

ATO Annual review of performance – submissions on behalf of [REDACTED]

1. We refer to the terms of reference into your review of the Australian Taxation Office's (ATO) performance.

(a) policies and procedures for issuing garnishee notices, including how the ATO considers circumstances of taxpayers such as vulnerable small businesses and individuals;

(b) understanding and assessing the nature of any impact upon affected taxpayers, particularly small businesses;

(c) setting key performance targets for staff based on the level of debt collected; and

(d) the issuing of standard garnishee notices in every case as a 'cash grab' (which allegedly occurred towards the end of the 2017 financial year).

2. I make submissions on behalf of [REDACTED] (Taxpayer), which had multiple garnishees issued against it in March 2018, two business days after the payment due date. Whilst the garnishees were subsequently lifted and the ATO entered into a payment arrangement, concerns remain why garnishee orders even issued in the circumstances. Particularly when issuing garnishee orders caused a significant further deterioration in the health of the directors of the Taxpayer, [REDACTED] (Directors), when the ATO was already aware they were in vulnerable circumstances.

3. We provide a background of relevant facts and circumstances and our view regarding the relevance of our circumstances to your review below.

Background

4. We operate a small business [REDACTED] in the [REDACTED] industry with less than 10 employees [REDACTED] Queensland.

5. The business itself has run from the same premises for many years. In October 2013 [REDACTED] Business was subject to an ATO GST audit, with its September 2013 GST refund being retained. On 30 October 2013 the Commissioner of Taxation issued a media alert advising that it was investigating suspected GST fraud in the [REDACTED] industry. In 2013 [REDACTED] [business] received an audit finalisation letter advising that the auditor was satisfied with its GST reporting and that no further action was required.

6. Despite the audit being finalised [REDACTED] [business], aware of the ATO's public concerns, repeatedly asked the ATO to send a GST champion to visit its premises to ensure its systems and procedures were adequate to guard against the GST risks the ATO had publicly referred to. These requests included by way of an email to ATO officer [REDACTED] on 17 December 2013, asking if he had made any progress in arranging a GST champion to visit [REDACTED] [business] premises. The ATO refused to comply with this request for guidance.

7. On 1 July 2016 [REDACTED] [business] was acquired by us, [REDACTED] (Directors). [REDACTED] had been a long-standing and trusted employee of [REDACTED] [business] for many years, including during the October 2013 GST audit (finding no issues).

8. From August 2016 (ONE month after we had acquired [REDACTED] [business]) the ATO commenced auditing the Company, retaining each of its monthly GST refunds up until January 2017 – until the ATO was retaining some \$1.3 million GST refunds owing to us the taxpayer.

9. The retention of GST refunds placed a huge financial burden on our small business. Aware of the previous October 2013 GST audit, which had advised the business its GST reporting was in order, we sought guidance from the ATO on what we could do, given the ATO had previously advised the

business its GST reporting was in order and the ATO had previously declined requests to send a GST expert to visit the business to ensure its GST reporting systems and procedures were in order.

10. On 1 September 2016 in response to these further requests for guidance, ATO officer [REDACTED] refused to provide guidance, instead advising us 'if you lay down with dogs, you get up with fleas.'

11. The 2016 GST audit was not finalised until February 2018, at which point the Commissioner issued GST assessments of approximately \$980,000 and penalty assessments of approximately \$500,000. The combined \$1.48 million in assessments offset the \$1.3 million in retained debts – leaving a residual amount payable of \$173,000 with a payment due date of 2 March 2018 (a **residual 11.68%** debt of the total amount owing as per the 1 February 2018 assessments).

12. Regarding the quantum of assessed penalties, paragraph 60 of MT 2008/1 states the ATO view that the reasonable care test will be satisfied, including where a taxpayer makes appropriate enquiries, including by contacting the ATO. Despite this commentary and despite documented attempts to seek guidance from the ATO, the ATO penalised us (the Taxpayer) in excess of \$500,000. Presumably in a bid to ensure the ATO would not be obliged to refund retained GST refunds and to ensure it collected maximum revenue possible from the audit.

