



ATO Submission

Inquiry into the management and assurance of integrity by consulting services (Consulting services)

24 April 2023

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Introduction

The Australian Taxation Office (ATO) welcomes the opportunity to make a submission to the Senate Finance and Public Administration References Committee's (the Committee) inquiry into the management and assurance of integrity by consulting services.

The ATO's submission is divided into two parts. The parts reflect the different ways the ATO engages or consults with external suppliers (including consultants) and stakeholders. The terms of reference are broadly addressed within these two parts.

Part 1 of the submission provides information on the ATO's use of external suppliers and supporting procurement processes. Although the terms of reference are focused on 'consultancy services', the ATO's submission includes additional information on its use of external suppliers to assist the Committee in understanding the broader landscape of the ATO's use of suppliers. This part also provides information on the requirement for businesses seeking to tender for Australian Government procurement contracts to provide a statement from the ATO indicating their compliance with tax obligations.

Part 2 of the submission provides information on the ATO's stakeholder consultation activities (sometimes referred to as stakeholder engagement). The ATO undertakes various consultation activities with a range of stakeholders as part of our role to manage and shape the tax, superannuation and registry systems. The stakeholders involved provide their input on a voluntary basis and are not paid. The ATO does not develop policy and therefore does not consult on the development of policy. Most ATO consultation activities are not confidential.

The ATO would welcome the opportunity to appear as a witness, if called, to provide further information.

Part 1: External suppliers (including consultants)

1. The ATO engages external suppliers to help to deliver its outcomes. The ATO's contracts with external suppliers – including consultants – are consistent with, and reflect the principles of, the Commonwealth Procurement Rules (CPRs) and various procurement-related legislation and government policies. To ensure compliance with these requirements, the ATO has a range of system-based and other controls in place and conducts regular assurance processes.
2. As required by the CPRs, the ATO's procurement processes focus on achieving value for money.
3. The Department of Finance's definition of a 'consultancy' is '*the engagement of temporary services that involve the development of an intellectual output that assists with decision making and where the intellectual output represents the independent view of the service provider*' (Resource Management Guide 423, paragraph 57)¹.
4. The ATO also provides information on its tenders and procurement on its website².
5. The ATO provides details of its use of consultants – including the number of contracts, total spend, and significant spend with specific consulting firms – in the Commissioner's Annual Report³ (refer to pages 122 – 24 in the 2021-22 Annual Report).

The ATO's use of consultants

6. The ATO does not use consultants, as defined by the Department of Finance, for core business or to augment its workforce.
7. When the ATO procures consultants, we ensure they represent good value for money and provide a unique or specialised service that cannot be accessed 'in-house'.
8. An example is where there is a need to obtain independent advice, often of a specialised nature, to assist with decision-making. There are instances where it may not be economical for the ATO to retain certain specialised capabilities in-house when these are not required on an ongoing basis, including for specific technical and administrative matters.

¹ <https://www.finance.gov.au/sites/default/files/2021-05/rmg-423-procurement-publishing-and-reporting-obligations.pdf>

² <https://www.ato.gov.au/About-ATO/ATO-tenders-and-procurement/>

³ https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Reports/n0995_ATO_annual_report_2021-22_Digital.pdf

9. The areas for which consultants are engaged vary from year to year depending on ATO business needs and priorities. Some specific examples of when the ATO may use consultants include the following:

- the use of experts to provide technical advice such as the application of an accounting standard, a foreign law, a commercial arrangement, or an industry, business or industrial process
- the use of highly specialised expertise such as valuation experts where it would be impractical to maintain such expertise 'in-house'
- the engagement of expert witnesses in legal proceedings (noting the ATO is provided legal services by the Australian Government Solicitor (AGS), external law firms and counsel, but these are outside the definition of consulting services)
- the use of experts to provide probity services for complex procurements.

Consultant contracts and expenditure

10. ATO expenditure on reportable consultancy contracts⁴ in 2021-22 was \$14.3 million (including GST). The ATO is forecasting to spend less on consultancy services in 2022-23 than it did in 2021-22.

11. Table 1 provides details of the ATO's expenditure on consultants. Further information can be found in the Commissioner's Annual Reports⁵.

