



## THE TAX INSTITUTE

THE MARK OF EXPERTISE

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20 March 2014

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**

Thank you for the opportunity to make this submission in relation to your new Work Program for 2014 and beyond (**Work Program**). We also thank you for the opportunity to discuss the Work Program with you in person on 6 March 2014.

As the leading professional association in tax, The Tax Institute works closely with the tax profession to identify issues in the tax system that require attention. In this submission we are aiming to provide you and your office (**IGT**) with some of the main current concerns of the tax profession for possible incorporation into the Work Program.

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

We have begun by considering the issues proposed in your press release dated 9 February 2014 but we have also 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 have not ranked the issues.

#### **1. Issues proposed by IGT for examination**

We note the following issues included in the press release dated 9 February 2014 as requiring particular attention and review:

##### **a) Taxpayer bill of rights**

Australia currently does not have a Taxpayer Bill of Rights. However the Taxpayer Charter, which is published by the ATO, explains the rights and obligations of

taxpayers dealing with the ATO. It is important to note that the Charter itself acts as a reference point for what remedies may be available to taxpayers elsewhere (such as through appeals under the *Taxation Administration Act 1953* (Cth), access to information under the *Freedom of Information Act 1982* (Cth) and protection of taxpayer information under privacy legislation and secrecy provisions) rather than giving rise to standalone remedies.

We refer you to *Towards Greater Fairness in Taxation: A Model Taxpayer Charter* by Michael Cadesky, Ian Hayes and David Russell for STEP, CFE and AOTCA (2013) (p 20) which recognised the above as one of the shortcomings of taxpayer charters, resulting in charters being largely ignored by taxpayers, tax advisers and the tax administration. We also note that taxpayer charters contain taxpayer rights which are not comprehensive.

Accordingly, we support a review into the Taxpayer Charter to consider whether it is comprehensive and useful to taxpayers independently of other measures.

The Taxpayer Charter should also be reviewed to ensure consistency with other ATO publications such as *Our Approach to Information Gathering* (which replaced the *Information Gathering and Access Manual* in November 2013).

A member has raised an issue where these two publications have been inconsistent in their guidance on a taxpayer's ability to obtain transcripts of interviews conducted under section 264 of the *Income Tax Assessment Act 1936* (Cth). This may be a result of different ATO publications that deal with the same issue being updated at different times.

#### b) ATO's approach to debt collection

Members have provided us with details of their concerns with current ATO debt collection strategies, particularly in relation to the activities of third party debt collection agencies who are employed by the ATO to assist with debt collections.

We have noted below several examples of the concerns which have been expressed to us and note that this issue is of much concern to our membership and would warrant consideration for a review by the IGT.

- A member has expressed concern at receiving a call on 5 February 2014 from the "Recovery Collections" area for a \$700 debt not due until 21 March 2014.
- A member was trying to make a payment arrangement for a client for a debt of less than \$10,000 using the ATO's automated self-help service<sup>1</sup> which concluded that the payment arrangement could not be arranged through this system. The member was referred to an ATO officer who advised they couldn't deal with the payment arrangement because the matter was being handled by a

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<sup>1</sup> <http://www.ato.gov.au/General/Managing-your-tax-debt/In-detail/Paying-your-debt/How-to-pay-a-tax-debt-using-our-automated-self-help-service/>

debt collection agency. Upon speaking with the debt collection agency, the agency couldn't assist because the debt figure had not yet been updated for a recent BAS amount. The member noted that they had to wait for a letter to be issued by the debt collection agency before they could enter into the payment arrangement.

- A member was concerned at being addressed as "mate" by an officer at a debt collection agency after providing his details as required by ordinary "proof of identification" procedures. The member was also concerned with what legal obligation an agent has to provide the debt collection agency with details about a particular client in the absence of receiving authority from the client to do so. As the debt collection agency officer could not advise the member, their discussion had to end at this point.
- A member expressed concern at being contacted by an officer from a debt collection agency after hours who also asked to speak to the client directly rather than the tax agent whom they had contacted.
- A member expressed concern at receiving correspondence from the debt collection agency when they were no longer the tax agent for the client having previously advised the ATO of this.
- Receipt of a letter by a member from a debt collection agency to whom the client's "case" had been escalated due to non-lodgement. The member advised the client had no tax currently owing, no debt outstanding and was due a significant refund.
- Receipt of a telephone call by a member from an officer of a debt collection agency chasing up a debt of \$320 of a taxpayer who had not been a client of the member for 15 years and was then advised by the officer of the debt collection agency to change the details of the taxpayer with the ATO.

#### c) ATO's support for tax practitioners

A review of the support for tax practitioners would be warranted. We have separately noted concerns in relation to the Lodgement Program below.

Recently, as part of the *Tax Practitioner Action Plan 2011-2015*, the ATO has progressed towards increasing electronic interactions between tax agents and the ATO (for example it is a condition of the Lodgement Program that returns be lodged electronically). This will require tax agents to increase their reliance on the Portal (as well as other forms of electronic interaction with the ATO) in the future.