13. If penalty assessments had issued at nil (either because no shortfalls exist for penalty purposes because we (the Taxpayer) took reasonable care, or because the general discretion is exercised to reduce penalties to nil), then we would have been entitled to a GST refund of approximately \$327,000.

Events surrounding the issuing of garnishee orders on 6 March 2018

14. As you would be aware, on 28 March 2018 Commissioner Jordan appeared before the House of Representatives Standing Committee on Tax and Revenue hearing into the ATO's 2017 report. The Commissioner is quoted in the transcripts as saying:

"think about this statement – 'The ATO can bankrupt a small business before it has a chance to dispute a debt.' **This is absurd, and I was shocked to see this in a submission to parliament.** We only use stronger action like garnishees and bankruptcy proceedings when a **taxpayer refuses to engage with us and don't deal with their tax debt over a period of time.** In all cases except a small few where there is a **very high risk**, we issue a warning letter to taxpayers before undertaking firmer actions such as the issue of a garnishee."

15. Commissioner Jordan's statement, having regard to our (the Taxpayer's) circumstances, strongly suggests his delegates are not acting in accordance with his directions. Only 3 weeks prior to the Commissioner making this statement, the Commissioner's delegates had issued garnishees on 6 March 2018:

(a) two business days after the due date – without any attempt to contact us, our tax agent or our authorised legal representative (which if contact had been made the ATO would have been advised that the debts were disputed debts and the legal practitioner had already contacted the ATO several times prior to the due date with a view to arranging a payment arrangement);

(b) to collect a residual 11.68% debt, given the bulk of the \$1.48 million ATO debt assessed on 1 February 2018 had been offset by \$1.3 million in retained GST refunds; and

(c) in circumstances where:

(i) Deputy Commissioner Michael Cranston and Deputy Commissioner Tim Dyce had already been made personally aware of the deteriorating health of the Directors as a consequence of ATO action and Deputy Commissioner Dyce was already aware that one of the directors was suffering from suicidal ideations; and

(ii) Deputy Commissioner Dyce was aware that we (the Taxpayer) had instructed [redacted] [lawyers] to act on our behalf since December 2016 and at all times had co-operated and fully engaged with the ATO audit team, despite the stress ATO actions was creating for us as the Directors.

16. The Commissioner's statement to the Standing Committee on Tax and Revenue is not supported by our interactions with the ATO. We have at all times fully engaged with the ATO, including by instructing [redacted] [lawyers] to act on our behalf in liaising with the ATO, including attending meetings with Assistant Commissioner Ian Read and his team and attending a formal ATO interview whilst under duress due to the fact we had been diagnosed with depression and anxiety, this appeared only to serve as an intimidation tactic. Our legal representatives had been liaising with the ATO prior to the due date to seek to negotiate a payment arrangement. The ATO issued garnishees two business days after the due date for payment for a residual 11.68% of assessed debt – clearly there was no length of time during which we (the Taxpayer) had not dealt with our debt appropriately and almost 90% of alleged debt had already been offset by retained GST refunds.

17. I cannot see how [redacted] [business's] circumstances could be regarded as 'very high risk', to warrant garnishees issuing without formal notice, particularly when:

(a) Deputy Commissioner Dyce, other senior officers and multiple ATO teams (including the audit team and an objections team that handled objections regarding decisions to retain GST refunds) were already aware that my wife [redacted] was suffering from suicidal ideations due to ATO interactions;

(b) almost 90% of the assessed debt had already been offset by retained GST refunds; and

(c) We (the Taxpayer) has at all times had a good compliance history. Whilst this history is relatively short (from 1 July 2016), character references for [redacted] [Director] had been provided to Deputy Commissioner Cranston, the audit team and the former objections team – attesting to [redacted] [Director's] distinguished career in law enforcement both in the United Kingdom and Australia, including serving as a member of Prime Minister Blair's personal protection team.

