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Mr David Monk
Committee Secretariat
Standing Committee on Tax and Revenue
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: taxrev.reps@aph.gov.au

Dear David

**SUBJECT: SUBMISSION ON INQUIRY INTO TAX DISPUTES BY THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON TAX AND REVENUE**

CPA Australia represents the diverse interests of more than 150,000 finance, accounting and business professionals in 121 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background we provide this submission in relation to the House of Representatives Standing Committee on Tax and Revenue (the Committee) in relation to its Inquiry into Tax Disputes announced on 6 June 2014, and to the accompanying media release issued on 6 June 2014.

General comments

Our comments below are framed around the inquiry's Terms of Reference and principally focus on small to medium enterprises (SMEs) and individual taxpayers being those sectors of the taxpayer community which is the focus of the Committee's review as set out in the abovementioned media release. We will also lodge a separate submission in respect of the parallel review by the Inspector General of Taxation into tax disputes concerning large business and high net worth individuals which was also announced by the Committee on 6 June 2014.

As an overall comment we strongly believe that the Commissioner should be commended for the recent performance of the Australian Taxation Office (ATO) in resolving tax disputes through negotiation and the use of Alternate Dispute Resolution (ADR) processes. This has involved a considerable paradigm shift by all parties and our members note that its roll-out across all market sectors including SMEs has typically led to the more expeditious resolution of disputes by the ATO.

It should be noted that the rollout of ADR processes is a crucial development as our members find that the vast majority of cases concerning SMEs do not involve a 'test case' involving technical issues. Instead the tax dispute is usually a dispute over facts (i.e. things that did or did not happen) or an incorrect application of the tax law based on a mistake of the taxpayer or their adviser (such as is commonly the case with disputes concerning Division 7A of the Income Tax Assessment Act 1936). Moreover, for all but the most aggressive of taxpayers, avoiding litigation is both the most desirable and economically sensible outcome. Accordingly, we are increasingly witnessing tax practitioners in the SME market embrace ADR as an alternate means of resolving dispute.

In our opinion, the Commissioner's performance could further improve if the ATO placed greater strategic priority on quickly 'cutting through' to the core matters of dispute between the Commissioner and the taxpayer by initiating structured settlement negotiations or ADR processes earlier and in a more focused way.

We believe that this could be achieved by:

- Involving senior ATO decision makers prior to the audit completion stage with a mandate to make strategic decisions about the ATO's priority issues and approach to overall dispute resolution
- Mandating that the parties seek to reconcile the competing views of the Commissioner and the taxpayer, for the purpose of isolating the key factual or technical matters that are in controversy against those on which there may be agreement or which may involve concessions offered by either side
- Minimising paper warfare by ensuring that the ATO litigation staff meeting with taxpayers and their advisers early in a face-to-face conference for the purpose of outlining the key audit findings, areas of concern, and identifying opportunities for resolving the dispute quickly through structured negotiation or ADR. In other words considerable time and cost savings could be realised if the ATO adopted a culture of 'talk first, write later'; and
- Requiring that negotiation and the ADR processes be part of the objection and review process, and not only apply when litigation is initiated or threatened.

At the operational level within the ATO, we offer the following suggestions to further enhance the ADR process:

- The ATO committing and adhering to an orderly and reasonable time frame for the conduct of a review or audit of the taxpayer. Also, there should be a focus on providing taxpayers with an opportunity to respond to the ATO's position in a reasonable timeframe. Our members can cite cases where the ATO has taken 6 months (or more in some cases) to finalise its audit view and issue a position paper, and then request the taxpayer's response within 14 or 28 days
- Similarly, assuming this does not already happen, place a monetary value on the ATO's time and resources by allocating a 'budget' to resolve disputes based on, amongst other things, the technical complexity of the dispute and the financial materiality of the amount of tax in dispute. This should help the ATO to focus on the quick and efficient resolution of disputes and be congruent with the response of taxpayers and their advisers who adopt a cost control mentality in resolving disputes involving SMEs and individuals, and
- Ensuring there is better internal communication between the ATO's audit/ review team dealing with the taxpayer on the substantive matters in the dispute, and its debt collection team. In many instances, follow-up and even active recovery action is taken by a debt collection team who are entirely uninformed by their internal colleagues that the debt is the subject of an unresolved dispute or that significant concessions have been made that will affect the amount of the outstanding tax liability.

