



## THE TAX INSTITUTE

27 September 2012

Mr Ali Noroozi  
Inspector-General of Taxation  
Level 19  
50 Bridge Street  
SYDNEY NSW 2000

By email: [submissions@igt.gov.au](mailto:submissions@igt.gov.au)

Dear Ali,

### **New Work Program Consultation**

The Tax Institute is pleased to have the opportunity to make a submission to you in relation to the development of your new Work Program for 2012-13 and beyond (**Work Program**). The Tax Institute also thanks you for the opportunity to discuss the Work Program with you in person on 18 September 2012.

As the leading professional association in tax, The Tax Institute works closely with the tax profession to deliver education to the profession and the broader public with the overarching aim of improving the tax system. With this in mind, we work closely with the tax profession to identify issues in the tax system that require attention.

With respect to your role in overseeing the systems put in place by the Australian Taxation Office to administer tax laws and the systems established by the tax laws in relation to administrative matters, we aim to provide you and your office (**IGT**) with insight into the most pertinent of issues arising. We therefore take the opportunity to convey some of the main current concerns of the tax profession to the IGT for consideration and possible incorporation into the Work Program.

### **Suggested Issues for inclusion in the Work Program**

We have firstly considered the issues proposed by the IGT for examination as contained in the press release dated 13 August 2012. In addition, we have separately noted additional issues we consider the IGT should examine. We consider each issue that we have raised below to be a priority issue for review and therefore make no distinction or ranking between issues, regardless of whether they have been raised by the IGT or ourselves.

## 1. Issues proposed by IGT for examination

We have given consideration to the list of issues suggested as potential review topics as included in the IGT's press release dated 13 August 2012. In particular, we note the following issues as requiring particular attention and review:

- **ATO's Risk Engine** – to the extent the Risk Engine will be used more and more extensively by the ATO, a timely examination of its current effectiveness is necessary to ensure the Risk Engine already in place will be able to be used more broadly or to ensure that if there are any issues with the way the Risk Engine is operating (eg risk rules applied to it), that these are addressed and amended as necessary before the Risk Engine is more broadly deployed.

We note that considerable amendments were required to be made to the Risk Engine that applied to personal income tax returns lodged in Tax Time 2011 (that sought to extract returns suspected of being "at risk") so that the Risk Engine could run more effectively for Tax Time 2012 as the Risk Engine had unnecessarily extracted many thousands of returns that were either necessary or anticipated during Tax Time 2011. At the first instance, it would be useful if an examination of the Risk Engine as it applies in the individuals market segment could be undertaken as most available examples of the results of applying a specific risk framework to a specific event can be found in this market segment.

- **Delayed income tax refunds** – many personal income tax returns in a refund position were delayed by operation of the ATO's Risk Engine during Tax Time 2011. Many of our members noted grave concerns with the delays caused in the issue of refunds during this period, in particular that refunds were delayed up to several months beyond the "12 week review period" notified to them and their clients. We received many complaints from our members with examples of the types of delays that arose during this trying period for both tax agents and taxpayers and are certain that many would not like to see the same issues arise again. In this regard, a review into the conduct surrounding delayed income tax refunds would be most welcome.

Should the IGT undertake a review of delayed income tax refunds, we would suggest that a review of the Risk Engine, so far as it operated in this area, be undertaken at the same time.

- **ATO's services and support for tax practitioners** – The ATO is currently undertaking the "Tax Practitioner Action Plan", spanning the period 2011- 2015, the purpose of which we understand is to work with tax practitioners to support them in their practice, engage with tax practitioners and ensure tax practitioners assist taxpayers to meet their compliance obligations.

Tax practitioners face the daunting task of assisting taxpayers to understand and meet their compliance obligations, which could not effectively be achieved without ongoing support from the ATO itself. To ensure the ATO makes the most of this project, and to ensure the needs of tax practitioners are also met effectively, in our view, there is opportunity for the IGT to review the outcomes which have been achieved so far from this project and consider what is being aimed for to ensure that the ATO makes the most of this project and most effectively achieves its goals with respect to tax practitioner engagement.

We note that given the impending changes to the general anti-avoidance provision and the recent and forthcoming changes to the transfer pricing provisions, we are unsure of the value of the IGT reviewing the administration of these areas.

