

Inquiry: the 2013 Annual Report of the Australian Taxation Office.

Submission by Donald YATES

It is recognised that the Australian Taxation Office operates with many employees and uses precedents (sometimes tested at law) to guide the staff in their interactions with the tax paying community.

Issues:

1. Different perspectives of different staff

While a tax payer may get an ATO ruling and use that in interactions between the taxpayer and the ATO, there needs to be the opportunity to intercede BEFORE the rulings intervention, and ask questions of the ATO that may require the ATO to not blindly stick with their precedents but to also look at matters with a more open perspective.

In my personal experience, a perspective taken by ATO Staff in July 2011, was not conceded in an AAT Conference and then an AAT Hearing until late 2013 and then confirmed in March 2014. That was almost 3 years of questioning of the ATO's perspective that went through at least 2 internal ATO appeals where the ATO would not even answer a simple question during this long period related to who could claim R&D expenses.

The ATO's perspective was confirmed by the AAT to be wrong. It was not appealed in the Federal Court by the ATO.

2. ATO Commercial Confidentiality vs Defence Secrecy issues

I have received at least 3 Defence Export Control Office Export Control advices to restrict certain defence technologies, namely DECO Advices 120337, 121506 and 122117, and have paid \$170,000 in past ATO findings to protect the secrecy of certain technologies.

It is disappointing that the ATO claims that their staff compliance with commercial confidentiality far outweighs security matters related to the Defence Trade Control Act of 2012, namely section 14A, regarding publishing of DSGL (defence and strategic goods list materials, as per regulation 13E of the Customs (Prohibited Exports) Regulations of 1958, could limit the release of such defence related R&D activities, (with invoice detail of services provided) because of which telecommunications provider is used by the ATO.

It has been released by the ATO that their telecommunications service provider is Optus. This means that even intra-office emails would most probably be transferred through Singapore, so such internal office ATO emails may be in contravention of the Defence Trade Control Act of 2012.

The Department of Defence has suggested the use by the ATO of a Governance Supervisor to oversee assembled tax invoices which may detail secret information. To date, the ATO will not recognise this need. This is why I chose to pay the \$170,000 to the ATO to retain the secrecy provisions. I still do NOT HAVE ANY CONFIDENCE that the ATO have appropriate protection measures of both commercial and defence secret know how and intellectual property. I have asked how the ATO would protect even the ingredients list for the Coca-Cola® secret recipe but I am yet to get an answer.

3. Lack of coordination between ATO Offices

In October 2012, in an attempt to resolve the immediate personal issues with the ATO, I contacted the office of the Inspector General of Taxation. A person recommended by the Inspector General's office within the ATO made contact with me and matters were in the process of being determined.

During this period of discussion with the ATO, another person successfully achieved a judgement summons against me, when I thought such matters were on hold. While not confirmed, the ATO person, at a management level to discuss and resolve the taxation matters, seemed somewhat embarrassed by the court action on the same matter at the same time.

This was not the only example of a lack of coordination

At the end of May 2013, the AAT Appeal process by myself against the ATO was commenced. Some 3 weeks later, a bailiff knocked on my door on a Sunday late afternoon to seize goods to the value of the judgement summons. When the status of the AAT Appeal was explained to the bailiff, they did hold their action and stated that they would be talking with their client, namely the ATO.

It was only AFTER the second conference between myself and the ATO with the AAT, that they confirmed that the judgement summons collection Services would be suspended until such a time that the AAT Appeal was resolved.

4. Loss of AAT Appeal by ATO has not resulted in discontinuance action

After my successful AAT Appeal against the ATO, I sought action by the ATO to apply for a Notice of Discontinuance related to the Judgement Summons against me of December 2012. Despite 2 requests, this has not yet happened.

A credit notice of BAS Returns as conceded by the ATO has been sent to me. I am waiting on the final ATO recalculation of BAS Statements for the period Jan 2008 to September 2011 and a final position. My taxation returns for the whole period of more than 6 years may also need to be resolved.

5. Client file tagging, delays and frustrations

Subsequent related ATO matters where fees and charges were paid to the ATO, (to keep defence matters secret again), particular subsequent refunds from BAS Returns were DELAYED, TWICE, by the ATO. This matter and the tagging was only removed after 2 requests to the ATO Complaints service.

Summary

The ATO needs to be more open to challenges and internal examination of their own precedents that maybe wrong or be found to be out of date.

The ATO should better coordinate responses to clients, possibly using flags and markers on files, on a common client file system.

The ATO should reconsider their commercial confidentiality provisions in a world where intellectual property is no longer only determined by patents, trademarks etc. In matters like defence, industry Governance Supervisors within the ATO should be appointed.

Where found to be wrong, the ATO should not flag such clients for future closer examination, delays and related frustrations.