Specific Comments

We also make the specific comments in respect of the Inquiry's Terms of Reference in respect of SMEs and individuals:

- **Collecting Revenues Due**

It is positive that the Commissioner has indicated the ATO will now have a greater awareness of pursuing and settling matters based on their litigation risk. However we consider that the Commissioner ought to go further and consider the settlement of tax debts on a more 'commercial basis'. By approaching settlements in this way, the Commissioner would be putting the ATO on the same footing as the taxpayer in any dispute. That is, the parties could negotiate to settle a debt by taking into account a broad range of objectives. This would likely lead to more positive settlement outcomes and could lead to an increase in revenue collected.

We have seen the ATO increase its engagement with taxpayers concerning the compromise of taxation debts where full settlement of those debts is no longer a possibility. For example, one of our members recently acted for a client that was able to 'trade away' a large amount of taxation losses in order to compromise a large taxation liability. This enabled our client to keep trading, keep employing its staff and, ultimately, keep contributing to the Australian tax base. The ATO's willingness to enter into these arrangements is positive and should be expanded further.

- **Fair Treatment and Respect of Taxpayers**

Although the ATO has made significant inroads in this area, there is still some work to be done. It is our experience that the ATO does not always make taxpayers aware of the Model Litigant Rules when litigious proceedings are commenced and does not communicate to taxpayers the ATO's approach to those standards. This ought to be addressed, either through stronger internal guidelines at the ATO or as part of a broader education campaign.

As discussed, one area in which the ATO is not always fair and reasonable in dealing with taxpayers relates to the timeframes demanded for the production of information and/or for responses to positions the ATO has developed. Our experience suggests many of these timeframes derive either principally or solely from the ATO's internal case metrics which inform the performance reviews of staff managing cases. We would encourage the ATO to reassess this approach and to put in place alternative guidelines for its staff where possible based on the complexity of the matters in dispute.

- **Efficiency, Effectiveness and Transparency**

Unfortunately, there seems to be some continuing instances of miscommunication in correspondence received from the ATO by taxpayers. In particular, we are aware of instances where the ATO has advised on the phone of one outcome and issued inconsistent written correspondence at a later stage, which creates confusion for taxpayers especially SMEs and individuals. Strengthening the ATO's internal communication protocols in respect of taxation disputes would go a long way towards alleviating this issue.

- **How the ATO Supports the Outcomes of Efficiency, Effectiveness and Transparency**

The information published by the ATO relating to the performance of its dispute resolution function is critically important. Taxpayers use the statistics produced to assess their likelihood of successfully engaging with the ATO at each stage of the process and the time typically taken for each level of engagement. Our experience is while this aspect of the ATO's reporting has increased in recent years, the publication of 'real time' statistics is still unsatisfactory. The litigation and ADR landscape moves quickly and statistics that are only published annually or biannually do not provide a strong platform for taxpayers to form their decisions.

Also, we often become aware of key ATO resolution statistics through the tax grapevine and not via official ATO publications. This information may 'leak out' of committee meetings or be disclosed to certain taxpayers in defined contexts. Large, well-resourced taxpayers will usually have advisors who can tap into the 'tax grapevine' to obtain this information. However, SMEs and individual taxpayers may not have this ability. This mismatch of information could be more appropriately addressed by developing the ATO's ability to publish statistics in real time.

Creation of Separate Agency

We note that the abovementioned media release also ought feed back as to whether there should be a separate agency to handle ATO litigation, whether the ATO should have a separate appeals area or if current arrangements to ATO disputes should remain intact.

In our view the structural separation of the ATO, between a compliance, assessing, and collecting branch and a review, interpretation and advisory branch is a proposal which has considerable merit and should be actively explored.

However, it is ultimately a policy decision and we expect it will be complicated and take the Federal Government a long time to decide and implement.

The key consideration that we see with this proposal is that the compliance branch of the ATO should not be stripped of its technical expertise and 'firepower', as this is likely to lead to a greater number of tax disputes that take longer to resolve. As discussed, senior level technical involvement at an early stage of the taxpayer review or audit has, in our members' experience, assisted in resolving tax disputes more quickly and efficiently in the past.

If you have any questions regarding the above, please contact Mark Morris, Senior Tax Counsel, on [REDACTED]
[REDACTED] or via email at [REDACTED].

Yours faithfully

[REDACTED]

Paul Drum FCPA
Head of Policy

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