



**THE TAX INSTITUTE**

7 August 2014

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

By email: [taxrev.reps@aph.gov.au](mailto:taxrev.reps@aph.gov.au)

Dear Mr Monk,

***Inquiry into the Annual Report of the Australian Taxation Office 2013***

The Tax Institute welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Tax and Revenue (**Committee**) in relation to its Inquiry into the *Annual Report of the Australian Taxation Office 2013*.

The Tax Institute (**Institute**) is Australia's leading professional association in tax, with more than 14,000 tax members. Further details about The Tax Institute are included at Appendix A.

***Executive summary***

Given the broad terms of this Inquiry, we have focussed this submission on those aspects of the Australian Taxation Office's (**ATO**) practice that are of particular relevance to our members.

There has been an unprecedented number of senior private sector appointments to the ATO in recent times, led by the appointments of Commissioner Chris Jordan AO, and Second Commissioner Andrew Mills, and more recently, Chief Tax Counsel Jeremy Hirschhorn and Deputy Chief Tax Counsel Kirsten Fish. This is welcome and has resulted in an increased emphasis on process improvement, risk management and early engagement in the ATO's discussions with stakeholders at senior levels. However, the Institute appreciates that it will take some time for organisation-wide change to take effect at the ATO coal face.

There are particular issues raised by our members affecting their day-to-day interactions with the ATO that require further attention. In summary, the main conclusions from this submission are:

- (a) The ATO is increasingly emphasising electronic interactions between tax agents and the ATO. Resources should be allocated to improve the reliability of the Tax Agent Portal as part of this initiative.
- (b) The ATO has recently implemented a framework whereby tax agents may be sanctioned for late lodgement of their clients' returns. The current framework should be reviewed to ensure that it is operating fairly and effectively.
- (c) We welcome the ATO's innovative and strategic approach to debt collection in recent times. The ATO's existing systems and procedures need to support these activities by capturing and retrieving all relevant taxpayer information and ensuring continuity of service.
- (d) The independent reviews undertaken in the large business segment have been championed by the ATO and are an example of the benefits of early engagement in ATO audits. Smaller taxpayers would benefit from similar opportunities for early engagement.

### ***Tax Agent Portal***

The ATO is increasing its emphasis on electronic interactions between tax agents and the ATO. For example, in order for tax agents to access later due dates for lodgement of their clients' returns, the returns must be lodged electronically. This will increasingly require tax agents to rely on the Tax Agent Portal (**Portal**) and other ATO electronic systems in the future.

The Portal is a secure ATO website available only to tax agents. It allows agents to undertake online activities essential their day-to-day practice. This includes communicating securely with the ATO, viewing and updating ATO information about their clients and lodging activity statements. Since the Portal was introduced in October 2002, tax agents have come to heavily rely on its existence. It has become a crucial tool of trade for many tax agents.

Members consistently tell us of their frustrations and concerns regarding the Portal both when it is operational and when it is down. Even when the Portal is operational, it can still function slowly which slows down the productivity of agents using the Portal. The information available on the Portal is updated in batches rather than in 'real time', which can also hamper agents' ability to obtain the most up-to-date information at any point in time.

When the Portal is down (due to maintenance or other technical problems), tax agents are unable to work until the Portal becomes available again. It is of particular concern that unscheduled disruptions to the Portal are arising in periods of peak usage. At

times, maintenance can take considerable time (usually a couple of days) to conduct and often problems can ensue following completion of the maintenance work.

The ATO is currently reviewing its future interactions with taxpayers by electronic means. However, until significant changes are made, tax agents will continue to have concerns about the stability and availability of the Portal.

To have constructive input into the ATO's future electronic interactions, a post-implementation review by the ATO into the technology supporting the Portal would be useful. This would greatly assist the ATO to determine whether the Portal or a similar system should be delivered in the future or whether the functionalities offered by the Portal that are heavily relied on by tax agents should be delivered by alternate electronic means.

Until this review is completed, an interim solution may need to be found to ensure that the Portal is working at its optimum level. This is necessary to assist to manage the frustrations that tax agents will continue to experience with the Portal until it is completely upgraded or replaced by a new system to facilitate electronic interactions between tax agents and the ATO.

### ***ATO's Lodgment Program***

The Commissioner has the power to defer the time by which taxpayers are required by law to lodge their tax returns. The Commissioner exercises this power in issuing the Lodgment Program each year. Under the Lodgement Program, tax agents are allowed to lodge their clients' returns later than the statutory due dates. For example, individuals are generally required to lodge their returns for an income year by 31 October but under the Lodgement Program they can generally lodge through an agent by 15 May the following year. This assists agents to spread their workload throughout the financial year rather than suffer the effects of having the majority of their lodgment work due only on the statutory dates for lodgments.

Effective 1 July 2012, the ATO introduced a new differentiated framework for the Lodgment Program for tax agents, requiring tax agents to lodge 85% of client returns by the due dates in the Lodgement Program. The purpose of the differentiated framework is to encourage agents to bring late lodging clients into line, thereby having an overall positive impact on lodgements to the ATO. From 1 July 2013, tax agents who have not met the 85% lodgement requirement have been subject to various treatments from the ATO, the severest of which is removing the agent from the Lodgement Program such that they no longer have an extended time to lodge their client's returns.

The Institute has consistently received complaints from members about the need to meet the 85% performance requirement. There is a concern that clients who have been

late lodgers historically or who are recalcitrant, despite an agent's best efforts, can compromise the agent's own reputation with the ATO.

