



Auditor-General for Australia



3 July 2014

Mr David Monk
Inquiry Secretary
House of Representatives Standing Committee on Tax and Revenue
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Mr Monk

Inquiry into disputes between taxpayers and the Australian Taxation Office

Thank you for your correspondence of 4 June 2014, inviting the Australian National Audit Office (ANAO) to make a submission to the House Standing Committee on Tax and Revenue inquiry into tax disputes between taxpayers and the Australian Taxation Office (ATO).

The ANAO has examined aspects of disputes between taxpayers and the ATO as part of our program of performance audits that assess the effectiveness and efficiency of the ATO's administration. While no performance audit has focussed solely on this topic in recent years, matters such as objections, appeals and complaints have been examined in a number of audits. Of particular relevance are Audit Report No.35 2013–14, *Managing Compliance of High Wealth Individuals*, Audit Report No.25 2011–12, *Administration of Project Wickenby*, and Audit Report No.19 2013–14, *Management of Complaints and Other Feedback*.¹ These audits have examined the standard dispute resolution processes that were most frequently being applied, involving the largely iterative application of audit, objection and appeal processes.²

The ANAO is aware that the ATO has also recently developed initiatives such as the Integrated Approach to Dispute Resolution, in order to avoid litigation and resolve disputes in the simplest and most cost-effective manner, and within a timeframe that is as close as

¹ The ANAO is currently conducting an audit into annual compliance arrangements with large corporate taxpayer that is expected to table in the Spring session of Parliament.

² If taxpayers disagree with the result of the objection, they are able to apply to the Administrative Appeals Tribunal or the Federal Court of Australia for an independent external review.

possible to the time of the original decision.³ The ANAO has not conducted a detailed review of such processes, however we note the broad performance information the ATO has reported about the dispute processes, including that only around five per cent of the income tax assessments amended as a result of compliance activities in 2012–13 were subject to objection.⁴ Further, the ATO reported exceeding its benchmark overall cycle time service standard for objections and reviews in that year (completing 85 per cent of cases in 56 days compared to a 70 per cent benchmark).⁵

Our audits have found that while standard dispute resolution processes sometimes work well, common themes have arisen in relation to the: often high rates of disputes stemming from both ATO errors and taxpayers withholding information; long periods of time taken for resolution; and consequent frustration by taxpayers about the responsiveness, cost and sometimes fairness of processes. These findings have highlighted scope for the ATO to improve the efficiency and effectiveness of dispute resolution processes, to the benefit of the organisation and taxpayers. They also give weight to the ATO further developing and implementing alternative dispute resolution processes.

These matters are discussed briefly below, within the context of the issues outlined in the inquiry's terms of reference.

Collecting revenues due

While the overall rate of objection to amended income tax assessments is reasonably low (five per cent overall in 2012–13 as mentioned above), it is much higher for some types of taxpayers examined in ANAO audits. Notably, around two-thirds of amended assessments were objected to by both high wealth individual (HWI) taxpayers and those covered by Project Wickenby, in the respective time periods examined.⁶ Further, for both types of taxpayers, a significant proportion of objections gained a positive outcome for taxpayers—49 per cent for HWI taxpayers and 37 per cent in relation to Project Wickenby. This resulted in a considerable reduction in the value of liabilities raised, for example more than half for HWI taxpayers. In this regard, the total tax amount in dispute, for 2011–12 and 2012–13, was \$909 million, of which the ATO amended the liability by \$477 million (52 per cent) in favour of HWIs.

More broadly, as noted in the ANAO's debt relief audit, much of the debt owed to the ATO is disputed.⁷ As at 30 June 2013, of \$33.2 billion in total debt holdings, \$10.1 billion was

³ Inspector-General of Taxation, *Review into the ATO's use of early and alternative dispute resolution*, May 2012, p. 9.

⁴ In 2012–13 the ATO undertook around 749 000 compliance checks including review and audit activities with around 483 000 resulting in an amended assessment. In the same period the ATO received 26 500 income tax objections and completed just over 22 400 objections that were related to compliance activities. ATO data available from <<https://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/In-detail/Statistics/Compliance-activity-and-objections/>>.

⁵ Commissioner of Taxation, *Annual Report 2012–13*, pp. 29–30.

⁶ For the two years 2011–12 and 2012–13, HWI taxpayers lodged 123 objections following a compliance activity, which represented an estimated objection rate of 65 per cent. Similarly, taxpayers subject to Project Wickenby compliance interventions lodged 254 objections, or 63 per cent of the 405 interventions that had raised a tax liability to 30 June 2011.

⁷ ANAO, Audit Report No.52, 2012–13, *Management of Debt Relief Arrangements*, p. 25.

subject to objection or appeal.⁸ This figure highlights the scale of revenue associated with taxpayer disputes.

Efficiency, effectiveness and transparency, from the perspective of both taxpayers and the ATO

A number of ANAO audits have examined the causes of taxpayer disputes, particularly objections, and how the ATO can improve the effectiveness of its administration to reduce the incidence of disputes. In this regard, the ATO often cites taxpayers withholding information from audit processes, requiring the ATO to issue an amended assessment that is subsequently subject to objection by the taxpayer, who then provides additional information to prove that the decision is not justified or incorrect. This is particularly the case for taxpayers with more complex tax arrangements, such as large businesses and HWIs, where tax matters are contentious, as they are often untested by the courts and subject to interpretations that can be challenged. Conversely, taxpayers and their representatives frequently cite the ATO taking aggressive/defensive revenue positions or making mistakes in conducting the audit, to which they object.

