

Inquiry into the 2012-13 Australian Taxation Office Annual Report

2.1 The following issues are considered in this chapter:

- towards contemporary service
- Australian Public Service Commission's Capability Review of the ATO
- simplification of key performance indicators
- benchmarking
- workforce reduction
- Lodgement Program for tax agents
- stakeholder consultation forums
- Tax Agent Portal
- the Tax Gap
- cash economy
- international taxation issues
- independent review of ATO decisions
- crowdfunding
- ATO's co-operation with child support agencies.

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 early 2015.

Towards contemporary service

- 2.3 The ATO's submission states that an important component of its reinvention project is the drive to provide contemporary service on a par with that offered by banks and other private institutions. The ATO recognises that the adoption of modern technology is central to this and has introduced a range of innovative new products to improve the experience of taxpayers interacting with the ATO.¹
- 2.4 In May the ATO joined *myGov*, a secure online profile enabling Australians to access a range of government services using a single username and password.² The Commissioner of Taxation said the decision to meld the ATO's online services with the *myGov* platform was taken partly to avoid the need for yearly user identity verification and partly in recognition of the push towards whole-of-government initiatives.³ The ATO summarised it as follows:
- It is a value proposition from... our side, but it is also now driving greater benefits. By October we expect we will have brought in about three million people to link the tax office to their *myGov* account and the number of *myGov* customers will have gone from about 2.8 [million people] to probably five million across Australia. So it is win-win. It is a better process year-on-year for tax customers and it also helps build the profile of *myGov* in the Australian community.⁴
- 2.5 At the hearing the Committee heard that an additional two million user accounts have been created and linked to the ATO's services since the agency joined *myGov*. The ATO also reported a substantial increase in the use of its existing online services - updating taxpayer details and tracking superannuation - as a result of the changes.⁵
- 2.6 The ATO also informed the Committee about a new, simpler, prefilled tax return service it launched in time for the lodgement of 2013-14 tax returns.⁶ Of the approximately 4.5 million taxpayers with simple tax
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1 Australian Taxation Office, *Submission 4.3*, p. 7.

2 Australian Taxation Office, *Submission 4.3*, p. 7; Australian Government, *About myGov*, <https://my.gov.au/mygov/content/html/about.html> (accessed 23/09/2014).

3 Mr Jordan, ATO, *Transcript of Evidence*, p. 13.

4 Mr Leeper, ATO, *Transcript of Evidence*, p. 6.

5 Australian Taxation Office, *Submission 4.3*, p. 7.

6 Mr Jordan, ATO, *Transcript of Evidence*, p. 1.

affairs, around three million currently employ tax agents to lodge their tax returns and almost 1.4 million taxpayers self-lodge returns.⁷ The new *myTax* service is designed specifically for those individuals with straightforward tax affairs who self-lodge returns.

- 2.7 *MyTax* streamlines the lodgement of tax returns by using the shared registry information provided by banks, government agencies and employers to prefill individuals' returns. Details such as wages, salary, dividends, Centrelink payments and medical expenses are completed for the taxpayer, leaving only those fields that relate to deductions to be manually populated.⁸ Before they lodge their return, taxpayers only have to review the prefilled details and declare any donations, work-related expenses, investment income expenses or taxation fees they have incurred.⁹
- 2.8 The Committee heard that *myTax* can be used on tablets and smart phones as well as computers.¹⁰ According to the ATO, it can take taxpayers as little as ten minutes to complete a tax return using the service and as of 27 August 2014, approximately 570,000 tax returns had been lodged via *myTax*.¹¹
- 2.9 The ATO reported that it has received an 'extraordinarily positive' response to the introduction of *myTax* and that it intends to continue to build and refine the service over the next few years.¹² In the meantime, the agency has extended call centre operating hours to support taxpayers using the new *myGov* platform and *myTax* service. It has also published simple instructions and a video resource demonstrating how to create a *myGov* account and link it to the ATO's online services.¹³
- 2.10 The ATO noted that light-touch tax returns, such as *myTax*, are dependent on the timely provision of shared registry information and they are

7 Mr Jordan, ATO, *Transcript of Evidence*, p. 2.

8 Mr Jordan, ATO, *Transcript of Evidence*, p. 1.

9 Australian Taxation Office, *MyTax*, <https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Lodge-online/MyTax/> (accessed 23/09/2014).

10 Australian Taxation Office, *MyTax*, <https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Lodge-online/MyTax/> (accessed 23/09/2014).

11 Mr Jordan, ATO, *Transcript of Evidence*, pp. 1-4.

12 Mr Jordan, ATO, *Transcript of Evidence*, pp. 1-2.

13 Australian Taxation Office, *Submission 4.3*, p. 7; Australian Taxation Office, *Individuals – myGov and linking to the ATO*, <https://www.ato.gov.au/General/Online-services/Register/Individuals---myGov-and-linking-to-the-ATO/> (accessed 21/09/2014).

working with banks and other financial institutes to provide data as early as possible.¹⁴

- 2.11 The ATO also informed the Committee of a new online newsroom launched in August to support its communication with small businesses.¹⁵ The Small Business Newsroom provides small businesses with the latest tax and super news; it facilitates access to educational webinars and video resources, and allows businesses to add important dates and reminders to their own calendars.¹⁶ Small businesses can subscribe to receive email notifications on news topics of interest and can opt-out of receiving general ATO letters in the mail.¹⁷
- 2.12 The newsroom includes a platform for feedback and the ATO stated it is committed to continue to work with small businesses to ‘enhance the newsroom’s functionality’.¹⁸
- 2.13 The Committee heard that an ATO app released in July 2013 has been updated to provide additional information and functionality to individual taxpayers and small businesses.¹⁹ The app now includes tools enabling users to:
- lodge a return on their smart phone via *myTax*
 - identify any lost superannuation in their name
 - gauge their super guarantee responsibilities
 - calculate their fuel tax credits
 - access information and resources about self-managed superannuation funds.²⁰
- 2.14 The ATO reported that as of July 2014, the app was available on Apple, Android and Windows devices and had been downloaded more than

14 Mr Leeper, ATO, *Transcript of Evidence*, pp. 4-5.

15 Mr Jordan, ATO, *Transcript of Evidence*, p. 2; Australian Taxation Office, *ATO online newsroom to save small businesses time*, <https://www.ato.gov.au/Media-centre/Media-releases/ATO-online-newsroom-to-save-small-business-time/> (accessed 23/09/2014).

16 Australian Taxation Office, *Small Business Newsroom*, <https://www.ato.gov.au/newsroom/smallbusiness/> (accessed 23/09/2014).

17 Australian Taxation Office, *Subscribe to get the latest business news and updates*, <https://www.ato.gov.au/Newsroom/smallbusiness/Subscriptions/> (Accessed 23/09/2014).

18 Australian Taxation Office, *Submission 4.3*, p. 8.

19 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

20 Australian Taxation Office, *Submission 4.3*, p. 8.

340,000 times.²¹ The Commissioner of Taxation noted that the app 'continues to be quite well received'.²²

Australian Public Service Commission's Capability Review

Background

- 2.15 In 2011, the Australian Public Service Commission (APSC) began undertaking capability reviews of government departments and three major agencies; the Australian Taxation Office, the Australian Customs and Border Protection Service and the Australian Bureau of Statistics.²³ The APSC's Capability Review of the ATO was completed and released in 2013 and provided the agency with an assessment of its ability to 'meet future obligations and challenges'.²⁴
- 2.16 The APSC review found that while the ATO has a strong track record of effective tax and superannuation administration, there are areas which require development if the agency is to maintain its position as a world-leading tax administrator.²⁵
- 2.17 The APSC described ATO culture as 'risk averse' with its officers predisposed to 'avoid rather than appropriately manage risk'. The APSC reported that this culture manifested through lengthy internal consultation and debate that delayed outcomes, the elevation of decision making and a pervasive feeling of disempowerment through all levels of staff.²⁶
- 2.18 The APSC determined that ATO officers were enthusiastic and motivated, however they lacked the guidance offered by a 'unified, strategic, transformational plan'. This placed the ATO at risk of wasting the

21 Australian Taxation Office, *Submission 4.3*, p. 8.

22 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

23 Australian Public Service Commission, *Capability Review Program*, <http://www.apsc.gov.au/projects/capability-reviews> (accessed 19/09/2014).

24 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, p. 1.

25 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, pp. 5-6.

26 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, pp. 5-6.

commitment of its staff or achieving inconsistent outcomes as staff interpreted the agency's vision in their own way.²⁷

- 2.19 Investment in information and communication technology (ICT) was identified by the APSC as being ad hoc without adequate consideration of overall infrastructure or planning to meet the expectations of future clients. Just four per cent of the ICT budget was available for discretionary investment and these funds were allocated in a first-in-first-served manner without regard of the strategic value-add to the ATO as a whole.²⁸
- 2.20 The APSC found the governance arrangements of the ATO to be too 'rules-driven' and corporate management practice statements and instructions to be too elaborate and formulaic. The plethora of rules contributed to staff difficulties in identifying and applying appropriate guidelines to their work and resulted in staff reluctance to make decisions in matters not covered by existing rules.²⁹
- 2.21 The ATO's consultation arrangements were also noted by the APSC as an area for improvement. Duplication caused a number of stakeholders to be represented on multiple committees and the ATO faced some criticism for failing to act on stakeholder feedback.³⁰
- 2.22 The APSC considered the following as priority development areas of the ATO:
- developing a forward-looking, enterprise-wide strategy
 - developing ICT efficiency and agility
 - building the future workforce
 - streamlining governance arrangements and structures
 - improving external connectedness.³¹

Capability Action Plan implementation

- 2.23 In response to the APSC review the ATO produced a Capability Action Plan outlining activities to address the issues identified by the APSC. The ATO's intended outcomes include:
- a clear statement of strategic intent that covers the 2020 vision and mission and the enterprise strategies to achieve that intent

27 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, p. 9.

28 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, p. 9.

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

30 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, p. 31.