## 2. Additional issues suggested for examination

In addition to the issues on which we have commented above, we outline below some additional key issues. We suggest the following topics for consideration by the IGT for inclusion in the Work Program:

- **Use of data matching/third party information** – during the course of the calendar year, some members have alerted us to the use of data matching in particular areas by the ATO to ensure potential assessable income is captured by the ATO. Areas in which data matching is being used by the ATO include capital gains made from the disposal of real property and shares and income from foreign sources. The data matching program has resulted in instances such as an attempt by the ATO to capture a capital gain that has either actually already been reported or is not assessable.

Our members' concerns arise from aspects of the data matching program such as an apparent absence of some form of internal check where it may have been discovered that a capital gain has already been reported or the improper use of third party information (eg per a State's land titles records, a change to the ownership of a parcel of real property is recorded in July of Year 2 following the end of Year 1, but the contract for sale was executed, and hence the disposal occurred for income tax purposes, in Year 1; the capital gain is recorded in Year 1's income tax return and the ATO has issued a notice saying the gain should be captured in Year 2's income tax return).

Concerns have also arisen from using data matching to ensure all foreign sourced income has been returned and assessed.

We would be keen to see a review of the ATO's internal procedure for using and relying on third party information for data matching to determine whether certain income amounts have not already been reported and identifying checks and balances that may be in place and improvements that could be made to

them. This may prevent instances of the ATO following up on income and gains that have either already been reported or are not required to be reported.

This is particularly relevant if the ATO plans to continue to utilise data matching programs in the future. It will ensure that such programs are structured properly and the ATO has carried out the necessary internal checks to answer questions they may have with information previously notified by a taxpayer.

- **ATO correspondence with taxpayers and their tax agents** – our members have raised concerns with the nature of correspondence that is undertaken between the ATO and taxpayers where a tax agent has been appointed. We have discussed these issues at length with the ATO. One of the main concerns here is the need for a tax agent to be notified when their client is going to receive a particular piece of correspondence so the tax agent has notification that their client may contact them in respect of a piece of correspondence they have received. Members have found themselves caught unaware where a client has called them to discuss a piece of correspondence and the tax agent has not had any prior knowledge of the correspondence. This can be somewhat detrimental to a tax agent's relationship with their client, particularly as they may seem unprepared to deal with the particular issue when it arises.

An investigation into the ATO's current procedures about how and when they correspond with taxpayers directly rather than through their agent, or vice versa, would be valuable. Suggested improvements to the procedures, if necessary, to prevent situations arising similar to the circumstance noted above, would be beneficial to the ATO, tax agents and taxpayers so that each party knows where they may stand with each other in respect of the types of correspondence they may expect to receive directly or indirectly.

- **IT system upgrades** – our members have also noted to us their frustration with certain IT system upgrades and the inconvenience caused to their practice where the upgrade occurs in part. As an example, the upgrade of the Australian Business Register (**ABR**) website in two parts (May and November 2012), which will not result in all of the functionality of the previous ABR being returned for some time, has caused much inconvenience to tax practitioners. For example registering a new entity for GST, which is a function that will be absent until November this year, can only be done through the Tax Agent Portal once the ABN has been issued, and the ability to save a draft application, which is a function which will be returned to the system at as yet an undetermined time.

A review into the decisions behind why IT system upgrades are done "in part" and why sufficient resources are not allocated to execute an upgrade "in whole" would be beneficial to the tax profession. This would allow tax practitioners to gain an understanding regarding why a part-upgrade is chosen over a whole-of-system upgrade.

- **Excess superannuation contributions: Commissioner's discretion** – members have raised concerns over the last couple of years in relation to the way the Commissioner exercises his discretion in determining whether to disregard excess concessional and non-concessional contributions made in a particular financial year that may otherwise be subject to excess contributions tax.

Though the discretion is somewhat narrow, there are concerns the Commissioner has interpreted the provision even more narrowly than as intended in the context when applying his discretion. In this regard, a review into how the Commissioner has exercised this discretion is warranted.

As always, we would be pleased to assist the IGT in any way we can and to contribute to all reviews undertaken by the IGT as appropriate.

If you would like to discuss any of the above, please contact either me or Tax Counsel Stephanie Caredes on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, reading "Robert Jeremenko". The signature is written in a cursive, flowing style.

Robert Jeremenko  
Senior Tax Counsel