Table 1: Number of and expenditure (including GST) on reportable consultancy contracts 2022-23 FY (YTD to 28 February 2023) and 2021-22 FY

Supplier	2022-23 YTD	2021-22
Number of new contracts	33	68
Number of ongoing contracts	64	76
Total number of contracts	97	144
New contracts expenditure	\$0.9m	\$5.1m
Ongoing contracts expenditure	\$3.5m	\$9.2m
Total expenditure	\$4.4m	\$14.3m

'Big 7' firms

12. The ATO procures services from a wide range of external suppliers, including those referred to by this Committee as the 'Big 7'. The 'Big 7' firms are Accenture, Boston Consulting Group, Deloitte, Ernst & Young, KPMG, McKinsey, and PricewaterhouseCoopers (PwC). Although these firms provide consultancy services, the ATO may also use them for other services that do not fall under the Department of

⁴ A reportable consultancy contract is an arrangement that is published in AusTender as a consultancy (as per PGPA Rule 2014). The determination of whether a contract is a consultancy is based on the Department of Finance's definition as per Resource Management Guide 423.

⁵ https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Reports/n0995_ATO_annual_report_2021-22_Digital.pdf

Finance's definition of consultancies. Where providers are used by the ATO for what are defined as non-consultancy services, they are mostly engaged to provide support in the information and communications technology (ICT) space with the next most significant support being in relation to data and analytics. While this submission discusses the 'Big 7', they are not reflective of the ATO's biggest spend on consultancy services. For significant reportable consultancy contracts expenditure, please refer to the Commissioner's Annual Reports.

- Tables 2 and 3 provide details of the ATO's expenditure with these external suppliers across both consultancy and non-consultancy services.

Table 2: ATO expenditure (including GST) with the 'Big 7': 2022-23 FY (YTD to 28 February 2023)

Supplier	Consultancy spend	Non-consultancy spend	Total spend
ACCENTURE	-	\$107.0m	\$107.0m
BOSTON CONSULTING GROUP	-	-	-
DELOITTE	-	\$12.2m	\$12.2m
ERNST & YOUNG	-	\$18.6m	\$18.6m
KPMG	\$1.7m	-	\$1.7m
MCKINSEY	-	-	-
PRICEWATERHOUSECOOPERS	-	\$4.9m	\$4.9m
TOTAL	\$1.7m	\$142.7m	\$144.4m

Table 3: ATO expenditure (including GST) with the 'Big 7': 2021-22 FY

Supplier	Consultancy spend	Non-consultancy spend	Total spend
ACCENTURE		\$216.8m	\$216.8m
BOSTON CONSULTING GROUP	\$3.1m	-	\$3.1m
DELOITTE	\$1.5m	\$15.7m	\$17.2m
ERNST & YOUNG	-	\$22.0m	\$22.0m
KPMG	\$3.4m	-	\$3.4m
MCKINSEY	-	-	-
PRICEWATERHOUSECOOPERS	\$0.04m	\$5.2m	\$5.2m
TOTAL	\$8.0m	\$259.7m	\$267.7m

Maintaining integrity

14. External suppliers, including consultants, are engaged through a procurement process, using open tender, limited tender, or an established panel arrangement.

Commonwealth Procurement Rules (CPRs) and other laws and policies

15. All ATO procurement processes are undertaken in accordance with the CPRs and other relevant Commonwealth legislation and policies.
16. As required by the CPRs, ATO procurement processes are focused on value for money, with consideration given to financial and non-financial costs and benefits (which may include broader economic and social benefits) and treating potential suppliers in a non-discriminatory manner.