31 Australian Public Service Commission, *Capability Review of the Australian Taxation Office*, p. 7.

- ICT investment driven by our strategic intent and enterprise strategies and our plans maximise our ability to keep pace with contemporary service expectations
 - our workforce is equipped, ready, willing and able to deliver our ongoing and future business needs
 - an efficient, streamlined governance system that supports accountability, quality decision-making and effective risk management
 - our connections and relationships across the government and the community are purposeful and effective and provide benefits to tax and superannuation systems and our administration.³²
- 2.24 The ATO's Capability Action Plan contains 52 deliverables that feed into the five priority development areas identified by the APSC. Each deliverable is further broken down into specific activities to achieve that deliverable; for example 'develop the 2020 vision and mission' is refined into drafting, consulting and finalising stages. The ATO reported that as of 30 June 2014, it had completed 35 of the 52 deliverables outlined in its Capability Action Plan.³³
- 2.25 The ATO has produced two overarching documents to focus its business: *ATO strategic intent*; and *ATO corporate plan 2014-18*. These documents formalise the agency's priorities and the strategies and activities to achieve these.³⁴
- 2.26 The strategic intent captures the agency's vision to become a 'leading tax and superannuation administration' known for its 'contemporary service, expertise and integrity'.³⁵ It also outlines twelve overarching performance measures that the ATO will use to assess its progress towards this vision:
- community and key stakeholder engagement and satisfaction with ATO performance
 - number of customer service interactions delivered through our 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

32 Australian Taxation Office, *Submission 4.3*, p. 6.

33 Australian Taxation Office, *Submission 4.3*, p. 6.

34 Mr Jordan, ATO, *Transcript of Evidence*, p. 2.

35 Australian Taxation Office, *ATO strategic intent*, July 2014, p. 2.

- adjusted average cost to the 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
 - employee engagement compared to APSC state of the service.³⁶
- 2.27 The *ATO corporate plan 2014-18* establishes the ATO's business priorities and the strategies the agency will use to achieve them.³⁷
- 2.28 The ATO has published an ICT Strategy to guide the coordinated, enterprise-wide investment in technology to build the agility and efficiency of ATO services.³⁸ The strategy focuses on four areas of development including:
- delivering end-to-end digital service
 - using data in a more insightful and intelligent manner
 - providing a digital working environment
 - reinventing IT services operate to increase efficiency.³⁹
- 2.29 The Committee also notes that the ATO has committed to create a 'Portfolio Investment Framework' to provide its Investment Board and IT Demand Management Steering Committee with 'consistency and rigour' in the consideration and approval of major business projects with IT components.⁴⁰
- 2.30 The ATO is refining and simplifying its once over-complicated governance structure. The agency has already reduced its Corporate Management Practice Statements and Instructions from 178 to around 60 concise Chief Executive Instructions (CEI).⁴¹ Staff can now access the new CEIs via the ATO's intranet along with resources to support their correct application.⁴² According to the ATO its new CEIs are also much less prescriptive,

36 Australian Taxation Office, *ATO strategic intent*, July 2014, p. 13.

37 Australian Taxation Office, *ATO corporate plan 2014-18, Foreword*, <https://www.ato.gov.au/About-ATO/About-us/In-detail/Strategic-direction/Corporate-plan/> (Accessed 13/10/2014).

38 Australian Taxation Office, *ATO Capability Action Plan: Update on progress June 2014*, p. 4.

39 Australian Taxation Office, *ATO IT Strategy*, pp. 4-9.

40 Australian Taxation Office, *ATO Capability Action Plan: Update on progress June 2014*, p. 4.

41 Australian Taxation Office, *ATO Capability Action Plan: Update on progress June 2014*, p. 9.

42 Australian Taxation Office, *ATO Capability Action Plan: Update on progress June 2014*, p. 20.

leaving tax office staff free to exercise their professional judgement within the principles of these instructions:

When I give speeches internally in the various sites at the ATO I keep saying, 'you've got a good education, you've got good experience, you're well trained; that should equal an ability to exercise common sense and judgement' - within certain principle based parameters. Rather than setting out in very, very finite detail all sorts of requirements across every single aspect of their [ATO officer] duties we have much more principle based parameters for them to exercise judgement and common sense within. I do get a lot of positive feedback from people saying, 'I enjoy my job more because I am applying my mind more to the actual thing in front of me, rather than feeling like I've just got to go through a line-by-line process or questionnaire'.⁴³

- 2.31 An Integrated Tax Design (ITD) Unit has been established by the ATO to work co-operatively with Treasury to inform the effective operation of taxation law in the community. The ATO is using its 'know-how' as the tax administrator to influence the design of tax and superannuation legislation. It is also submitting prioritised requests for law changes.⁴⁴
- 2.32 Since last year the ATO has reduced its ongoing consultation committees from 68 to just eight ongoing committees with special-purpose and technical forums convened as required.⁴⁵ Whilst these changes have been well received the ATO may have to look at reintroducing some committees. This is further considered in the section *Stakeholder consultation forums* below.
- 2.33 The Committee notes that the ATO also intends to undertake a post-implementation review of the new consultation arrangements in the first quarter of 2015. According to the ATO, the outcomes of the review will be used to better align the consultation process with external stakeholder expectations.⁴⁶

43 Mr Jordan, ATO, *Transcript of Evidence*, p. 9.

44 Australian Taxation Office, *ATO Capability Action Plan: Update on progress June 2014*, p. 10.

45 Australian Taxation Office, *Capability Action Plan: June 2014 Update on Progress*, p. 10.

46 Australian Taxation Office, *Submission 4.3*, p. 7.

Simplification of key performance indicators

Background

- 2.34 Australia, like many OECD countries, has used performance indicators to evaluate the operation of its public service since the mid-1980s. Over time, the focus of performance indicators has broadened from reporting on financial inputs, towards providing a clearer picture of the results or outcomes achieved through the expenditure of public money – ‘in other words, whether the outcomes or the impacts sought by government are being realised’.⁴⁷
- 2.35 In 2012-13 the ATO participated in an Australian National Audit Office (ANAO) pilot project which examined the development and implementation of key performance indicators (KPI) by a sample of government agencies.⁴⁸
- 2.36 The pilot project found that the most readily available performance information in the public sector in 2012-13 tended to be financial in nature, which, of itself, did not provide adequate insight into whether publicly funded programs and activities were achieving their objectives.⁴⁹ The pilot highlighted the need for the KPIs of Commonwealth entities to provide information (either qualitative or quantitative) on the effectiveness of programs in achieving overall objectives.⁵⁰

ATO’s refinement of KPIs

- 2.37 In light of the ANAO’s findings and other work conducted by the ATO, the tax office has shifted the focus of its KPIs from process-driven service standards, to outcome focused statements that can be used to measure results.⁵¹ It has reduced its KPIs from more than 500 to fewer than 250 and has published a corporate plan which outlines the agency’s four overarching goals and maps KPIs back to these:

47 ANAO, *The Australian Government Performance Measurement and Reporting Framework – Pilot Project to Audit Key Performance Indicators*, Report No. 28 2012-13, p. 14.

48 ANAO, *The Australian Government Performance Measurement and Reporting Framework – Pilot Project to Audit Key Performance Indicators*, Report No. 28 2012-13, p. 18.

49 ANAO, *The Australian Government Performance Measurement and Reporting Framework – Pilot Project to Audit Key Performance Indicators*, Report No. 28 2012-13, p. 42.

50 ANAO, *The Australian Government Performance Measurement and Reporting Framework – Pilot Project to Audit Key Performance Indicators*, Report No. 28 2012-13, p. 62.

51 Mr Leeper, ATO, *Transcript of Evidence*, p. 8; Australian Taxation Office, *Submission 4.3*, p. 9.

In our corporate plan we have established four key goals: easy for people to participate, contemporary and tailored service, purposeful and respectful relationships and a professional and productive organisation. These are the things that, when we have tested them with customer and stakeholder groups, represent the kinds of propositions they want back from the ATO as a transformed organisation. We have derived measures... to service and test those four goal areas. So it is very much a transformation from an input-and-process focus around service standards to measures that will help us to test the value we are providing in the transactions we undertake.⁵²

2.38 The ATO has also published the *ATO strategic intent* to complement its corporate plan. The strategic intent captures the ATO's vision to become a 'leading tax and superannuation administration' known for its 'contemporary service, expertise and integrity' and links this vision to twelve all-encompassing performance measures that the agency will use to assess progress towards this vision.⁵³ These key performance indicators are intended to be 'challenging, attainable with effort, affordable and meaningful to the community'.⁵⁴ They include:

- community and key stakeholder engagement and satisfaction with ATO performance
- number of customer service interactions delivered through our 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 the 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
- employee engagement compared to APSC state of the service.⁵⁵

52 Mr Leeper, ATO, *Transcript of Evidence*, p. 8; Australian Taxation Office, *Submission 4.3*, p. 10.

53 Australian Taxation Office, *ATO strategic intent*, July 2014, p. 2 and p. 13.

54 Australian Taxation Office, *Submission 4.3*, p. 9.

55 Australian Taxation Office, *ATO strategic intent*, July 2014, p. 13.

- 2.39 The ATO acknowledged that it is important to ensure that these corporate KPIs are aligned with the performance measures of individual teams within the agency. It indicated that it is willing to pursue this work and may also consider further refinement of the corporate KPIs.⁵⁶
- 2.40 The Committee noted that the ATO's new approach to KPIs is similar to the United Kingdom's Her Majesty's Revenue and Customs (HMCR). The HMCR maintains a one page summary of performance indicators arranged under three main goals:
- creating sustainable cost reduction
 - maximising revenue collection
 - stabilising and improving customer service.⁵⁷
- 2.41 Underneath each of these goals it lists three to seven measurable performance indicators such as 'cash collected from compliance' or 'percentage of return transactions carried out online'.⁵⁸
- 2.42 At the hearing the ATO provided evidence that it uses KPIs to facilitate informed decision making. According to the ATO, performance information in relation to commitment to service, finance and the ATO's workforce is provided to its key corporate committees on a monthly and quarterly basis.⁵⁹
- 2.43 Furthermore, the ATO ensures performance data is publically available. Information on the agency's performance is included in the *Commissioner of Taxation Annual Report* which is tabled in Parliament before 31 October each year and 'effectiveness stories' are regularly published on the ATO website.⁶⁰

Benchmarking

- 2.44 There are a range of national and international benchmarks available to assist the ATO to gauge its efficiency and cost effectiveness compared to other tax administrations.⁶¹ The ATO informed the Committee that it uses benchmarks to identify both how it is performing and how it is seen to be performing by stakeholders. The executive use benchmarking data to
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56 Mr Olesen, ATO, *Transcript of Evidence*, p. 9; Mr Jordan, ATO, *Transcript of Evidence*, p. 12.

57 Her Majesty's Revenue and Customs, *Annual Report and Accounts 2013-14*, p. 17.

58 Her Majesty's Revenue and Customs, *Annual Report and Accounts 2013-14*, p. 17.

59 Australian Taxation Office, *Submission 4.3*, p. 10.

60 Australian Taxation Office, *Submission 4.3*, pp. 10-11.

61 Australian Taxation Office, *Submission 4.3*, p. 12.

evaluate organisation strengths and weaknesses and to determine areas for improvement.⁶²

- 2.45 The Committee heard that the ATO is a regular participant in the Forum on Tax Administration's (FTA) biennial international benchmarking study.⁶³
- 2.46 Every two years the FTA publishes a comparison of revenue authorities across the Organisation for Economic Co-operation and Development (OECD) and other advanced and emerging economies.⁶⁴ It reports on authorities' performances in areas such as, complaint handling, institutional arrangements, authority delegation, and performance targets.⁶⁵ It identifies trends and offers useful insight into the practices of other tax administrators by highlighting examples that it considers best practice.⁶⁶
- 2.47 The 2013 FTA study found that many other revenue authorities face the same challenges as the ATO in terms of implementing major organisational reform during a period of budgetary restraint and adopting pre-filled, electronic tax returns for individuals with simple tax affairs.⁶⁷ The FTA noted that over half of all the revenue authorities surveyed allowed clients to lodge electronic tax returns and almost half prefill some sections of personal income tax returns.⁶⁸
- 2.48 The ATO provided the Committee with an analysis of its performance in relation to the other tax administrators surveyed by the FTA.⁶⁹ It found that the cost of collecting tax in Australia is trending down. Specifically, the cost of collection relative to gross revenue has decreased from 84c in every \$100 collected in 2005, to 71c per \$100 collected in 2013. The cost of collection relative to net revenue decreased from \$1.04 in every \$100 collected in 2005, to 93c in 2013.⁷⁰

62 Australian Taxation Office, *Submission 4.3*, p. 12.

63 Mr Leeper, ATO, *Transcript of Evidence*, p. 7.

64 Australian Taxation Office, *Submission 4.3*, p. 12.

65 Mr Leeper, ATO, *Transcript of Evidence*, p. 7.

66 Forum on Tax Administration, *Tax Administration 2013: Comparative Information on OECD and other advanced and Emerging Economies information brochure*, <http://www.oecd.org/ctp/administration/Tax-Administration-2013-Information.pdf> (accessed, 18/09/2014).

