

## **Submission to House of Representatives Standing Committee on Tax and Revenue – Inquiry into External Scrutiny of the Australian Taxation Office**

This submission focusses on the ANAO’s role in auditing the ATO through performance and assurance audits and audits of performance indicators and performance statements. In line with the terms of reference for the inquiry, the submission also outlines the ways in which the ANAO’s scrutiny of the ATO has regard for removing inefficiency and duplication, reducing cost to government and the ‘earned autonomy principle’.<sup>1</sup>

### **ANAO scrutiny of the ATO**

The Auditor-General has an important role in providing external audit, review and examination of the ATO. Consistent with the long-established role to provide independent advice to the Parliament about the performance of Australian Government public sector entities, the ANAO, in support of the Auditor-General, has conducted performance audits of the ATO’s administration over many years. The ANAO has conducted these audits objectively and the findings are independent, balanced and defensible. The table below lists ANAO performance audits of the ATO that have been completed in the past five years.

#### **ANAO performance audits of the ATO completed from 2011 to 2015**

Report title	Year	Report No.
Administration of Capital Gains Tax for Individual and Small Business Taxpayers	2015	51
Promoting Compliance with Superannuation Guarantee Obligations	2015	39
Administration of Contact Centres	2014	7
Annual Compliance Arrangements with Large Corporate Taxpayers	2014	5
Administration of the Australian Business Register (multi-agency audit)	2014	48
Compliance Effectiveness Methodology	2014	39
Managing Compliance of High Wealth Individuals	2014	35
Management of Complaints and Other Feedback	2014	19
Administration of the Taxation of Personal Services Income	2013	5
Management of Debt Relief Arrangements	2013	52
Management of the Australian Taxation Office’s Property Portfolio	2013	51
Management and Reporting of GST and FBT Information	2013	44
Preparation of the Tax Expenditures Statement (multi-agency audit)	2013	34
The Regulation of Tax Practitioners by the Tax Practitioners Board	2013	33
The Australian Taxation Office’s Engagement of External Debt Collection Agencies	2012	54

<sup>1</sup> Earned autonomy is that public service agencies be permitted greater independence—for example, by exemption from elements of inspection—provided that they first demonstrate to the satisfaction of the Government that they have achieved a certain threshold of performance in the execution of their functions. Peck E, *Modernization: The Ten Commitments of New Labour’s Approach to Public Management?*, International Public Management Journal 7.1 (2004), pp. 1–18.

Report title	Year	Report No.
Small Business Superannuation Clearing House	2012	47
Interpretative Assistance for Self-Managed Superannuation Funds	2012	40
Administration of Project Wickenby	2012	25
The Management of Compliance in the Small to Medium Enterprises Markets	2012	16
Administration of the Superannuation Lost Members Register	2011	31
Administration of the Wine Equalisation Tax	2011	20
The Tax Office's implementation of the Client Contact - Work Management - Case Management System	2011	6

Note: In addition, the ANAO has included the ATO in cross-entity audits, including of the *Pilot Project to Audit Key Performance Indicators* in 2013 and 2014.

## **Role of the Auditor-General**

Unique features of the ANAO's role in auditing and reporting on the performance of the ATO include: the mandate and statutory independence of the Auditor-General who is 'an independent officer of the Parliament'<sup>2</sup>; broad powers to collect information; the ability to conduct cross-entity audits involving the ATO as part of a whole-of-government mandate and to examine its 'back office' functions; and the use of well-established and rigorous audit methodologies that are underpinned by audit standards. Further, audits of performance of the ATO and other entities are tabled by the Auditor-General in the Parliament providing the highest level of transparency and opportunity for further enquiry by the Parliament.

### ***Auditor-General mandate and independence***

The *Auditor-General Act 1997* (the Act) establishes the mandate of the Auditor-General to undertake audits of Australian Government entities. The Act provides the Auditor-General with the authority to undertake financial statement assurance audits and performance audits, and to provide additional services including audits of performance measures, better practice guides and assurance reviews (such as of Defence major projects).