Ensuring probity

17. The ATO focuses on probity in its procurement processes to help ensure the integrity and fairness of these processes. Probity controls include all the documents, plans and guidance that the ATO develops in line with good decision-making practices. These are used to maintain consistency, accountability, transparency and fairness within a procurement process.
18. A probity approach is determined for each procurement based on a consideration of risk and complexity. For more complex, higher risk procurements this may involve engaging an external probity adviser.
19. Each stakeholder involved in a procurement process:
 - is required to complete a probity learning package prior to commencement of the procurement, and
 - confirm they have no conflicts of interest or declare any conflicts of interest. Where a conflict of interest is declared, the delegate for the procurement process will determine how it should be managed. In some cases, the person declaring a conflict of interest is fully removed from the procurement process.
20. Through the proper use of probity controls, and complying with the directions within these controls, the ATO maintains probity in our procurement process to give confidence to the public regarding our spending of public funds by:
 - maintaining appropriate documents and information and making this publicly available, and
 - responding to questions in public forums and audits.
21. To support staff involved in procurement processes, the ATO has detailed procurement guidance, which is complemented by training and assurance activities. This guidance is actively maintained and there is a Chief Executive Instruction on procurement.

22. The ATO's contracts with external suppliers include clauses setting out privacy, confidentiality, and security requirements and include clauses for termination for cause.
23. The performance of external suppliers is subject to strict controls and governance arrangements, including in relation to privacy and security.
24. All external providers and their staff accessing ATO information are required to undertake a pre-engagement integrity check before commencing work for the ATO. Where the nature of the information to be accessed is of a higher security classification, consultants (and other service providers) undergo more rigorous security clearance processes through the Australian Government Security Vetting Agency, with the ATO registering sponsorship of the clearance.

Contract enforcement options and actions

25. Where an external supplier does not meet its contractual obligations, the ATO takes immediate action to address this, in accordance with the terms and conditions of the contract.
26. The ATO's contracts with external suppliers, including consultants, include 'termination for default' clauses, which enables the ATO to terminate a contract where a breach of contract is not rectified within 14 days of written notification being provided to the supplier.
27. The ATO has not experienced significant or serious breaches of consultancy contracts with respect to delivery of agreed outcomes or integrity. In the last 10 years:
 - the ATO has not determined that a consulting firm has not fulfilled their contract
 - the ATO has not terminated any consultancy contracts
 - none of the ATO's consultancy contracts have been the subject of dispute or legal action.
28. The ATO actively manages its contracts during the contract management phase and has taken action with suppliers via contract management processes. Actions taken have included financial and "in-kind" compensation, removal of contractor staff members concerned, requiring the supplier to implement new processes and training regimes to address issues across a range of areas of contract performance.
29. To support ATO contract managers in properly managing the contracts for which they are responsible, the ATO has detailed contract management guidance, which is complemented by training and assurance activities.

Additional information – use of specialised advisory panels

30. One area where the ATO uses consultants is to obtain advice through advisory panels. These are paid arrangements where the ATO utilises the paid services of individuals or entities for the purpose of seeking independent advice on specific technical and administrative matters.
31. The key advisory panels include the Public Advice and Guidance (PAG) Panel, the General-Anti-Avoidance Rules (GAAR) Panel, the Commissioner's Remedial Power (CRP) Advisory Panel, the Independent Assurance of Settlements (IAS) Program, and the Test Case Litigation Panel.
32. The use of advisory panels is designed to reinforce the integrity of ATO decision making by enabling a range of views to be considered before final decisions are made, as well as to protect confidence in the integrity of the tax system and the ATO's role in settlement processes by ensuring significant tax settlements represent good value to the Australian community.
33. The consultants on these panels are typically former judges, barristers and leading tax professionals. The panels are advisory in nature and the ATO remains the ultimate decision-maker.
34. Members of advisory panels are required to identify and declare conflicts of interest as they arise. The ATO is responsible for determining the appropriate course of action in relation to those conflicts of interest, which may include excusing that member from involvement relating to that issue.
35. The ATO is not aware of any breaches having occurred by members of our advisory panels, nor consequently any enforcement measures required.

Additional information – tax performance of consultants in government procurement decisions

Existing tax attestation requirements in Government procurement decisions

36. Since 1 July 2019, businesses seeking to tender for Australian Government procurement contracts are required to provide a statement from the ATO indicating that they are generally compliant with their tax obligations. Specifically, businesses tendering for Commonwealth Government procurements that are undertaken through open tenders, are subject to the CPRs, and have an estimated total value of over \$4 million must obtain a satisfactory Statement of Tax Record (STR) showing satisfactory engagement with the tax system.