67 Forum on Tax Administration, *Tax Administration 2013: Comparative Information on OECD and other advanced and Emerging Economies*, p. 13.

68 Forum on Tax Administration, *Tax Administration 2013: Comparative Information on OECD and other advanced and Emerging Economies*, pp. 14-15.

69 Australian Taxation Office, *Submission 4.3*, p. 12.

70 Australian Taxation Office, *Submission 4.3*, pp. 12-13.

2.49 Despite the downward trend in the cost of revenue collection, the ATO acknowledged that its performance remains below average in relation to the cost of collection relative to gross revenue.⁷¹ The Commissioner of Taxation attributed this result to the cost of quality assurance activities undertaken by the ATO to ensure taxpayer refunds are correctly administered:

Not all countries have the level of churn to the same extent [as the ATO]. Obviously a lot of effort goes into making sure that if you are giving large refunds to people it is appropriate to do it. And particularly in the GST world there is quite a significant effort in terms of the way our system is set up to make sure that people who put in claims for refunds are entitled to that.⁷²

2.50 The FTA comparative data shows Australia's tax administration expenditure relative to gross domestic product (GDP) is also decreasing. In 2013, 0.18 per cent of GDP was spent on collecting taxes compared to 0.23 per cent in 2005.⁷³

2.51 The ATO also provided an FTA comparison of tax administrators' full time equivalent staffing levels and gross revenue collected. In 2011 Australia collected AUD \$361.3 billion with 18,196 full time equivalent staff. This places the ATO's performance above the United Kingdom, Ireland and New Zealand and close to Norway and Denmark.⁷⁴

2.52 In 2011 the ATO also participated in the United Kingdom's Her Majesty's Revenue and Customs benchmarking study which examined the tax administrations of Canada, France, the Netherlands, Ireland, Poland, Spain, and South Africa.⁷⁵ The results indicated that:

- Australia has a low processing cost per return for personal tax returns
- Australia is the most cost efficient tax administrator of those who manage VAT/GST registration activities in-house and which participated in the study.⁷⁶

2.53 The study also found that Australia needed 'to improve its program to resolve large business disputes more quickly in line with the efforts of other jurisdictions'.⁷⁷

71 Mr Jordan, ATO, *Transcript of Evidence*, p. 8.

72 Mr Jordan, ATO, *Transcript of Evidence*, p. 8.

73 Australian Taxation Office, *Submission 4.3*, p. 13.

74 Australian Taxation Office, *Submission 4.3*, p. 13.

75 Australian Taxation Office, *Submission 4.3*, p. 15.

76 Australian Taxation Office, *Submission 4.3*, p. 15.

- 2.54 The Committee heard that the ATO also monitors private and public benchmarks within Australia in areas like call centre performance and IT costs to ensure money spent on these activities is both 'reasonable and defensible'.⁷⁸

Workforce reduction

- 2.55 The Committee heard that the ATO is 'well on the way' to achieving a staff reduction of 3,000 before 31 October 2014. This figure includes the 900 redundancies announced in November 2013 as part of efficiency dividends and the abolition of some taxes.⁷⁹
- 2.56 The ATO explained that the 2014-15 federal budget made it necessary to seek additional redundancies in order to support 'a balanced operating budget'. This required staffing reductions expected over the forward estimates to be brought forward; including a reduction of 500 employees over the year 2014-15 and a further 1,600 in 2015-16.⁸⁰
- 2.57 The ATO expected to achieve its targeted staff reduction mostly, if not completely, through voluntary redundancies. An initial invitation to employees interested in taking a voluntary redundancy was issued in January 2014 and attracted 2,200 expressions of interest, resulting in 1,361 employees leaving the organisation. This was closely followed by a second invitation which drew 2,366 expressions of interest and resulted in the issue of 1,300 offers of redundancy. The ATO is currently finalising arrangements with individuals who accepted offers.⁸¹
- 2.58 Staff applications for voluntary redundancy were systematically appraised using a role/skills self-assessment process and a selection panel review. Applicants were asked to rate both the importance of their role and then the significance of their skills within the agency on a scale of one to four (one being very important). The panel then worked through each application, accepting employees who rated themselves four/four - 'the person in the role has no particular skills/the role is not particularly critical'.⁸²

77 Australian Taxation Office, *Submission 4.3*, p. 15.

78 Mr Leeper, ATO, *Transcript of Evidence*, p. 8.

79 House of Representatives Standing Committee on Tax and Revenue, *2013 Annual Report of the Australian Taxation Office: First Report March 2014*, p. 13.

80 Australian Taxation Office, *Submission 4.3*, p. 17.

81 Mr Leeper, ATO, *Transcript of Evidence*, p. 10.

82 Mr Jordan, ATO, *Transcript of Evidence*, p. 10.

2.59 The Commissioner stated that most voluntary redundancies were issued to employees rated as a three/three or above and that some staff rated below this had their applications rejected as their skills, or role within the agency, was deemed too important to lose.⁸³

2.60 The ATO also outlined its efforts to ensure redundancies were spread across the organisation and did not negatively impact a particular group or office more than others:

As I said it has been a large logistical exercise. ... We have had to be very careful in managing precisely where and from what groups and what locations we take these redundancies. That is why we have to measure this from a whole-of-ATO point of view, because... if some offices have 300 or 500 people taking a voluntary redundancy, the office might not be viable. We have had to be careful in managing sites and components of workgroups - if it is important to have a particular function in a particular site, we cannot necessarily allow that whole function to go.⁸⁴

2.61 The Committee also heard that despite the ATO's efforts to achieve staff reductions on a voluntary basis, involuntary redundancies may become necessary later this year as ten regional taxation offices cease operations.⁸⁵ The regional offices nominated for closure comprise Sale, Bendigo, Orange, Grafton, Port Macquarie, Cairns, Mackay, Rockhampton, Launceston and Toowoomba.⁸⁶

2.62 The Committee asked for an update on the ATO's work to issue voluntary redundancies or redeploy the staff at these offices. The ATO replied that as of July 2014, nine of the 72 employees working at these locations had already accepted voluntary redundancies and an additional two were in progress. Eleven staff had already been redeployed to metropolitan ATO offices and two had indicated that they were considering this option.⁸⁷

2.63 According to the ATO, approximately 30 employees could potentially be redeployed to other Commonwealth agencies if they elected to decline a voluntary redundancy.⁸⁸ The Committee also heard that the ATO has notified staff affected of office closure dates and has established a team to

83 Mr Jordan, ATO, *Transcript of Evidence*, p. 10.

84 Mr Jordan, ATO, *Transcript of Evidence*, p. 9.

85 Mr Jordan, ATO, *Transcript of Evidence*, p. 11.

86 Mr Olesen, ATO, *Transcript of Evidence*, p. 11.

87 Mr Olesen and Mr Leeper, ATO, *Transcript of Evidence*, p. 11.

88 Mr Leeper, ATO, *Transcript of Evidence*, p. 11.

support voluntary redundancy arrangements or assist staff to transition to other agencies.⁸⁹

- 2.64 The Committee questioned whether such a significant reduction in staff could affect the revenue collection functions of the agency. It asked the ATO to outline how it has safeguarded revenue collection throughout these changes.
- 2.65 The Commissioner of Taxation acknowledged that the likelihood of staff reductions affecting the agency's ability to collect revenue had increased as a greater number of employees were made redundant. However he assured the Committee that he was satisfied that the current staff reduction will not have any 'material impact' on the ATO's revenue collection.⁹⁰
- 2.66 The Committee noted media claims that the ATO's ability to collect revenue could be affected if any further cuts to staff are made. The ATO explained that there is not a simple correlation between staffing and revenue collection:

I think some of those articles are premised on a simplistic view that you just divide the revenue base by the number of officers in the organisation and that equates to revenue per head of the person working in the organisation. That is just not how it works. The variety of functions that people do, the variety of risks they might address, the kind of work they do varies enormously. You certainly cannot apply a simplistic average to every person and say that for everyone who works in the organisation they bring in this amount of money.⁹¹

- 2.67 According to the Commissioner, the ATO is using the voluntary redundancy process to shed duplicated and unnecessary corporate functions:

Over the years there has been a build-up of quite a multi-layered management approval structure, which we are eliminating. We are also looking at a lot of duplication in function that has been developed within the individual groups. They have built up their own significant corporate enabling functions over time as well.⁹²

89 Mr Leeper, ATO, *Transcript of Evidence*, p. 12.

90 Mr Jordan, ATO, *Transcript of Evidence*, p. 10.

91 Mr Olesen, ATO, *Transcript of Evidence*, pp. 10-11.

92 Mr Jordan, ATO, *Transcript of Evidence*, p. 10.

- 2.68 The ATO has also indicated that it is pursuing a range of additional strategies to minimise any negative impact on ATO services arising from staff reductions. These include:
- introducing contemporary technology that better meets customer expectations such as *myTax*
 - building the capability of staff to improve efficiency and effectiveness
 - communicating more clearly with staff to avoid objections and disputes
 - using negotiation and the new independent review process to resolve disputes more quickly
 - automation of repetitive work or processes to increase efficiency
 - improving the use of small business benchmarks, analytics, case selection engines and community information to identify and focus on areas of risk
 - increasing senior oversight of case management to ensure cases are completed quickly
 - improving risk assessment processes – such as tax fraud models – to ensure compliant taxpayers are not subjected to unnecessary delays when interacting with the agency.⁹³
- 2.69 The ATO stated that it intends to follow-up the reduction in staff with a ‘concentrated effort’ to identify gaps that need to be back-filled and any retraining or redeployment necessary to ensure the agency continues to operate effectively.⁹⁴

Lodgement Program for tax agents

Background

- 2.70 The ATO’s Lodgement Program for tax agents establishes the due dates for the lodgement of tax returns each financial year. Generally speaking, taxpayers must complete a return by 31 October, unless they lodge through a tax agent who is permitted to lodge returns on behalf of clients until 15 May the following year.⁹⁵
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93 Australian Taxation Office, *Submission 4.3*, p. 18

94 Mr Jordan, ATO, *Transcript of Evidence*, pp. 9-10.

95 The Tax Institute, *Submission 5*, p. 3.

- 2.71 On 1 July 2013 the ATO introduced a new Lodgement Program; ‘co-designed’ by tax agents, for tax agents, after practitioners raised the issue of differentiating between agent practices.⁹⁶ The new program requires tax agents to electronically lodge 85 per cent of client returns by the due dates established for that financial year; the aim being to encourage tax agents to bring late lodging clients into line and therefore improving overall ATO lodgement statistics.⁹⁷
- 2.72 Each agent’s performance percentage is calculated by dividing the number of current year returns lodged before the due date, by the total number of an agent’s clients, as reported in the Tax Agent Portal.⁹⁸
- 2.73 Tax agents who do not meet the 85 per cent lodgement requirement may be subjected to ‘treatments’ administered by the ATO. The severity of the treatment applied may increase if an agent displays repeated poor performance and could ultimately result in exclusion from the concessional due dates under the Lodgement Program.⁹⁹

Stakeholder concerns with the Lodgement Program

- 2.74 At the public hearing the Tax Institute and the Inspector-General of Taxation both reported significant sector concern in relation to the operation of the Lodgement Program and the fairness of its outcomes.¹⁰⁰
- 2.75 The Committee heard that the Tax Institute’s members are apprehensive because, despite their best efforts to meet lodgement due dates, late lodging or recalcitrant clients may harm their reputation with the ATO:

Although a 15 per cent margin has been allowed to accommodate the above circumstances, members affected remain greatly

96 Australian Taxation Office, 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 12/09/14); Mr Olesen, *Transcript of Evidence*, p. 27.