18. By issuing garnishees in the circumstances, the Commissioner's powers have been exercised in a reckless manner – jeopardising the health of the Directors (as evidenced by the Medical Practitioner's Letter dated 13 March 2018).

19. Had we not already had specialist tax lawyers engaged it is very likely that the [redacted] business would have been forced into insolvency by the ATO before it had a chance to dispute the alleged debt owing – given even with specialist tax lawyers all our bank accounts were frozen for nearly a week.

ATO policies and procedures inadequate to ensure it properly responds in ways respectful of the mental health of Taxpayers

20. The circumstances surrounding the issuing of garnishee notices to us indicate the ATO policies and procedures are inadequate in considering the circumstances of small business taxpayers.

21. For instance, we do not understand on what basis ATO policies and procedures would justify the issuing of garnishees when:

(a) ATO debt records would have shown 88.32% of the 1 February 2018 assessed amounts had been offset by \$1.3 million in retained GST refunds;

(b) the ATO made no attempt at contacting the [redacted] business or its advisors in the two business days between the payment due date and when garnishees issued to identify if the Taxpayer intended to negotiate a payment arrangement and/or if it intended to dispute the debt;

(c) the ATO systems should have already been flagged regarding our vulnerability and in particular that the ATO already had medical practitioner letters in its possession confirming a diagnosis that my wife was already suffering suicidal ideations due to stress created from interactions with the ATO.

22. The garnishee orders were subsequently lifted in the week after issuing due to a satisfactory payment arrangement being agreed with us (the Taxpayer) regarding the residual debt. However the ATO systems and procedures failed further in that notwithstanding a satisfactory payment arrangement was on foot, the Commissioner's delegates proceeding to revoke our (the Taxpayer's) status as being part of the deferred GST scheme on or about 3 April 2018. This was despite the ATO at that time having entered into a payment arrangement with the us (theTaxpayer) for the outstanding debt.

23. This ATO action further indicates a lack of policy and procedure around the issuing and withdrawal of garnishee orders. Particularly when the cash-flow forecasts provided in support of the payment arrangement had been prepared on the assumption that the Commissioner would not revoke our (the Taxpayer's) status as part of the deferred GST scheme – thereby jeopardising the terms of the payment arrangement and the basis on which garnishee orders had been lifted.

24. The lack of policies and procedures regarding the issuing and withdrawal of garnishee orders has had an adverse impact on us (the Directors) of a vulnerable small business taxpayer as outlined below.

Vulnerability of the Taxpayer and impact the garnishees have had on the health of the Directors

Senior ATO officers aware of our vulnerability prior to garnishee orders issuing

25. Prior to garnishee orders issuing, various senior ATO officers and teams were aware of the severe strain placed on the Directors of the Taxpayers due to the actions and inactions of the ATO.

26. On multiple occasions various ATO officers have been provided with copies of medical practitioner reports from multiple doctors, all of which confirm diagnoses of stress due to ATO interactions so severe it has led to physical manifestations and mental health issues.

27. In February 2017 Deputy Commissioner Dyce was provided medical practitioner letter dated 15 February 2017 from Doctor [REDACTED], which diagnosed [REDACTED] (Director) with suicidal ideations. Doctor [REDACTED] was of the view was a direct result of the difficulties the Directors had experienced with the ATO. A copy of Doctor [REDACTED]'s letter was also provided to the objections team, given at that point in time objections were on foot regarding the decision to retain GST refunds.

28. Similarly, in December 2016 Deputy Commissioner Cranston had been provided with a medical practitioner letter dated 16 December 2016 from Doctor [REDACTED], which at that time confirms both of the Directors were suffering from depression and that [REDACTED] had 'recently developed hypertension and has an elevated cortisol (stress related) on his blood tests.' Even at this earlier point Doctor [REDACTED] clearly stated his view that 'any help in expediting a solution to the ATO problem would help their respective health greatly.'