37. When applying for the STR, the business is required to attest to the following:
 - they will comply with and pay all Australian tax obligations
 - have no tax related convictions in the last four years
 - they are complying with, or do not have, tax obligations outside of Australia.
38. The criteria for a satisfactory STR are objective and are that the taxpayer:
 - is up to date with registration requirements
 - has lodged at least 90% of lodgment obligations (for each lodgment type)
 - has paid or has a payment plan for any undisputed debts \$10,000 or greater.
39. STRs provide objective tax information about a business. While an STR does not provide absolute assurance of tax compliance (i.e. it does not reflect any ATO action underway) it does indicate whether a business is generally compliant with their tax obligations, which is an important consideration for agencies as part of their assessment of that business' eligibility to participate in procurement activities.
40. Where that business is also a provider of tax services, an STR does not, at this stage, provide information on the governance arrangements of their tax advisory work.
41. It should be noted that the ATO issues STRs to businesses in our capacity as tax administrator, from within our Client Engagement Group. Consistent with our taxpayer secrecy obligations, protected taxpayer information beyond the statements cannot be shared with other parts of the ATO, including the Enterprise Strategy and Corporate Operations Group, who are responsible for making procurement decisions, or any other agencies.
42. ATO contracts with suppliers, including consultants, require the supplier to comply with all their tax obligations over the life of the contract.

Additional information – ATO staff and integrity

43. The ATO has several employees, including senior executives who are former partners or employees of the 'Big 7' consulting firms. A small number of these ATO employees have ongoing financial interests in those firms, for example through shares.
44. All ATO employees must declare conflict of interests, whether real or perceived as soon as they become aware of them. Where a conflict of interest is declared, management plans are put in place to ensure the conflict does not manifest. For example, these management plans specify that particular ATO employees cannot be involved in procurement decisions involving firms they were previously employed by.

Part 2: ATO consultation/engagement with stakeholders

45. The ATO engages with stakeholders (stakeholder consultation) to effectively manage and shape the tax, superannuation and registry systems. Consultation is about stakeholders providing feedback to the ATO.
46. The ATO has safeguards to ensure the integrity of our stakeholder consultation processes, including managing conflicts of interests and protecting confidential information. As part of continuous improvement activities, the ATO is currently strengthening some of our processes in relation to record keeping and working with some stakeholders to provide more clarity on what security classifications on documents mean for them in practice.
47. The ATO considers that stakeholder consultation brings a range of benefits to the operation of the tax, superannuation and registry systems. The internal benefits of consultation include improved design, policy implementation and administration. The external benefits include improved public trust, a more responsive government, improved transparency, and a stronger representative democracy.

The value of consulting

48. Stakeholder consultation contributes to good decision making, can mitigate unintended outcomes, and improves our services and advice to the community. Most of the stakeholder consultation conducted by the ATO is on the administration of the existing law and the implementation of legislative and administrative change.
49. The ATO does not develop policy and therefore does not consult on the development of policy. Most consultation is not confidential, and the ATO publishes the details of open and closed consultations on our website⁶ to provide transparency.
50. The ATO has processes, practices and guidelines to support effective consultation. These include guidance on end-to-end planning of consultation activities, stakeholder selection and management, and when to treat consultation as confidential (in whole or in part). The ATO has an internal Consultation Hub that provides a central point for advising staff on best practice and maintains information on the ATO's consultation activities.
51. The ATO lists its consultation processes on our website⁷. This includes open, planned and recently closed consultation with information on the topic, key dates (eg for comments) and contact officers. We do not list confidential consultations on our website because of the sensitivity of information.