The ANAO's performance audit activities generally involve the audit of all or part of an entity's operations to assess its efficiency or administrative effectiveness. Areas where improvements can be made to aspects of public administration are identified and recommendations are made to assist public sector entities to improve performance. The performance audit activity also extends, under certain circumstances, to conducting performance audits of Commonwealth partners, which are those bodies (such as grant recipients or contractors) that receive money directly or indirectly from the Commonwealth for a particular purpose. Such audits may be conducted only to the extent that they assess the operations of the Commonwealth partner in relation to achieving the Australian Government's purpose. This power also extends to state and territory bodies that receive money from the Australian Government if the audit is conducted at the request of the Joint Committee of Public Accounts and Audit or the responsible Australian Government minister. Similarly, the ANAO can conduct performance audits or assurance reviews of government

<sup>2</sup> *Auditor-General Act 1997*, s. 8., <<https://www.comlaw.gov.au/Details/C2012C00445>>, [accessed 2 March 2016].

business enterprises at the request of the Joint Committee of Public Accounts and Audit. In 2014–15, 49 performance audits were tabled, involving all portfolios and 29 public sector entities.

The Auditor-General is ‘an independent officer’ of the Parliament, supported by the ANAO to provide the Parliament with independent assessments of selected areas of public administration, and assurance about public sector financial reporting, administration and accountability. The Auditor-General’s position as an independent officer of the Parliament recognises that to be effective the Auditor-General must be seen to be independent, which requires freedom from control by the executive government and being able to act without direction or interference. Accordingly, the Auditor-General has absolute discretion in the exercise of available functions or powers, including the selection of topics for performance audits and the manner in which they are to be conducted.<sup>3</sup> The Auditor-General has a very broad mandate, and is free to choose subjects for performance audits which consider the efficiency, effectiveness and economy issues related to Commonwealth organisations and Commonwealth programs.

As a supreme audit institution (SAI), the ANAO subscribes to the principles of the International Organization of Supreme Audit Institutions (INTOSAI). INTOSAI considers that a supreme audit institution should have ‘a sufficiently broad mandate and full discretion, in the discharge of SAI functions’.<sup>4</sup> It states that SAIs should be empowered to audit the collection of government revenues and the economy, efficiency and effectiveness of government or public entities operations.

Broad mandate and independence remain important key features of the role of supreme audit institutions internationally. These features enable citizens, through the Parliament, to have confidence that there is proper arm’s length review of government activities without the risk of interference by the Executive.

### ***Broad powers to collect evidence***

The Auditor-General has extensive powers to obtain information and access to premises to facilitate the effective discharge of his functions. The strength of these powers reflects the mandate and independence of the Auditor-General and distinguishes the Auditor-General’s role from other reviewers of public sector activities. The powers are not to be limited by the provisions of any other law unless that law expressly excludes the power to gather information and access to premises by the Auditor-General. Notwithstanding these powers, audits are managed cooperatively with audited agencies.

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<sup>3</sup> When developing the annual Audit Work Program, the Auditor-General must have regard to the audit priorities of the Parliament as determined by the JCPAA under the *Public Accounts and Audit Committee Act 1951* and any reports made by the JCPAA under the same Act.

<sup>4</sup> INTOSAI, Mexico Declaration on SAI Independence, <[http://www.issai.org/media/12922/issai\\_10\\_e.pdf](http://www.issai.org/media/12922/issai_10_e.pdf)> [accessed 24 February 2016].

### ***Conduct of audits across-entities and of ATO corporate functions***

Cross-entity audits are performance audits of particular themes or common aspects of administration across a number of entities. The ATO, through its revenue collection activities, provides a platform for the delivery of a broad range of government programs. By including the ATO in such audits, the ANAO is able to obtain a full picture of a particular program or activity that spans different entities. This is becoming increasingly important as ‘joined up’ approaches to achieving outcomes and shared service arrangements between agencies become more common. A recent example is the audit of the Australian Business Register, which included the ATO, Australian Securities and Investments Commission and the Department of Industry, to reach a conclusion about the level of cooperation between these agencies to administer the register.<sup>5</sup> Another example is the current audit of the *Administration of Higher Education Loan Program Debts and Repayments*, which requires the ANAO to undertake audit activity in both the Department of Education and the ATO.