97 The Tax Institute, *Submission 5*, p. 3.

98 Australian Taxation Office, *How we calculate your lodgement performance*, <https://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/85--on-time-lodgment-requirement/How-we-calculate-your-lodgment-performance/> (accessed 12/09/2014).

99 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 12/09/2014).

100 Mr Noroozi, Inspector-General of Taxation and Mr Jeremenko, The Tax Institute, *Transcript of Evidence*, pp. 28-29.

concerned about the impact of these requirements on their business and the stress they cause as a result.¹⁰¹

2.76 Tax practitioners who have spoken to the Inspector-General of Taxation in relation to this issue expressed disquiet that the Lodgement Program does not take into account other services performed by tax agents. He said that:

Some of the representations that have been made to us are that not enough account is taken of their whole-of-practice issues – as the faithful tax accountant or agent, they do a lot more than just tax returns. One of the issues might be the amount of regulatory response that they [tax practitioners] have to do at different periods in the year... Some of those peaks and troughs might be things that could be looked at in trying to even out the burden over the year.¹⁰²

2.77 The Office of the Inspector-General of Taxation explained that some tax practitioners specialise in bringing taxpayers who are behind on their returns back up to date and, in doing so, agents may be required to lodge client returns ‘going back as far as 10 years’; placing them at risk of late lodgement:

Basically I think the tax agent’s concern is: ‘If I am helping somebody that has not lodged for the last ten years and bringing them up to date, I should be thanked for bringing these people up to date rather than being punished.’ I think the tax office says they only look at it in terms of the current year, but the difficulty for the tax agent is that they still have to do the rest of their work along with that.¹⁰³

2.78 The Committee Chair asked the ATO how the effectiveness of the Lodgement Program is being monitored in light of tax agents’ concerns. The ATO replied that there has been a ‘substantial improvement in on-time lodgement performance as a result of the program’.¹⁰⁴

2.79 Since the introduction of the program the ATO has observed:

- an increase of more than 32 per cent in the number of agents achieving 85 per cent or more on-time lodgement
- an increase of 11 per cent in the number of agents achieving 85 per cent on-time lodgement for FBT returns

101 The Tax Institute, *Submission 5*, p. 4.

102 Mr McLoughlin, Office of the IGT, *Transcript of Evidence*, p. 28.

103 Mr Noroozi, IGT, *Transcript of Evidence*, p. 28.

104 Mr Olesen, ATO, *Transcript of Evidence*, p. 27.

- 419,900 more tax returns lodged on time than in the previous year [2012-13 compared to 2011-12]
 - a 10 per cent reduction in the number of agents lodging paper returns, resulting in 16 per cent fewer paper returns lodged than in the previous year [2012-13 compared to 2011-12]
 - a 10 per cent reduction in the number of agents requesting lodgement deferrals for tax returns and FBT returns.¹⁰⁵
- 2.80 The ATO also pointed out that to date, the program had resulted in no sanctions other than the ATO working closely with late lodging tax agents to improve their performance and furthermore, surveys administered by the agency show that the ‘vast majority of agents’ were ‘quite happy’ with the program’s operation.¹⁰⁶
- 2.81 However the ATO did acknowledge that the ‘intent of the program and how it is meant to operate’ had not been communicated very successfully to tax agents.¹⁰⁷ The Commissioner of Taxation explained the issue as follows:
- ...we have a significant communication issue... We need to explain where we are coming from with this thing because I think the perception about the rigidity [of the program] is not the reality of our approach.¹⁰⁸
- 2.82 The ATO also noted that the Lodgement Working Group had already reconvened to discuss agents’ concerns and will continue to work through issues to ‘fine-tune’ the program.¹⁰⁹ At the Lodgement Working Group meeting held on 11 August 2014, attendees agreed to undertake the following activities:
- a review of the Lodgement Program’s 31 October due date, to assess the feasibility of changing the design of the on-time performance measure to better accommodate agents who lodge multiple prior year returns on behalf of clients
 - the ATO will consider contacting the clients of tax practitioners who show no improvement to ensure clients are aware they have overdue obligations

105 Australian Taxation Office, *Effects of the framework*, <https://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/Effects-of-the-framework/> (accessed 12/09/2014).

106 Mr Olesen, ATO, *Transcript of Evidence*, p. 27.

107 Mr Olesen, ATO, *Transcript of Evidence*, p. 28.

108 Mr Jordan, ATO, *Transcript of Evidence*, p. 28.

109 Mr Olesen, ATO, *Transcript of Evidence*, p. 28.

- professional associations are invited to send through their ideas for the 2014-15 Lodgement Program.¹¹⁰

Stakeholder consultation forums

- 2.83 The Committee questioned the ATO and stakeholders in relation to the streamlined consultation arrangements introduced in 2013 as part of the organisation's Capability Action Plan.
- 2.84 Since last year the ATO has reduced its ongoing consultation committees from 68 to just eight ongoing committees. Special-purpose and technical forums are convened as required.¹¹¹
- 2.85 The Tax Institute provided a very positive assessment of the ATO's new consultation arrangements, nominating the reduction of duplication and the increased authority of the remaining committees as key benefits:
- The reduction was initially resisted by a number of organisational representatives, but within a short period of time it has become quite apparent that the new model is quite workable. ...members' attending means that they are being taken away from their day job, and they do not mind doing that - if it is seen to considerably add value. As I say a lot of duplication has pretty much been eliminated in the consultation space.¹¹²
- 2.86 The Council of Small Business Organisations of Australia was also supportive of the new consultation arrangements.¹¹³
- 2.87 The Institute of Public Accountants praised the ATO for reducing duplication, but said the disbandment of ongoing speciality committees has reduced the ATO's engagement with industry on some taxation issues.¹¹⁴
- 2.88 The Institute of Chartered Accountants Australia cited the discontinued Fringe Benefit Tax (FBT) subcommittee as an example of the loss of ongoing specialty consultation and observed that some regional tax

110 Australian Taxation Office, *Lodgement Working Group discusses on-time performance*, <https://www.ato.gov.au/Tax-professionals/News-and-updates/Income-tax/Lodgement-Working-Group-discusses-on-time-performance/?tplandingpage> (accessed 15/09/2014).

111 Australian Taxation Office, *Capability Action Plan: June 2014 Update on Progress*, p. 10.

112 Mr Jeremenko, The Tax Institute, *Transcript of Evidence*, p. 16.

113 Mr Strong, Council of Small Business Organisations of Australia, *Transcript of Evidence*, p. 17.

114 Mr Greco, Institute of Public Accountants, *Transcript of Evidence*, p. 17.

practitioners have had fewer opportunities to engage with the ATO since the new consultation arrangements were introduced.¹¹⁵

- 2.89 The Inspector-General of Taxation agreed that smaller tax practitioners - particularly those in regional areas - no longer feel they have a platform from which to consult with the ATO.¹¹⁶ He said they believe the ATO has shifted away from interactive consultation and towards the one-way provision of information since the Tax Practitioner Forum (ATPF) was substituted with the Tax Practitioner Advisory Group (ATPAG):

...what we are hearing from smaller tax agents particularly is that, since the regional ATO Tax Practitioner Forums (ATPF) are no longer, they [regional tax agents] feel as if they do not have a forum where they engage and consult. The other forums they go to are more where they receive information rather than engage and consult.¹¹⁷

- 2.90 In addition, the Inspector-General of Taxation observed that the new consultation arrangements may also have resulted in reduced transparency:

...when you have established working groups there is transparency. You can see what questions were raised, and everyone can see the tax officer's response, because those minutes would be on websites. The agendas are on web sites. If you [the ATO] can manage that and the information can be disseminated in some other way that is great. But there is this issue of transparency.¹¹⁸

- 2.91 The ATO acknowledged stakeholder concerns and outlined the reasoning behind the structure of the new consultation arrangements. According to the Commissioner of Taxation the new arrangements are more focussed on outcomes and less on committee process:

It did become a bit of a process - the meetings were held quarterly, there was an agenda, the people would get there and tick off the items - whereas I am much more focussed on the shorter term: 'Here are the issues that we have today and need some help on. Who are the best people around in Australia for this issue to help us work our way through it?' ... You do it for more like four

115 Mr Croker, Institute of Chartered Accountants Australia, *Transcript of Evidence*, p. 16.

116 Mr Noroozi, IGT, *Transcript of Evidence*, p. 18.

117 Mr Noroozi, IGT, *Transcript of Evidence*, p. 18.

118 Mr Noroozi, IGT, *Transcript of Evidence*, p. 18.

months, and then it stops – and then there is the outcome. So it is much more focussed.¹¹⁹

- 2.92 The Committee notes that the ATO intends to undertake a post-implementation review of the new consultation arrangements in the first quarter of 2015. The Consultation Steering Group – whose members include key external and internal ATO stakeholders and Treasury – agreed that while the effectiveness of consultations have improved, it is appropriate to conduct a formal assessment of the operation model. The outcomes of the review will be used to better align the consultation process with external stakeholder expectations.¹²⁰
- 2.93 The Committee acknowledges the Inspector-General of Taxation’s confidence that the ATO will ‘self-correct’ and reinstate committees as required.¹²¹ The Committee will monitor the outcome of the post-implementation review.

Tax Agent Portal

- 2.94 The Tax Agent Portal is a secure online environment used by registered tax agents and their employees to conduct transactions with the ATO.¹²² Since the portal was introduced in October 2002 it has become fundamental to the day-to-day business of tax agents.¹²³
- 2.95 At the public hearing, the Committee heard criticism regarding the reliability of the portal and some stakeholders questioned its continuing viability.
- 2.96 The Institute of Public Accountants discussed the effect of increasing user traffic and the Tax Institute outlined the impact of unplanned system outages on the productivity of tax agents:

The analogy that we like to use internally is that... the portal is almost like a dinosaur that is trying to deal with the 21st century. ...tax practitioners are continually being pushed more and more towards an electronic way of interacting. The amount of reliance they currently place on the portal means that outages, whether

119 Mr Jordan, ATO, *Transcript of Evidence*, p. 17.

120 Australian Taxation Office, *Submission 4.3*, p. 7.

121 Mr Noroozi, IGT, *Transcript of Evidence*, p. 18.

122 Australian Taxation Office, *Tax Agent Portal*, <https://www.ato.gov.au/Tax-professionals/Tax-Agent-Portal/> (accessed 11/09/2014).