⁶ <https://www.ato.gov.au/General/Consultation/>

⁷ <https://www.ato.gov.au/General/Consultation/What-we-are-consulting-about/>

Who we consult

52. The ATO conducts stakeholder consultation through 'bespoke' activities and formal groups. The groups are:
 - Special purpose working groups⁸ (11)
 - Stakeholder relationship groups⁹ (19)
 - Stewardship groups¹⁰ (9).
53. The stakeholders we consult with do so in a pro-bono or volunteer capacity and includes representatives of professional associations, industry groups and tax professionals including tax agents, BAS agents and lawyers. Stakeholders are selected based on their expertise and ability to provide a diversity of views.
54. By way of example, advisors are a key source of intelligence and information as to what is occurring in the market, such as the commercial realities of running a small business and the impacts ATO administrative processes can have on cost of compliance. This, in turn, can inform the ATO's effective management and shaping of the tax, superannuation and registry systems. Consultation with these types of stakeholders is an important part of the ATO meeting its responsibility to effectively manage the system.

What we do to maintain integrity

Managing conflicts of interest

55. The ATO takes conflicts of interest (real, potential or perceived) seriously. It expects people involved in consultation to identify, report and manage conflicts of interest.
56. Declaring a conflict of interest allows the ATO to manage situations in a professional, transparent, and ethical matter. It does not indicate wrongdoing on the part of a participant in consultation, but it helps protect the integrity of the consultation process and the decision making, and the reputation of those involved.
57. In consultation, conflicts of interest are not uncommon because stakeholders are sometimes tax advisers and consultations deal with changes to the administration of tax law.
58. Some of the ways the ATO manages conflicts of interest are:
 - outlining expectations regarding conflicts of interest in group charters
 - setting clear expectations and communicating with participants in consultation regularly
 - ensuring consultation participants are well-informed on their obligations (for example, at the start of their tenure on a consultation group)
 - maintaining records in relation to conflicts of interest

⁸ <https://www.ato.gov.au/General/Consultation/Consultation-groups/Special-purpose-working-groups/>

⁹ <https://www.ato.gov.au/General/Consultation/Consultation-groups/Stakeholder-relationship-groups/>

¹⁰ <https://www.ato.gov.au/General/Consultation/Consultation-groups/Stewardship-groups/>

- putting in place conflict management plans (for example, which could include removing or restricting a person from participating in a consultation activity).

59. Whilst most ATO consultation processes are not confidential and do not involve confidential information, some ways we protect confidential information (when needed) are:

- protectively marking information (physical and electronic) through security classifications, informational management markers and caveats. This ensures that information created or received is handled, shared and viewed appropriately.
- providing statements and reminders at the start of discussions or agenda items in longer meetings about the level of sensitivity that attaches to information and discussions and the extent to which it can be shared
- outlining expectations for the treatment of confidential information in charters for groups
- using confidentiality agreements.

60. The ATO is also progressively implementing an integrity declaration process for members of stewardship groups for members to confirm they meet obligations in relation to their personal affairs and to affirm their commitment to demonstrate expected behaviours.

Enforcement actions

61. The ATO is focused on fostering a culture of integrity in its stakeholder consultation. This is critical to achieving effective and efficient processes and meaningful consultation.
62. Enforcement measures are responsive to the circumstances of a situation or 'breach'. The factors the ATO will consider include the nature and extent of conduct, the impact of the conduct (eg potential for market impact or community detriment) and whether conduct was deliberate, repeated, reckless or inadvertent.
63. There are a range of options available, including: reminders of obligations, seeking commitment that the 'conduct' is not repeated, or certain action will be taken or removal from the membership of a consultation group.
64. An example of where the ATO identified an area of concern and exercised one of these options occurred in 2022. After the ATO investigated alleged behaviour which resulted in a referral to the Tax Practitioner Board (TPB) and the state police, the ATO determined that the removal of a person from one of its stewardship groups was appropriate. The TPB terminated registration of the agent. The person will not be part of any ATO consultation arrangements in the future.

Conclusion

65. The ATO is the Australian Government's principal revenue collection agency, administering the legislation governing tax, and supporting the delivery of government benefits to the community. The ATO's roles and responsibilities are broad and set out in our Commissioner's Annual Reports.
66. The ATO welcomes the opportunity to provide the Committee with information on the different ways we use *consultants* and the ways we *consult* with stakeholders. In procuring consultants our contracts are consistent with the CPRs and related legislation and policies. In consulting with stakeholders, there are a range of benefits to the tax, super and registry systems, including hearing directly from the community.
67. The ATO thanks the Committee for the invitation to make a submission.