29. Doctor [REDACTED] maintained this view when he concluded his 15 February 2017 letter with 'Anything which could be done to relieve their stress levels would be of great benefit to their deteriorating health'.

30. Whilst copies of these respective medical practitioner reports were emailed to Deputy Commissioner Cranston on 16 December 2016 and to Deputy Commissioner Dyce on 17 February 2017, we have concerns that the ATO systems have failed to properly record when it is in receipt of evidence confirming ATO actions have sufficiently impacted the mental health of taxpayers that medical practitioners have diagnosed suicidal ideation.

31. If a simple note had been made in the Taxpayer's records on receipt of either of the 16 December 2016 or 15 February 2017 medical practitioner letter (either by the audit team or the objections team dealing with the objection to the decision to retain GST refunds), then presumably the Commissioner would have refrained from exercising his power to issue garnishee orders on 6 March 2018.

32. Issuing garnishee orders on what can only be described as questionable grounds was in complete disregard of Doctor [REDACTED]'s diagnosis and recommendations in December 2016 and February 2017, which had been communicated to senior ATO officers.

Impact on vulnerability as a consequence of issuing garnishee orders

33. In the circumstances it is not surprising that the Commissioner's actions of issuing garnishee orders to the Taxpayer resulted in a further significant deterioration in the health of the Directors.

34. On 13 March 2018 the ATO was provided with a further medical practitioner report from Doctor [REDACTED], which reiterated the Directors were patients of his for some years and that they had been under 'enormous pressure from their dealings with the Australian Taxation Office.' Doctor [REDACTED]'s diagnosis in March 2018 was that both Directors were depressed and **both** Directors were now suffering from suicidal ideation. Doctor [REDACTED] concluded his letter that he was 'extremely concerned' and asked for 'any possible consideration and help in their very fragile and now worsening situation'.

35. On the same date, Doctor [REDACTED] [B] issued a medical practitioners report advising [REDACTED] was 'suffering from severe stress secondary to ongoing issues with the Australian Taxation Office. This has led to hypertension and increasing requirement for higher dosing of his medication. Ongoing high sustained stress levels will eventually cause other medical issues.'

36. Although objections to GST and penalty assessments have now been lodged, the Directors continue to suffer poor health as a consequence of the stress directly caused from dealings with the ATO, including delays now being experienced in having the objection properly considered (Objection submitted April 2018 still no decision as of 8 October).

37. On 16 April 2018, after the garnishee orders had been issued and withdrawn and after the status of the Taxpayer under the deferred GST system had been revoked and restored, Doctor [REDACTED] [C] diagnosed [REDACTED] as suffering from acute Shingles. In Doctor [REDACTED]'s view the acute Shingles were due to 'ongoing stress levels related to the ATO investigation/audit.' Doctor [REDACTED]'s diagnosis was confirmed by blood results on 19 April 2018. Whilst the blood results refer to [REDACTED] by her maiden name, it is evident it is her results having regard to the referring doctor and the date of the request. Summary of medical practitioner letters and the impact garnishee orders have had

38. Read in chronological order, it is apparent that:

(a) since Deputy Commissioner Cranston was first notified on 16 December 2016 of the significant impact ATO actions have had on the health of the Directors, the ATO (through various senior officers and teams) was continually kept abreast of the continuing deterioration the health of the Directors; and

(b) despite this awareness the ATO issued garnishee orders, which directly resulted in a further deterioration in the health of the Directors.

39. Stress attributable to ATO dealings is so severe that prior to garnishee orders issuing:

(a) [REDACTED] had been diagnosed with hypertension and depression; and

(b) [REDACTED] had been diagnosed with depression and suicidal ideations, although no physical manifestations had been diagnosed.