123 The Tax Institute, *Submission 5*, p. 2; Mr Noroozi, *Transcript of Evidence*, p. 20.

they be planned or - more problematically - unplanned, really do have a huge effect on practitioners' ability to function.¹²⁴

2.97 In their submission the Tax Institute also claimed that 'unscheduled disruptions to the portal are arising in periods of peak usage' and expressed concern that the information available via the portal is updated in batches, rather than in real time, limiting agents access to up-to-date information.¹²⁵

2.98 The Inspector-General of Taxation is currently running a tax practitioners services review. According to the Inspector-General, stakeholders are hesitant to raise their concerns in relation to the Tax Agent Portal in case the replacement of the service results in further disruptions to portal access:

What is in their minds is what happened with the previous IT upgrade... and the flow on effects from that. From what we have heard, there seems to be a cautiousness with which they are raising their concerns, because they are worried that, if there were to be a wholesale change, it might attempt to solve a few of their current irritations but give rise to a much bigger problem.¹²⁶

2.99 The ATO acknowledged that they are 'having trouble maintaining the infrastructure to a state or a degree that is satisfactory from the tax agents' point of view' and outlined the internal service standards and strategies in place to minimise portal response times and the impact of planned outages.¹²⁷

2.100 Service standards require the portal to provide three second, or less, response times 95 per cent of the time and the ATO attempts to perform maintenance to the portal's 60,000 interfaces from around 9pm to 7am.¹²⁸ According to the ATO, overall the agency is meeting these standards and endeavouring to respond promptly to portal issues:

We keep our ears finely tuned to the feedback from tax agents. We understand that this is fundamentally how they do their business. Whilst we have not met that service standard at all times, certainly

124 Mr Jeremenko, The Tax Institute and Mr Greco, Institute of Public Accountants, *Transcript of Evidence*, p. 19.

125 The Tax Institute, *Submission 5*, p. 2.

126 Mr Noroozi, IGT, *Transcript of Evidence*, p. 20.

127 Mr Leeper, ATO, *Transcript of Evidence*, p. 19.

128 Mr Leeper, ATO, *Transcript of Evidence*, p. 20.

I want to make it clear to my people that we listen very, very carefully and respond quickly when there are problems.¹²⁹

- 2.101 At the hearing the ATO expressed the intention to shift the services offered by the portal to the ATO Online website and onto new Standard Business Reporting (SBR) software currently under development. However, the Tax Agent Portal would continue to operate concurrently with the new ATO Online functionality until the portal can be decommissioned in consultation with the sector. The ATO stated that transferring the Tax Agent Portal functions to the more modern, ATO Online would improve the 'reliability and performance' of the service. Further, the ATO maintained that incorporating aspects of the portal into new SBR software being developed should also provide a more robust platform for businesses to conduct taxation practices.¹³⁰
- 2.102 SBR software uses common computer languages enabling tax practitioners and businesses to prepare and lodge reports to government directly from business management software.¹³¹ The ATO expects SBR software to be in use from July 2015.¹³²

The Tax Gap

Background

- 2.103 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.
- 2.104 Parliamentary committees have long maintained an interest into the ATO's move towards measuring the Tax Gap.¹³³
- 2.105 In 2012 the Joint Committee of Public Accounts and Audit (JCPAA) recommended that the 'ATO examine tax gap methodologies' and the practicality of implementing a measurement after it heard evidence

129 Mr Leeper, ATO, *Transcript of Evidence*, p. 19.

130 Mr Leeper, ATO, *Transcript of Evidence*, p. 20.

131 Australian Taxation Office, *Expanding Standard Business Reporting services*, <https://www.ato.gov.au/General/Online-services/In-detail/Guide-for-business/Doing-your-tax/Expanding-Standard-Business-Reporting-services/> (accessed 11/09/14).

132 Mr Leeper, ATO, *Transcript of Evidence*, p. 20.

133 House of Representatives Standing Committee on Tax and Revenue, *2013 Annual Report of the Australian Taxation Office: First Report*, Chapter One, pp. 1-2.

regarding the estimation of Tax Gap by international tax administrations.¹³⁴

- 2.106 As a starting point the JCPAA recommended that the ATO 'publically release its Tax Gap analysis relating to Goods and Services Tax (GST) collections' – information which has since been made available.
- 2.107 The ATO included an estimation of the 2010-11 GST gap in the *Commissioner of Taxation Annual Report 2012-13*. The report showed that the GST gap for 2010-11 was 6.5% of GST revenue (including debt) or \$3 billion. Excluding debt, the GST gap was 5.4% of revenue or \$2.5 billion.¹³⁵
- 2.108 The ATO places the average GST gap (excluding debt) over the period 2001-02 to 2009-10 at 6.7%.¹³⁶
- 2.109 ATO estimations of the Luxury Car Tax (LCT) are also now publically available. The LCT gap was most recently assessed for the year 2010-11 and was estimated at \$28 million which equates to 5.2% of the total estimated theoretical LCT payable for that year. The LCT gap was found to have increased by 0.3 per cent between 2009-10 and 2010-11.¹³⁷

ATO's commitment to estimate the Tax Gap

- 2.110 The Committee is pleased to note that the ATO announced in their submission that the agency will be undertaking a formal assessment of the Tax Gap in Australia:

Following extensive consultation with Tax Gap experts and representatives from jurisdictions already publishing estimates, the ATO executive endorsed extending our Tax Gap estimation program to cover all taxes administered.¹³⁸

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

135 Australian Taxation Office, *Measuring tax gaps in Australia for the GST and LCT*, [https://www.ato.gov.au/Business/Bus/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-\(GST\)-and-the-luxury-car-tax-\(LCT\)/](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)/) (accessed 16/09/2014).

136 Australian Taxation Office, *The GST gap results*, [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=6#The_GST_gap_results](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=6#The_GST_gap_results) (accessed 15/09/2014).

137 Australian Taxation Office, *Estimate of the LCT 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=4#Estimate_of_the_LCT_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=4#Estimate_of_the_LCT_gap__overview) (accessed 15/09/2014).

138 Australian Taxation Office, *Submission 4.3*, p. 19.

2.111 In making the decision to pursue a more comprehensive measurement of the Tax Gap, the ATO consulted with a wide range of experts and stakeholders including: the Australian Bureau of Statistics, Treasury and the United Kingdom's Her Majesty's Revenue and Customs. A number of issues were raised during these discussions including:

- estimating the Tax Gap involves measuring 'what is not visible - what taxpayers have not disclosed about their compliance' and is therefore inherently uncertain
- the Tax Gap should be reported as a range to accommodate these inherent uncertainties. However this will make trend analysis difficult, especially during the early stages of the program
- Tax Gap measurements reflect more than just the ATO's administration of the taxation system and therefore should not be taken as a performance measure in isolation of other performance indicators
- estimates should not be published more frequently than once every two years, to allow for quality assurance work to be completed and methodologies to be refined
- credible Tax Gap estimates cannot be produced for individuals and small businesses without subjecting a small proportion of this population to random audits.¹³⁹

2.112 The ATO cited the following benefits as key factors in its decision to proceed with a formal estimation of the Tax Gap:

- many other tax administrations around the world (eg the UK and US) already estimate gaps for some or all of the taxes they administer. The ATO's commitment will better align it with sector best practice
- a greater understanding of the Tax Gap will support the ATO's awareness of which elements in the tax system are working effectively and elements which could be improved. This knowledge will enable the agency to provide better evidence-based advice to Treasury and government
- increasing the visibility of the Tax Gap through its formal estimation may assist the ATO to foster community discussion around compliance gaps and how they could be addressed.¹⁴⁰

139 Australian Taxation Office, *Submission 4.3*, pp. 19-20.

140 Australian Taxation Office, *Submission 4.3*, p. 19.

- 2.113 The ATO advised the Committee that it will be 'at least two years' before they can produce an 'overarching aggregate figure of what the Tax Gap might be, that can be disaggregated into the various components of the tax system'.¹⁴¹

Random audits

- 2.114 The ATO will use a combination of methodologies to estimate the Tax Gap and is considering incorporating random audits for small businesses and individuals from 2016. Conducting random audits will assist the ATO to overcome selection bias for these populations and is in line with international best practice for Tax Gap estimations.¹⁴²
- 2.115 At the public hearing the Commissioner of Taxation acknowledged that stakeholders and taxpayers are likely to raise concerns about this approach, but asserted that expert opinion holds random audits as critical to the reliability of the data:

I have expressed in prior hearings my concern over this issue [random audits]. We are subjecting citizens to an intervention for the sake of collecting data. But we have committed to this [Tax Gap] measurement now, and I absolutely get and share your concern on that issue... We are told that for reliability – and the experts advise us – there does need to be an element of that random audit in there.¹⁴³

- 2.116 The ATO indicated that they may not penalise non-compliant taxpayers identified via random audit and may instead encourage taxpayers to 'self-correct' with assistance around payment arrangements if required. The agency is also considering providing taxpayer education on how to avoid common mistakes identified through the random audit process.
- 2.117 This co-operative approach to random audits is important because there is a cost to taxpayers. The Tax Institute was concerned about the prospect of random audits and questioned the merit of subjecting taxpayers to this process:

...I am not sure how a random audit can be a light touch for a taxpayer. From the taxpayers' point of view, I think any audit is too much touch. ...it is something we need to work with the tax office on, but initial reaction from the Tax Institute is that I do not

141 Mr Olesen, ATO, *Transcript of Evidence*, p. 29.

142 Australian Taxation Office, *Submission 4.3*, p. 22.

143 Mr Jordan, ATO, *Transcript of Evidence*, p. 29.

think we should subject individual and small business taxpayers to extra audits for the sake of collecting data.¹⁴⁴

- 2.118 The Inspector-General of Taxation supported the use of random audits. He argued that they could also be used to improve the accuracy of the ATO's benchmarks which, in time, would improve the identification of non-compliant taxpayers and reduce the number of compliant taxpayers subjected to audit:

In the long term there will also be benefits to the taxpayers in that what this random audit can also do, to the extent that it uncovers people who should have been caught but were not, is allow a feedback loop into the risk assessment tools of the ATO – such as benchmarking, for example. Then they can better design risk assessment tools in the future, so fewer people fall into the range they should not have been in.¹⁴⁵

- 2.119 A previous inquiry conducted by the Inspector-General of Taxation supported this view. It found that 'of over 7,600 benchmarking audits, adjustments were only made in only 24 per cent of cases'. In light of these findings the review recommended that the ATO improves the accuracy of its benchmarks to ensure that its resources are focussed on non-compliant taxpayers and that costs for compliant taxpayers are reduced.¹⁴⁶
- 2.120 The Inspector-General told the Committee that the ATO needed to minimise inconvenience to the taxpayer by ensuring the random audits were 'light touch'.¹⁴⁷ He also raised the possibility of compensating compliant taxpayers subjected to random audit.¹⁴⁸

Cash economy

Background

- 2.121 The cash economy is an ongoing feature of Australia's taxation landscape and one which the ATO continues to implement programs to minimise.

144 Mr Jeremenko, The Tax Institute, *Transcript of Evidence*, p. 29.

145 Mr Noroozi, IGT, *Transcript of Evidence*, p. 29.

146 Inspector-General of Taxation, *Review into the ATO's use of benchmarking to target the cash economy*, July 2012, p. vi.

147 Mr Noroozi, IGT, *Transcript of Evidence*, p. 29.

148 Mr Noroozi, IGT, *Transcript of Evidence*, p. 29.

2.122 The ATO considers a business to be operating within the cash economy if it deliberately hides income, primarily from cash transactions, to avoid paying tax on the income it receives.¹⁴⁹ This may include activities such as:

- paying wages ‘cash-in-hand’ and not withholding any tax or superannuation from them
- skimming some or all of cash takings
- running some part of normal business ‘off-the-books’
- offering a discount for cash and not providing a receipt
- failing to ask new staff to complete a Tax File Number Declaration form when they commence employment
- providing false invoices
- avoiding tax and superannuation obligations by failing to register a business or lodge returns.¹⁵⁰

2.123 According to the Inspector-General of Taxation the ATO has three main methods of detecting businesses operating within the cash economy: cash economy risk modelling, data matching and performance benchmarking.