Unlike other review agencies, the ANAO regularly examines the ATO’s corporate support or ‘back office’ functions (such as its property portfolio or information technology systems) to assess whether they are being undertaken effectively and efficiently. The Auditor-General’s annual financial statements assurance audit activity in all Commonwealth entities, companies and subsidiaries also provides a unique insight into the risk management and control environment of these entities. In the case of the ATO, as with other agencies, findings in assurance audits of financial statements are considered in the selection of topics for performance audits and within the conduct of the performance audits themselves.

### ***Rigorous audit methodologies***

The ANAO’s work is governed by the standards applied by the auditing profession in Australia, and is supported by extensive policies, guidance and procedures. In accordance with these standards, performance audits are subject to rigorous standards of quality, cost and time, and are undertaken to provide a reasonable level of assurance.

### ***Performance audit coverage of the ATO***

In planning and implementing the performance audit work program, the Auditor-General aims for coverage across Australian Government public sector entities. As Australia’s main revenue agency, the ATO is a large organisation with significant powers and responsibilities, total available funding of some \$3.9 billion in 2015–16 and staff numbers of around 18 500. Given its size and responsibilities and the risks that it faces and manages, the ATO is an important part of the ANAO’s coverage and mandate.

As indicated earlier, the ANAO has typically produced around five performance audits specifically related to the ATO each year and also assessed aspects of the ATO’s administration through cross-agency performance audits. These reports have found that the ATO has relatively sound administrative processes, although with an emphasis on risk-based compliance arrangements rather than a performance-based approach focused on outcomes as well as outputs.

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<sup>5</sup> ANAO, Audit Report No.48 2013–14, *Administration of the Australian Business Register*.

In developing the forward audit program the Auditor-General takes a risk based approach. That is, topics are chosen based on maximising the value to improvements in public administration that the program can create. This involves consideration of factors such as:

- priorities of the Parliament and other stakeholders;
- breadth of coverage across portfolios and service delivery types (for example, grant programs, regulation, direct delivery and policy design and advice); and
- assessment of the findings of broader audit activity as to where risks may arise.

With respect to ‘earned autonomy’, the above approach to developing a forward audit program will generally result in the level of performance audit work undertaken in an agency being lower than otherwise for those that have demonstrated in prior audit activity (both performance and assurance) sound administration over past years then those that do not.

However, in providing independent assurance to the Parliament on the administration of an agency the Auditor-General needs to independently make this risk assessment as to the level of audit activity.

### ***Consultative approach to remove inefficiency and duplication***

The ANAO adopts a consultative approach to developing its forward audit program, taking account of the priorities of the Parliament through advice from the Joint Committee of Public Accounts and Audit, as well as the views of audited entities and other scrutineers and stakeholders.

In particular, arrangements involving the ANAO, the Inspector-General of Taxation and the Ombudsman are in place, and implemented in practice, which emphasise the need for the agencies to share information and consider more broadly the overall ATO review activity. In addition, the ANAO considers all other review activity, including the ATO’s own internal audit activity and the operation of the Audit and Risk Committee, when setting its work program.

The ANAO considers the impact to the ATO (and other Australian Government public sector entities) of implementing audit findings and recommendations including the potential costs. The ANAO audits focus on a small number of key recommendations in order to maximise the benefit of an audit.

In making recommendations, the Auditor-General also considers the level of ‘red-tape’ impact that recommendations may have and avoids prescribing in detail how an entity should implement a recommendation – a clear recognition that the accountable authority/agency is best placed to implement recommendations within the operation of its business and take account of the cost in doing so.

## **Concluding remarks**

The ANAO notes that any changes that constrain the Auditor-General from conducting performance audits of the ATO would represent a major reduction in the mandate and role of the Auditor-General as an independent officer of the Parliament. This role is central to the Australian Government's accountability framework and has served the Parliament well in improving public sector performance and supporting transparency and accountability in the Australian Government sector.