In examining this issue for HWI taxpayers, the ANAO noted that in 55 per cent of the cases where an objection had been allowed or settled, ATO objections staff recorded that the original compliance decisions were at least partially incorrect, or the ATO had changed its interpretation of the law. In the remainder of cases, the ATO recorded that new facts and evidence were introduced after completion of the compliance activity.⁹

The efficiency of dispute resolution processes is ideally measured by taking into account the costs incurred by the ATO and taxpayer in reaching a final position. However, as little information is generally available about the actual costs incurred by the ATO and taxpayer, one available indicator of efficiency is the elapsed time taken for the ATO to finalise an objection.

While noting the ATO's broader statistic of exceeding its benchmark primary service standard of 56 days for finalising objections, the HWI audit found that one in three objections finalised between 2011–12 and 2012–13 required more than a year to complete. For those HWI taxpayers who object to their amended assessment, the time taken to determine an objection is a significant part of the time taken to finalise issues raised in the audit or review. Typically this will mean that HWI taxpayers will be uncertain about their tax liability for over 1000 days for audits and over 600 days for reviews.¹⁰ As demonstrated in relation to HWIs, and also for taxpayers subject to Project Wickenby, these extended periods are often due to the complexity of the cases and to additional time being negotiated with taxpayers so that they can respond to requests for information. It is sometimes in the taxpayer's interest to delay the date for finalising objections, for business or personal reasons, or to delay full payment of their liability until the objection is finalised.

During the course of performance audits, some taxpayers advised the ANAO of their frustration with ATO dispute processes. For example, the relatively few criticisms and

⁸ Commissioner of Taxation, *Annual Report 2012–13*, p. 39.

⁹ ANAO, Audit Report No.35 2013–14, *Managing Compliance of High Wealth Individuals*, p. 25.

¹⁰ Audits required on average 716 days to complete; and comprehensive risk reviews on average 250 days to complete, added to the average 352 days to determine an objection.

complaints¹¹ about the ATO's administration of Project Wickenby focused on the timeliness and responsiveness of audit and objection processes, a lack of transparency and excessive imposts on those being audited or in a dispute process.

In terms of transparency, the ANAO audit of ATO complaints tabled in February 2014 found that in 12 of 43 complaints listed as 'Disagree with decision', it appeared that the complainant may have actually wanted to lodge an objection, rather than a complaint.¹² Accordingly, the ANAO noted there was merit in the ATO reviewing the information it provides regarding when to lodge an objection or make a complaint, and providing better guidance to complaints handling staff on where it would be more appropriate to advise taxpayers to lodge an objection or use other processes, rather than complain.

Fair treatment and respect of taxpayers

In commenting on the fair treatment and respect of taxpayers in dispute processes, the ANAO has only limited anecdotal evidence gathered from discussions with taxpayers or their representatives during the course of performance audit activity. This feedback has included some criticism about the fairness of the processes, being treated with undue suspicion by tax officers, and more commonly the cost and imposition of processes.

How the ATO supports the outcomes of efficiency, effectiveness and transparency through the use and publication of performance information

Limited information is made available publicly about the operation or outcomes of the ATO's dispute processes. The ATO's annual report presents information about the number and rate of objections and adherence to service standards (as discussed earlier). The ATO website also provides information about the number of objections to goods and service tax amended assessments, and the outcomes of those objections.¹³ It would be useful if the outcomes of dispute processes were publicly reported for all ATO disputes each year, as this information would indicate the extent to which disputes about the increase in tax payable as a result of ATO audits and reviews were allowed.

To support internal decisions making, ATO business lines also monitor and report various indicators of the efficiency and effectiveness of dispute processes and their outcomes, including:

- rates of objections and appeals;
- timeliness against cycle time benchmark service standards;
- objection and appeal results—generally whether they were allowed in full, allowed in part, disallowed, or were invalid or withdrawn;
- change in liabilities raised as a result of objection and appeal; and
- causes of disputes.

¹¹ There were 43 complaints about the ATO's administration of Project Wickenby to 30 August 2011.

¹² In some cases, the complaint resolver was able to explain the original decision to the complainant's satisfaction and closed off the complaint. In two cases the complainant was advised to lodge an objection. ANAO Audit Report No.19 2013–14, *Management of Complaints and Other Feedback*., p. 95.

¹³ Key ATO statistics available from < <https://www.ato.gov.au/About-ATO/About-us/In-detail/Key-documents/GST-administration-annual-performance-report-2012-13/?page=20>>.

These indicators provide useful performance information about the ATO's dispute resolution activities and give some insight into the soundness of processes and capability of staff involved in audits, objections and appeals. However, a comprehensive assessment would be necessary to provide a sound basis for determining the efficiency and effectiveness of the ATO's taxpayer dispute processes.

Further contact information

Should the Committee require further information in relation to these matters, please do not hesitate to contact Ms Barbara Cass, Group Executive Director responsible for the Treasury portfolio, on [REDACTED] or at [REDACTED], or Mr Andrew Morris, Executive Director, on [REDACTED] or at [REDACTED].

Yours sincerely

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Auditor-General [REDACTED]