- Cash economy risk modelling involves the ATO using the information available about a business to calculate a risk score indicating the likelihood of that business being non-compliant. The score is worked-out using a set of ‘business rules’ derived from reviews of case studies and audit findings.
- Data matching enables the ATO to identify taxpayers who have underreported their income. This works by comparing the information provided by government agencies, banks, land title offices and other third party sources with the information provided by taxpayers in their income tax return.
- Performance benchmarks provide an indication of the normal range of figures reported by businesses of different sizes in particular industries.

149 Australian Taxation Office, *How we check compliance: Definitions*, https://www.ato.gov.au/General/How-we-check-compliance/In-detail/Cash-economy/Overview/About-the-cash-economy/?fb_locale=fr_FR&page=5#Definitions (accessed 15/09/2014).

150 Australian Taxation Office, *Introduction for small business operators: Small business tax and the cash economy*, <https://www.ato.gov.au/workarea/DownloadAsset.aspx?id=12174> (accessed 16/09/2014).

The ATO may engage with businesses which fall significantly outside of the benchmarked range to better understand why this is occurring.¹⁵¹

- 2.124 The Inspector-General of Taxation's review of the ATO's benchmarks to target the cash economy found that a business being significantly outside of the benchmarked range did not necessarily indicate non-compliance. The Inspector-General of Taxation recommended that the ATO analyse its audit case data 'to determine whether other factors can be considered as useful predictors of taxpayer compliance or non-compliance'.¹⁵²

Current cash economy considerations

- 2.125 The Committee heard that the ATO's work to formally assess the Tax Gap may provide an indication of the dimensions of Australia's cash economy. Reliable estimation may assist the ATO to implement new programs to reduce the cash economy.¹⁵³
- 2.126 For example the ATO believes that by increasing the visibility of the cash economy the agency may also be able to fuel community discussion around acceptable taxpayer behaviours and normalise compliance:

The current thinking is that a lot of the cash economy work is driven at a community level. So, quite apart from using your data and analytics to identify where the highest-risk industries might be and targeting people in a remote way, there is something in community based strategies that make the work we do more visible that can have a big impact on the way the community sees it. Indeed, that is a part of our thinking behind wanting to progress some of the Tax Gap work... We know, and all the theory and research will tell you, that social norms play a big part in the way which people think about their compliance and ultimately their behaviours; and there is a place I think, for us to assist a broader community debate around tax-paying behaviours.¹⁵⁴

- 2.127 The Commissioner of Taxation also explained that the rapid adoption of new technologies is making it increasingly difficult for Australian businesses to engage in non-compliant activities without being caught. He

151 Inspector-General of Taxation, *Review into the ATO's use of benchmarking to target the cash economy*, July 2012, pp. 6- 7.

152 Inspector-General of Taxation, *Review into the ATO's use of benchmarking to target the cash economy*, July 2012, p. iv.

153 Mr Olesen, ATO, *Transcript of Evidence*, p. 22.

154 Mr Olesen, ATO, *Transcript of Evidence*, p. 22.

said part of the ATO's role in a community discussion about tax paying behaviours should be to highlight the consequences of non-compliance:

...we get all the credit card transactions provided to us and we get all of the online sales information provided to us – it is becoming increasingly difficult for people to stay outside the system in any significant way. We can aggregate people, the business, the individuals and the assets in order to paint a picture so that we can say: 'Well, you cannot be in the situation you are in and have the business you have had'. This is going to be increasingly available to us with the greater analytics and data provided to us. This is the message we have to get to people: 'You might be doing it now but, increasingly, it will be harder and harder to stay significantly out of the system. ...Most people think: 'If I get caught, I will pay a bit of tax and then it will all go away'. Well, it might not. Your life and your family's life might be totally disrupted by you going to jail'.¹⁵⁵

2.128 The Committee heard evidence from the Council of Small Business Organisations of Australia (COSBOA) in relation to the operation of compliant businesses within the cash economy. According to COSBOA, businesses may choose to operate within the cash economy for a number of reasons other than to avoid tax liability. These include issues like:

- the inhibitive cost of installing an electronic payment system such as credit card facilities or the bank fees associated with electronic transactions
- the difficulty and cost associated with establishing software and systems to employ additional workers
- customer preference for cash trade.¹⁵⁶

2.129 COSBOA also noted broad support amongst compliant small businesses for the ATO's efforts to minimise the cash economy.¹⁵⁷

2.130 The Committee raised the possibility of giving tax deductibility to services commonly paid for using cash transactions. The Committee asked the ATO and stakeholders to comment on whether such a strategy could encourage consumers to request receipts and therefore ensure that these cash transactions were reported.

155 Mr Jordan, ATO, *Transcript of Evidence*, p. 25.

156 Mr Strong, COSBOA, *Transcript of Evidence*, p. 21.

157 Mr Strong, COSBOA, *Transcript of Evidence*, p. 25.

- 2.131 COSBOA replied that many of the services commonly paid for in cash do not attract a large salary, for example child care or cleaning, and the workers employed in these professions may not be earning enough to incur a tax liability. If this is the case and these services were made tax deductible, the ATO would receive even less revenue.¹⁵⁸
- 2.132 The Institute of Public Accountants argued that the Australian Business Number (ABN) was originally intended to correct this scenario as customers could withhold payment for services until businesses provided their ABN, however in practice this does not occur.¹⁵⁹ The Commissioner of Taxation pointed out that this does occur to some extent as the ATO facilitates close to '400 million' ABN registry look-ups each year.¹⁶⁰
- 2.133 The Office of the Inspector-General of Taxation agreed that giving tax deductibility to services commonly paid for with cash would not offer a sustainable solution. He stated that the GST system is already weighted to encourage businesses to request receipts and this structure would not be effective if it was extended to private individuals:

...when you have a business-to-business relationship, you have an incentive to get an invoice because you want to get the credits back on GST. A feature of the GST system is that it incentivises a business to actually get the receipt. In relation to a private transaction, you cannot claim the credit; it [the GST] is intended to sit with you. That is where the GST falls on the customer.¹⁶¹

International taxation issues

- 2.134 The ATO is giving Australians and Australian businesses with income and assets hidden off-shore the chance to avoid substantial penalties if they come forward as part of the Overseas Voluntary Exposure Initiative (OVEI). Tax and interest on hidden assets and income that are revealed as part of the initiative will be limited to four years at normal rates and penalties will be capped at 10 per cent.¹⁶²
- 2.135 OVEI covers unreported or incorrectly reported income including:
- foreign income or a transaction with an offshore structure
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158 Mr Strong, COSBOA, *Transcript of Evidence*, p. 23.

159 Mr Greco, Institute of Public Accountants, *Transcript of Evidence*, p. 24.

160 Mr Jordan, ATO, *Transcript of Evidence*, p. 24.

161 Mr McLoughlin, Office of the IGT, *Transcript of Evidence*, p. 24.

162 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

- deductions relating to foreign income that have been claimed incorrectly
 - capital gains in respect of foreign assets or Australian assets transferred offshore
 - income from an offshore entity that is taxable in your hands
 - offshore deductions relating to domestic income.¹⁶³
- 2.136 According to the ATO the initiative had collected relatively modest figures at the time of the hearing. Approximately '\$38 million of income and \$360 million of assets' had been disclosed so far. However the ATO remained optimistic as a further 440 taxpayers had already lodged an expression of interest and the agency believed that some of these cases involved a significant amount of income and assets.¹⁶⁴
- 2.137 Results from the voluntary exposure programs of other tax administrators indicate that this type of program can be quite an 'effective tool for encouraging taxpayers to report past acts of non-compliance'.¹⁶⁵
- 2.138 The benefits associated with the initiative are only available to eligible taxpayers who come forward before 19 December 2014.¹⁶⁶
- 2.139 The Commissioner of Taxation advised the Committee that he expects to see the assets and income associated with those 440 expressions of interest to be disclosed before the cut-off date.¹⁶⁷
- 2.140 The Committee also questioned the ATO about its concerns in relation to the operation of section 25-90 of the *Income Tax Assessment Act 1997*.
- 2.141 Section 25-90 was introduced in 2001 – 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'.¹⁶⁸
- 2.142 The ATO's concerns relate to attempts by tax structures to shift profits by loading debt into Australian entities. These structures may employ
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163 Australian Taxation Office, *Project DO IT: Disclose offshore income today*, <https://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/In-detail/Project-DO-IT/Project-DO-IT/> (accessed 17/09/2014).

164 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

165 Forum Tax Administrations, *Tax Administration 2013: Comparative Information on OECD and other advanced and Emerging Economies*, p. 15.

166 Australian Taxation Office, *Project DO IT: Disclose offshore income today*, <https://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/In-detail/Project-DO-IT/Project-DO-IT/> (accessed 17/09/2014).

167 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

168 Australian Taxation Office, *Submission 4.3*, p. 24.

interactions between Thin Capitalisation measures, exempt foreign income measures and the benefits of s25-90 to avoid tax liabilities.¹⁶⁹

- 2.143 The ATO informed the Committee that the Department of Treasury had consulted with the private sector on this issue and that advice was with government for a decision. It is the ATO understanding that the consultations showed that, having adapted to the 2001 legislative changes, Australian companies would find it very difficult to identify and track interest specifically related to their foreign operations.¹⁷⁰
- 2.144 Since these legislative changes there has been a significant shift in the way Australian multinational businesses raise their finances.
- 2.145 Prior to the introduction of section 25-90, interest deductibility for outward investors was established by section 8-1 of the *Income Tax Assessment Act 1997* and previous foreign loss quarantining provisions. Outward investors were required to trace funds to determine the deductibility of interest incurred. When section 25-90 was introduced in 2001 it removed the need to trace the use of funds.¹⁷¹
- 2.146 Australian multi-national businesses moved away from borrowing in the countries that hosted their operations, and towards the use of multi-bank syndicates which do not allocate specific funding for each of the different localities that businesses operate in.¹⁷² Reversing the 2001 legislation would therefore be very complicated and would result in 'significant administrative cost' as businesses would be required to 'unscramble' interest incurred and what it was being applied to.¹⁷³
- 2.147 The Committee also heard that the Australian Government has announced that it will tighten the Thin Capitalisation measures to prevent multinational businesses from allocating a disproportionate amount of debt and therefore interest expenditures to their Australian operations to reduce their assessable income.¹⁷⁴

169 Australian Taxation Office, *Submission 4.3*, p. 24.

170 Mr Jordan, ATO, *Transcript of Evidence*, p. 26.

171 Ms Wong, KPMG Australian Tax Centre, *Offshore financing: Policy reflection of Section 25-90*, <http://www.kpmg.com/au/en/issuesandinsights/articlespublications/tax-insights/pages/offshore-financing-policy-reflection-of-section-25-90-09-july-2013.aspx> (accessed 19/09/2014).

172 Mr Jordan and Mr Mills, ATO, *Transcript of Evidence*, pp. 26-27.

173 Mr Mills and Mr Konza, ATO, *Transcript of Evidence*, p. 27.

174 Mr Konza, ATO, *Transcript of Evidence*, p. 27; Department of Treasury, *Thin Capitalisation Reforms: Exposure Draft Legislation*, <http://treasury.gov.au/ConsultationsandReviews/Consultations/2014/Thin-capitalisation-reforms> (accessed 17/09/2014). Announcement made 6 November 2013.