40. Post the garnishee orders issuing, both Directors have been diagnosed as suffering suicidal ideations and both Directors continue to suffer from physical manifestations of the stress, which various medical practitioners attribute to their dealings with the ATO.

Potential basis on which ATO issued garnishee orders

41. It is unknown on what basis the ATO thought it justified to issue garnishee orders to the Taxpayer in March 2018, although possible explanations would seem to include:

- (a) setting key performance targets for staff based on the level of debt collected; and/or
- (b) the issuing of standard garnishee notices as a 'cash grab' to improve revenue collected and recovered figures relating to the well published ATO review of GST fraud in the precious metals industry.

42. Irrespective of the actual basis on which garnishee orders issued, it seems apparent that the garnishee orders did not issue having regard to factors specific to the Taxpayer's circumstances, including:

- (a) 88.32% of assessed debt had already been offset by retained GST refunds;
- (b) We had already instructed our advisors the assessments would be disputed and to negotiate a payment arrangement for the 11.68% residual debt; and/or
- (c) multiple senior ATO officers and teams were already aware of the vulnerable circumstances of the Taxpayer, including the adverse impact ATO dealings have had on the health of the Directors.

Potential cash grab to improve revenue collected figures

43. Whilst the Commissioner has stated in Federal Parliament it is absurd to think the ATO can bankrupt a small business before it has a chance to dispute a debt, in the Taxpayer's circumstances this was a very real possibility – despite the events happening only weeks prior to the Commissioner making this statement.

44. The terms of the Inspector General's review which [REDACTED] [business] ha[s] been a part of refers to a potential 'cash grab' towards the end of the 2017 financial year. In our view a similar 'cash grab' existed in early 2018 when presumably the Commissioner finalised his GST audits of various taxpayers in the precious metals industry.

45. It has been well documented in the media that when the Commissioner first publicly announced his concern in **October 2013** regarding potential lost revenue due to GST fraud in the [REDACTED] industry this figure was estimated to be \$65 million. Some four years later media reports suggest this figure has ballooned to estimates of \$1 billion and the Commissioner has been questioned several times in Parliament regarding the ATO actions to identify and recover lost GST revenue in the industry.

46. Given the issuing of garnishee orders is not explained by the ATO's awareness of the vulnerability of the Directors of the Taxpayer, a worse-case scenario possibility is the Commissioner decided to proceed with issuing garnishee orders on a blanket basis to all taxpayers with outstanding debts arising from ATO audits focused on identifying and recovering lost GST as a consequence of GST fraud in the [REDACTED] industry.

47. By potentially freezing all assets of taxpayers subject to audit in the industry (within two business days of payment due dates as in the Taxpayer's instance, without any attempts to contact the Taxpayer or its advisors) perhaps it was a method by which the Commissioner intended to limit the number of taxpayers able to legitimately dispute the assessed debts and a way to increase revenue collected, irrespective of whether the taxpayers had been involved in GST fraud schemes.

Questionable basis on which 1 February 2018 assessments have issued

48. We have already explained above why it seems the \$500,000 penalty assessments have been considerably over-stated due to [REDACTED] [business] having taken steps to seek guidance from the ATO to ensure its systems and procedures were adequate to guard against the GST risks the Commissioner had identified in October 2013 as facing the [REDACTED] industry

49. Similarly we think the GST reassessments are significantly over-stated. *It was only on the finalisation of the GST audit that it became apparent the Commissioner's interpretation of the GST law is completely contrary to established interpretation principles, including those established by the High Court.*

Conclusion

This is only a brief snippet of some of the behaviours we have experienced. It is quite apparent that we are being held accountable for people whose greed has outweighed their integrity and whom have disappeared leaving the ATO scrabbling for lost revenue from a loophole that they failed to close some five years ago.

I have been a Police Officer for 30 years and have never experienced anything like this from a professional governing body. With all due respects, if the Commissioner of Taxation believes that this kind of behaviour is reasonable then it's quite disturbing.