Although a 15% margin has been allowed to accommodate the above circumstances, members affected remain greatly concerned about the impact of these requirements on their business and the stress they cause as a result. Agents who the ATO classify as continually having poor lodgment performance, with a poor compliance history, may be at risk of losing access to concessional due dates under the Lodgment Program

It is essential that the framework be monitored to determine whether it is having a positive impact on lodgements and to ensure that it is working fairly. Accordingly, the Institute is of the view that there should be a post-implementation review by the ATO of the framework.

### ***Debt collection***

The Institute has recently participated in a number of consultations on new debt collection strategies being developed by the ATO. We support the ATO's initiative and innovation in this area but we consider that ATO's debt collection procedures and systems could be improved. The most powerful evidence of this is the number of times our members complain to us about ATO debt collection activity.

Members have provided us with details of their concerns about current debt collection strategies, particularly in relation to the activities of third party debt collection agencies who are employed by the ATO. An underlying cause of the concerns we see is a lack of real time access to relevant information by the debt collection area within the ATO or the third party debt collector regarding the debt outstanding and the correct client contact. Our members, many of whom are working in small and medium sized businesses, find it difficult to recover recompense for these wasteful interactions.

Our members have found that there is a fragmentation of the ATO's administration of the debt matters relating to a single taxpayer, particularly in relation to sizeable debts. Interactions with the ATO on such debts could result in the taxpayer having to deal with numerous officers who are not adequately briefed with the relevant facts. Taxpayers sometimes have to deal with ATO officers in various locations and divisions (such as debt management, the legal team within the ATO, and external solicitors instructed by the ATO).

The ATO's handling of these matters could be improved by the ATO allocating specific officers within the debt collection area to specific taxpayers. This would obviate the need to re-explain previous advice and repeat individual circumstances to various officers, thereby reducing the time required by the taxpayer and their representatives to deal with these matters.

Our members have observed that junior collection officers, who are often the initial engagement point in matters relating to collection and recovery, can be inflexibly focussed on process and have a tendency to apply ATO policies in a way that is

perfunctory, mechanical and often uncompromising. The officers should be trained to have a greater commercial understanding of the business environment, so that reasonable outcomes can be achieved without requiring escalation to more senior levels within the ATO.

The ATO have recently consulted stakeholders such as the Institute on the commercial environment impacting on the attitude of small businesses to tax debts. We see this as a positive step on the part of the ATO. It is important that the ATO's systems reflect this initiative, and information relevant to the taxpayer's circumstances such as changes in business models is captured.

The ATO's debt collection strategies could also be improved by ensuring that the systems which are relied on as trigger points for taking formal action correctly reflect the taxpayer's position. For example, ATO systems should accurately reflect the taxpayer's lodgment and payment position of current obligations.

### ***Independent review and alternative dispute resolution (ADR)***

The Institute supports the ATO's recent introduction of independent reviews for large businesses and other early engagement processes. The current Commissioner's championing of early engagement goes some way to addressing the concern of our members that ATO audit processes can be adversarial and drawn out.

We understand that over a third of all independent review processes have been decided in favour of the taxpayer. Although this is a positive indication that officers are willing and able to engage with the issues, it also may show a deficiency either in the amount of information provided by the taxpayer earlier in the audit or a need to improve audit processes more generally.

Technical experts within the ATO, for example those from the Tax Counsel Network, who participate in independent reviews also advise the ATO at the review and audit stages. Although the independent reviewer may have the requisite level of independence, he or she looks to the ATO's technical expert for advice on interpretative issues. This is inconsistent with the principle of full and true independence.

Our members who advise smaller taxpayers have had less experience of the ATO adopting a cooperative approach. In particular, there is a concern that much of the attention in terms of early engagement and dispute resolution has been focussed on larger businesses but that smaller taxpayers have not been receiving the same opportunities.

In the HWI and small to medium segments our members have found that an early position is adopted by an ATO officer or audit team involved based on information available at an early stage in the audit process. A fresh case review should be taken of all of the information available at a point in time shortly prior to the ATO finalising its position in respect of the audit, rather than testing an earlier hypothesis based on limited information.

**Conclusion**

The Institute looks forward to providing additional details on any of the matters set out above or to address the Committee more generally at the next public hearing of this Committee on 27 August 2014.

If you would like to discuss this matter, please contact me or Senior Tax Counsel, Robert Jeremenko on 02 8223 0011.

Yours sincerely,

Michael Flynn  
President

## **APPENDIX A**

### **About The Tax Institute**

The Tax Institute is Australia's leading professional association in tax, with more than 15,000 tax members. The Tax Institute sets the benchmark for the most up-to-date tax professional development events and education programs in the country. This means that members of The Tax Institute are best placed to have the highest level of expertise in the field.

The growing membership base includes tax professionals from commerce and industry, academia, government and public practice throughout Australia.

The Tax Institute's reach now extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the numerous specialist, practical and accurate tax publications – all of which ensure that the latest information is available at their fingertips.

Established in 1943, the purpose of The Tax Institute was to provide education and information products and services to the tax profession as well as support improvements in the tax law and its administration. That core purpose remains.

Today we lead the tax profession with a strong and authoritative voice in supporting a fair and equitable tax system in Australia, whilst at the same time providing a full suite of education and information products that keep today's tax professional up-to-date and build the capacity of the next generation of tax professionals.

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