Independent review of ATO decisions

Background

2.148 In 2009 the Inspector-General of Taxation published a review into objections which found stakeholders believed that the ATO's existing review function lacked independence. The Inspector-General summarised the issue as follows:

...stakeholders expressed concern about the perceived lack of independence in the objections process where an ATO objection officer is located within the same business line as the original decision maker, albeit in a different section. This has led to certain stakeholder concerns that there is a perception of bias in the resolution of objections and that the process was merely a formality before the matter progressed to the AAT or Federal Court.

The IGT found that in relatively simple matters, there was a greater degree of independence with objections officers having more of an appreciation of their role and the role of the original decision maker. However, in larger more complex cases these respective roles and responsibilities became blurred. This was partly due to the complexity of the facts or the relevant law and the ATO's scarce technical resources.¹⁷⁵

2.149 The review made a number of recommendations to improve stakeholder perceptions of independence, including shifting the objection and litigation functions for the most complex cases to the law team under the leadership of the Second Commissioner.¹⁷⁶

2.150 At the 2011 Tax Forum the Inspector-General of Taxation took the issue further. He recommended that the ATO minimise this perception by creating a separate appeals area, headed by a new Second Commissioner.¹⁷⁷

2.151 On 1 July 2013 the ATO introduced an internal independent review in recognition that it needed to 'do more to demonstrate its willingness to

175 Inspector-General of Taxation, *Review into the ATO's Use of Early and Alternative Dispute Resolution*, p. 100.

176 Inspector-General of Taxation, *Review into the ATO's Use of Early and Alternative Dispute Resolution*, p. 107.

177 House of Representatives Standing Committee on Tax and Revenue, *2013 Annual Report of the Australian Taxation Office: First Report March 2014 Canberra*, p. 19.

question its decisions in an open, transparent and independent manner'.¹⁷⁸ At first independent reviews were only open only to large business income tax audits, however on 1 July 2014 this was extended to include all large market audits, including GST, Excise and Petroleum Resource Rent Tax audits.¹⁷⁹

Independent review updated

2.152 The ATO's current independent review service is only open to 'public group taxpayers with a turnover of \$250 million or greater who disagree with some or all of a Statement of Audit Position' with the following exclusions:

- the complainant would like to introduce new facts, evidence or arguments; in this situation the review is finalised and the case is referred back to the audit team
- the matter to be reviewed is already being considered by another review, objection, litigation or formal alternative dispute resolution process
- the area of disagreement will be considered by the General Anti-Avoidance Rules Panel.¹⁸⁰

2.153 The Committee heard that of 27 August 2014, 19 major cases had been finalised by the review service. Of these, eleven and a half were found in favour of the ATO's original position and seven and a half in favour of the taxpayer (the half relates to a case where two issues were resolved; one in favour of the taxpayer and one in favour of the ATO).¹⁸¹

2.154 The ATO reported that independent reviews are now completed in 12 weeks by a senior technical officer from the Review and Dispute Resolution area and result in recommendations to the taxpayer and the audit team.¹⁸²

2.155 Each review now involves a 'case conference' which brings together the taxpayer, the audit team and the independent reviewer to better understand the issues at the heart of each case.¹⁸³ The ATO reports that

178 Australian Taxation Office, *Submission 4.3*, p. 25.

179 Australian Taxation Office, *Submission 4.3*, p. 25.

180 Australian Taxation Office, *Submission 4.3*, p. 25.

181 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

182 Australian Taxation Office, *Submission 4.3*, p. 25.

183 Mr Jordan, ATO, *Transcript of Evidence*, p. 3.

these conferences have been well received both internally and externally.¹⁸⁴

- 2.156 The ATO reported that it completed a post-implementation review of its independent review service in January 2014 and that feedback was generally positive. Case conferences were highlighted as a particularly effective innovation and a number of recommendations were made to improve other aspects of the service:
- the introduction of an escalation process directly to the Chief Tax Counsel in cases where there is a disagreement related to the interpretation of an important question of law
 - retention of the rule forbidding the introduction of new facts, coupled with increased flexibility to accept clarifying evidence, particularly where it will help resolve the dispute.¹⁸⁵
- 2.157 In February 2014 the ATO endorsed its internal review recommendations.¹⁸⁶
- 2.158 The Committee notes that the ATO will continue to collect feedback from participants of independent reviews and intends to use this information to identify possible improvements to the service or other audit processes.¹⁸⁷

Crowdfunding

- 2.159 Crowdfunding is typically used by small businesses to raise capital for a new project or venture by collecting a small amount of money from a large number of people, normally via the Internet.¹⁸⁸
- 2.160 Recent media coverage of this issue has focussed on the uncertainty regarding its tax implications and has questioned the ATO's case-by-case management of GST liability for crowdfunded enterprises.¹⁸⁹

184 Australian Taxation Office, *Submission 4.3*, p. 25.

185 Australian Taxation Office, *Submission 4.3*, p. 26.

186 Australian Taxation Office, *Submission 4.3*, p. 26.

187 Australian Taxation Office, *Submission 4.3*, p. 26.

188 Forbes, *What is crowdfunding and how does it benefit the economy*, <http://www.forbes.com/sites/tanyaprive/2012/11/27/what-is-crowdfunding-and-how-does-it-benefit-the-economy/> (accessed 03/10/2014).

189 The Age, *GST 'looms' over crowdfunding for start-ups*, <http://www.theage.com.au/it-pro/business-it/gst-looms-over-crowdfunding-for-startups-20140818-1058yn.html> (accessed 03/10/2014).

- 2.161 The Committee raised these concerns at the hearing and asked the ATO to outline how the GST liabilities associated with crowdfunded ventures are determined and how taxpayers can gain some certainty in this new type of transaction.
- 2.162 The ATO reported that the tax implications of crowdfunding are complex and that GST liabilities are assessed using a variety of factors. There are three main crowdfunding models: equity based, debt based and donation based (where the donation provided is not necessarily a gift). The GST treatment applied to the funds raised through each of these models varies according to:
- the GST status of the entity raising the funds
 - whether the entity is Australian based or not
 - whether the contributor of the funds is Australian based or not
 - whether the contributor of the funds receives anything in return for their donation (e.g. gift card, product placement, goods etc.).¹⁹⁰
- 2.163 GST is only payable by entities who are GST registered - or required to be - in cases where the entity 'supplies something of value in return for a donation from a contributor in Australia'. No GST liabilities are incurred by entities which provide equity or debt interest in return for financial contributions.¹⁹¹
- 2.164 The Committee noted that one of the goals of the ATO's reinvention program is to keep pace with the changing economy and that the community would appreciate some certainty regarding the tax implications of crowdfunding.
- 2.165 The ATO replied that it is keeping abreast of developments in crowdfunding and recommended that businesses engaged in this style of capital raising and unsure of the tax implication should contact the agency for assistance. The ATO also stated that it will consider issuing further public guidance.¹⁹²

ATO's co-operation with child support agencies

- 2.166 The Committee questioned the ATO about its cooperation with other government agencies, in particular its contribution to the Child Support
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¹⁹⁰ Australian Taxation Office, *Submission 4.4*, p. 1.

¹⁹¹ Australian Taxation Office, *Submission 4.4*, p. 2.

¹⁹² Australian Taxation Office, *Submission 4.4*, p. 2.

Registrar's compliance activities. It heard that the ATO's provision of information to the Child Support Registrar has implications for both agencies, particularly on the Registrar's ability to enforce child support payments.

- 2.167 The ATO explained that the normal trigger for data to be supplied to the Child Support Registrar is the lodgement of both parents' tax returns.¹⁹³ The ATO advises the Registrar when a tax refund is available and about to be repaid to a taxpayer who also pays child support. If this taxpayer has outstanding child support payments the Child Support Registrar may take the refund and apply it to these payments.¹⁹⁴
- 2.168 The Committee noted that some taxpayers who also pay child support avoid lodging tax returns to prevent ATO from sharing their income data with the Child Support Registrar. In light of this, the Committee queried the possibility of introducing a failure to lodge penalty for individuals with outstanding child support liabilities and who have not lodged a tax return by the due date.
- 2.169 The ATO explained that it generally adopts a co-operative, rather than a punitive approach to taxpayers who fail to lodge a return. It told the Committee that it is piloting strategies informed by behavioural economics, to encourage non-compliant taxpayers to complete a return.¹⁹⁵ One such strategy involves prefilling as much of a non-compliant taxpayer's return as possible and then sending it to them with instructions to complete and return it. According to the ATO this approach has achieved 'astoundingly good results'.¹⁹⁶
- 2.170 The Commissioner of Taxation also acknowledged that, where appropriate, the ATO may pursue punitive measures in the case of wilfully non-compliant taxpayers. He informed the Committee that the agency is adopting a 'harder, heavier-handed approach' to non-compliant taxpayers who fail to lodge a return year-in-year out. According to the Commissioner, this approach is the 'flipside to offering a lighter, no-touch interaction for those [taxpayers] who have a demonstrable history of willing compliance'.¹⁹⁷

193 Mr Olesen, ATO, *Transcript of Evidence*, p. 15.

194 Australian Government, *Child Support Guide*, <http://guides.dss.gov.au/child-support-guide/5/2/8> (accessed 23/09/2014).

195 Mr Olesen, ATO, *Transcript of Evidence*, p. 15.

196 Mr Olesen, ATO, *Transcript of Evidence*, p. 15.

197 Mr Jordan, ATO, *Transcript of Evidence*, p. 14.

- 2.171 The ATO noted that it is able to voluntarily provide information to the Child Support Registrar in the absence of parents' tax returns, based on the data provided by institutions such as banks.¹⁹⁸ The Child Support Registrar has the right to acquire taxpayer income details under the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*. These acts support the Registrar in accessing taxpayers' employment and investment income details for the purpose of 'assessing the amount of an individual's child support payments and for garnishee action, where appropriate'.¹⁹⁹
- 2.172 Single-touch payroll is not currently government policy, but has been suggested by the ATO as a possible innovation to substantially improve the compliance activities of government agencies like the Child Support Registrar by increasing taxpayer visibility throughout the financial year.²⁰⁰ Single touch payroll is software with the ability to automatically report information such as gross and net income, tax withheld and super guarantee payments to the ATO when businesses process their payroll. Such an innovation could greatly increase the ATO's access to up-to-date taxpayer data at any given time and could remove the current requirement for businesses to report this information monthly, quarterly and annually.²⁰¹
- 2.173 The Committee also questioned the ATO about the potential to broaden the use of its online pay functionality to allow the payment of child support and other government debts.
- 2.174 The ATO responded that recovering debts for other government agencies would require a directive to do so from government. However it recognised that there is a 'significant push' across government departments to offer more whole-of-government initiatives. According to the ATO that is why the decision was taken to incorporate *myTax* into the existing *myGov* portal.²⁰² It is also why the agency's new voice activation

198 Mr Olesen, ATO, *Transcript of Evidence*, p. 15; Australian Taxation Office, *Other data exchanges: Child Support Registrar*, <https://www.ato.gov.au/General/How-we-check-compliance/In-detail/Data-matching/Data-exchanges/Our-data-exchanges-with-other-Australian-government-agencies/> (accessed 18/09/2014).

199 Australian Taxation Office, *Other data exchanges: Child Support Registrar*, <https://www.ato.gov.au/General/How-we-check-compliance/In-detail/Data-matching/Data-exchanges/Our-data-exchanges-with-other-Australian-government-agencies/> (accessed 18/09/2014).

200 Mr Leeper, ATO, *Transcript of Evidence*, p. 16.

201 Mr Leeper, ATO, *Transcript of Evidence*, p. 16; Australian Taxation Office, *Single touch reporting*, https://www.ato.gov.au/Media-centre/Speeches/Other/Tax-administration-transformation-Reinventing-the-ATO/?page=1#Single_touch_reporting (accessed 19/09/2014).

202 Mr Jordan, ATO, *Transcript of Evidence*, p. 13.

functionality was established in a manner that supports its uptake by other departments and why the ATO's call centres have the capability to handle inquiries from other agencies.²⁰³

- 2.175 The Commissioner of Taxation said the ATO is seen to be leading the move towards of whole-of-government initiatives and that he has spoken to a number of APS leadership and secretary groups regarding this matter.²⁰⁴

Committee comment

Towards contemporary service

- 2.176 The Committee considers the adoption of modern technology to be central to the ATO's drive to become a 'more contemporary and service-orientated organisation'. It is pleased to hear that the ATO has introduced a range of innovative technologies and was particularly interested to hear about the agency's new *myTax* service.
- 2.177 The Committee considers *myTax* to be a significant step towards 'no-touch' tax returns; however it recognises that receiving shared registry data late can limit the effectiveness of this service. The Committee has confidence that the ATO will continue to develop its relationships with banks and other institutions to address these issues.
- 2.178 The Committee considers the ATO to be progressing well with the implementation of its Capability Action Plan and on track to addressing the five priority development areas identified in the APSC's 2013 Capability Review. It was also pleased to observe the ATO's support for whole-of-government initiatives.

Australian Public Service Commission's Capability Review

- 2.179 The ATO's readiness to address the development areas identified by the APSC's 2013 Capability Review is apparent to the Committee. The ATO is progressing well with the implementation of its Capability Action Plan and is confident in the agency's ability to achieve the improvements outlined in this document.

203 Mr Leeper, ATO, *Transcript of Evidence*, p. 14.

204 Mr Jordan, ATO, *Transcript of Evidence*, p. 13.

- 2.180 The Committee looks forward to being updated on the progress of this work and the application of the strategic intent, corporate plan, and ICT Strategy.

Simplification of key performance indicators

- 2.181 The simplification and improvement of KPIs is an important part of enhancing performance measurement and reporting to the Parliament and the public. ANAO audits on this subject demonstrate that valuable performance measures are those that provide both an indication of an agency's achievements and the contribution of its staff to those achievements. The Committee also notes that the development of effective KPIs 'requires ongoing management attention' and sufficient time for them to be bedded down within the agency.²⁰⁵
- 2.182 Over the last twelve months the ATO has made significant improvements to the way in which it collects performance information.²⁰⁶ The Committee is very pleased with the agency's efforts to streamline and refocus its key performance indicators from process-driven service standards, to outcome focused statements that can be used to measure results.
- 2.183 The Committee appreciates that it may take some time to bed down key performance indicators throughout the ATO. The Committee will continue to monitor how the ATO's manages and reports on the performance information it collects.

Benchmarking

- 2.184 The Committee is pleased to note that the ATO regularly considers a range of national and international benchmarks to gauge its efficiency and cost effectiveness compared to other tax administrations.
- 2.185 Benchmarks can be an effective tool for determining the strengths and weaknesses of an organisation and for identifying areas for improvement. The Committee would like to see the ATO continue to use benchmarks to shape effective practices, set corporate goals and maintain the agency's reputation as a leading tax administrator.

205 ANAO, *The Australian Government Performance Measurement and Reporting Framework – Pilot Project to Audit Key Performance Indicators*, Report No. 28 2012-13, p. 15.

206 Australian Taxation Office, *ATO Capability Action Plan: Update on progress June 2014*, p. 2.

Staffing reduction

2.186 The Committee is satisfied that the ATO achieved staff reductions in a systematic and sensitive manner, mindful of maintaining the agency's capacity for the future. It notes the ATO's claim that its core businesses, such as revenue collection, are unlikely to be affected by the reduction of staff in any significant way. However the Committee notes that there are outstanding staffing issues that the ATO is working to address and the Committee will cover resourcing issues at its next bi-annual hearing with the ATO.

Lodgement Program for tax agents

2.187 The Committee appreciates tax agent concerns in relation to the operation of the Lodgement Program and the sanctions it may impose. However, to date, the program has resulted in nothing more than the ATO working closely with late lodging tax agents to improve their performance. Like the ATO, the Committee believes the goals of this program could be more effectively communicated and would like to see the ATO actively foster better stakeholder understanding of the initiative.

2.188 The Committee acknowledges that the Lodgement Working Group has already convened to discuss agents' concerns, work through issues and fine-tune the program. The Committee is looking forward to hearing how this has progressed during the next hearing.

Stakeholder consultation forums

2.189 The ATO has committed to conduct a post-implementation review of the new consultation arrangements during the first quarter of 2015.²⁰⁷

2.190 The Committee looks forward to monitoring how the outcomes of this review will be used to realign consultation arrangements consistent with stakeholder needs, while retaining the achieved efficiencies.

Tax Agent Portal

2.191 The Committee recognises the frustration of tax agents in regards to the Tax Agent Portal and is supportive of the incremental approach taken by the ATO to shift this service onto a more functional software platform and flexible online system.

207 Australian Taxation Office, *Submission 4.3*, p. 7.

- 2.192 However, the Committee believes that this work should not preclude the ATO from addressing current Tax Agent Portal service disruption and speed issues.
- 2.193 The Committee acknowledges that, to ensure continuity of service, the ATO will need to operate both the existing Tax Agent Portal and the new systems simultaneously for a period.

The Tax Gap

- 2.194 The Committee is pleased with the ATO's commitment to estimate the Tax Gap in Australia. As the ATO noted in its submission, a reliable Tax Gap measurement will support the agency to identify and address problematic areas of the taxation system. It will enable it to provide better advice to government and facilitate informed community debate around compliance.²⁰⁸
- 2.195 The Committee appreciates that Tax Gap measurements reflect more than just the ATO's administration of the taxation system. However, the Committee believes publication of the ATO's estimate would be beneficial to both the public and private sectors and would foster better informed community discussion around taxation issues. The Committee would like to ultimately see a reliable Tax Gap estimate made public.
- 2.196 Given the gradual build-up to the ATO's commitment to produce a formal estimation of the Tax Gap, the Committee is pleased to note the agency's plans to complete this work by the end of 2016. The Committee is satisfied with this schedule and will continue to monitor the ATO's progress and looks forward to the milestones being achieved.
- 2.197 The Committee acknowledges stakeholder concerns regarding the inclusion of random audits in the Tax Gap assessment methodology, but accepts this may be necessary to safeguard the reliability of the estimation. The Committee notes the potential to use the data provided by random audits to refine benchmarks for taxpayers at risk of noncompliance; which should result in fewer compliant taxpayers being subjected to audit.
- 2.198 The Committee also notes that the ATO is considering adopting an educational approach to non-compliant taxpayers identified through random audit.
- 2.199 The Committee will continue to observe the ATO's work to formally estimate the Tax Gap in Australia.
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208 Australian Taxation Office, *Submission 4.3*, p. 19.

Cash economy

- 2.200 The Committee acknowledges that the cash economy is a complex issue with many drivers including social norms and consumer behaviour. It recognises that businesses may choose to operate within the cash economy for a number of reasons other than to avoid tax liability.
- 2.201 The Committee is looking forward to seeing how the ATO's work to assess the Tax Gap supports its efforts to understand and manage Australia's cash economy. It expects that a robust indication of the cash economy will assist the ATO to implement effective initiatives to reduce it.
- 2.202 Further, the ATO stated that non-compliant small business will be increasingly easier to detect as innovative technologies become more prevalent. However, the Committee believes this should not preclude the ATO from implementing initiatives to reduce the drivers of the cash economy.
- 2.203 The Committee notes the ATO's efforts to reduce the cash economy and would like to be updated on any progress made during the next committee hearing.

Independent review of ATO decisions

- 2.204 The Committee recognises that the ATO has achieved positive outcomes through its trial of independent reviews, but accepts the Inspector-General of Taxation's concerns that this process is currently limited to high wealth businesses and individuals.
- 2.205 The Committee notes that the great majority of taxpayers, with a turnover of less than \$250 million, still have their disputes progressed through the Compliance area of the ATO.
- 2.206 The Committee notes that the ATO's dispute resolution process is the subject of a separate Committee inquiry.

Crowdfunding

- 2.207 The Committee acknowledges that the tax implications of crowdfunding are complex and that there may not be a simple method of applying GST that fits all crowdfunding models. However it believes that it is important the ATO keeps pace with the changing economy and provides as much certainty as possible for taxpayers seeking to understand how tax liabilities will be applied to their circumstances. This issue will be

addressed further at the Committee's next bi-annual hearing with the ATO.

ATO's co-operation with child support agencies

- 2.208 The Committee is pleased that the ATO is proactively supporting the compliance activities of the Child Support Registrar and would like to see this relationship developed further. It commends the ATO for its efforts to ensure the new infrastructure and technology it implements is also able to be used by other agencies.
- 2.209 The Committee was also interested to receive evidence about more ambitious proposals, such as single touch payroll, where transaction details relevant to each taxpayer could be transmitted to the ATO whenever an employer processed their payroll. However, the Committee also notes that adopting this technology would require significant change to the administration of the tax system and would face implementation challenges.²⁰⁹
- 2.210 The Committee encourages the ATO to continue to seek opportunities to collaborate with other Commonwealth entities.

The next hearing

- 2.211 The ATO is well on the way to becoming the contemporary, service-orientated, world leading tax administrator envisioned by the Commissioner of Taxation and his executive team.
- 2.212 The agency now has clearly articulated and readily accessible corporate goals mapped to meaningful performance indicators. It is more than halfway through implementation of its Capability Action Plan and has made substantial reforms to its internal governance arrangements and practices.
- 2.213 The ATO has also introduced a suite of new customer services and aligned its online tax returns with the whole-of-government *myGov* platform. It has made significant progress towards 'no-touch' tax returns and it has begun work to formally estimate Australia's Tax Gap for the first time.

209 Australian Taxation Office, *Commissioner's Small Business Consultative Group update*, <https://www.ato.gov.au/Business/Consultation--Business/Previous-years/Small-Business-Partnership/Minutes/Small-Business-Partnership-minutes---17-April-2013/?page=4> (accessed 19/09/2014).

- 2.214 The Committee looks forward to seeing this momentum carry into 2015 and deliver further personalised, accessible and reliable new services to Australian taxpayers.
- 2.215 The Committee plans to next meet with the ATO and its scrutineers in early 2015 and requests that the agency's submission provide information on progress in the following areas:
- providing light or no-touch tax returns
 - the implementation of the ATO's Capability Action Plan in response to the Australian Public Service Commission (APSC) Capability Review
 - progress towards bedding down the new key performance indicators within the agency and their use as a management tool
 - transferring the Tax Agent Portal to a new platform
 - refining the Lodgement Program for tax agents
 - budget and staff reductions, including regional offices
 - initiatives and programs to reduce the cash economy
 - evolution of the Tax Gap measurements
 - update on the post-implementation review of new consultation arrangements
 - update on the tax implications of crowdfunding
 - any additional consideration of section 25-90 of the *Income Tax Assessment Act 1997*.

John Alexander OAM MP
Chair