Members consistently tell us of their concerns regarding the Portal that the ATO has made available to tax agents to allow agents to electronically interact with the ATO. Since the Portal was introduced approximately 10 years ago, tax agents have come to heavily rely on its existence. It has become a crucial tool of trade for many tax agents.

When the Portal is down (due to maintenance or other technical problems), tax agents are unable to work until the Portal becomes available again.

The ATO is reviewing its future interactions with taxpayers by electronic means. However, until 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 review of the Portal would be useful to assist the ATO to determine whether the Portal or a similar system should be delivered in the future or whether it is the facilities offered by the Portal (eg pre-filled information about clients that is readily available, ease of updating information about client records, secure messaging between tax agents and the ATO) that are relied on by tax agents and whether there may be better methods of providing these facilities.

d) ATO's application of the general anti-avoidance rules

It would be useful to review the ATO's application of the general anti-avoidance rules at some stage. However, given that the law was recently revised, it would be better to allow the changes to settle into the system first and revisit this issue in a later work program.

e) ATO's approach to information security and information gathering

Our members have recently raised the following issues regarding information gathering and security, however we have received insufficient complaints to determine whether these issues are systemic. Depending on the number of issues advised to the IGT in this area, the IGT is best placed to determine whether the issues are systemic.

- *Retrieval of taxpayer information:* A lack of public guidance on how the taxpayer can have information provided to the ATO in the course of an audit returned by the ATO on the completion of that audit.
- *Use of email:* ATO policy against using email to liaise with taxpayers in relation to information requests where the taxpayer prefers and requests the use of email. We understand that the ATO's current view is that email is not a sufficiently secure method of corresponding with taxpayers.
- *Change to publications on information gathering:* As noted above under the Taxpayer Bill of Rights, in November 2013 the ATO published *Our Approach to Information Gathering* which replaced the *Information Gathering and Access Manual*. It is too early for our members to give detailed feedback on whether the new publication is as useful as the manual, but we note that much of the technical detail in the manual has been removed and the manual is no longer available for public access. We have been informed by the ATO that the new publication is not considered to be a 'manual' and instead contains ATO principles and approaches.

- *Use of formal information gathering powers:*
  - ATO proceeding to use formal access powers before informal requests for information have been exhausted, without any reasons being given.
  - A lack of certainty about whether taxpayers can have a lawyer present at formal interviews.
  - Presentation of information for questioning in the course of formal interviews without prior notice.
  - Concurrent use of powers under section 264 of the *Income Tax Assessment Act* 1936 and section 353-10 of the *Tax Administration Act* 1953 to issue identical notices under both provisions.

## **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:

### **a) New Lodgement Program Framework**

Effective 1 July 2012, the ATO brought in a new differentiated framework<sup>2</sup> for the Lodgement Program that is offered by the Commissioner for tax agents lodging income tax returns. The new framework requires tax agents to lodge 85% of returns “on-time” (including meeting relevant deferred due dates and lodging “return not necessary” and “further return not necessary” advices on time for the current income year where required).

The first year of the new framework, 1 July 2012 to 30 June 2013, was a transitional year for tax agents to get used to the new performance requirements. From 1 July 2013, the new framework applies and tax agents who do not meet the 85% lodgement requirement will be subject to various treatments from the ATO (including provision with self-help tools, contact and assistance from the ATO etc<sup>3</sup>).

There is a system in place by which the ATO alerts tax agents of their performance progressively throughout the duration of the Lodgement Program for a particular income year.

These performance requirements have been expanded to apply to tax agents who lodge FBT returns (effective from 1 April 2013) and to the BAS agent Lodgement Program.

<sup>2</sup> <http://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/>

<sup>3</sup> <http://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/If-you-do-not-meet-the-performance-requirement/>

The Tax Institute has consistently received complaints from members about the need to meet the 85% performance requirement, particularly where their clients have past year lodgements that are late and therefore they are not eligible to access the concessions offered through the Lodgement Program or they are recalcitrant clients. A 15% margin has been allowed to accommodate these circumstances.

Members who are tax agents are concerned about the impact of these requirements on their business and the stress they cause as a result. There is concern as well regarding the cessation<sup>4</sup> of the Lodgement Working Group that was involved in the design of the framework. This group was a useful resource to the ATO to consult on issues and concerns with the Lodgement Program, and it is particularly concerning to not have the group functioning while the new framework is still being bedded down.

An examination of the new framework which now applies to income tax return, FBT return and BAS lodgements would be useful to provide certainty to tax agents that the framework put in place is working as well as it can.

#### b) ATO Approach to Consultation

The ATO introduced sweeping changes to its consultation framework in mid-2013 to focus on considering strategic and systemic issues. This resulted in an immediate reduction in the number of standing committees from 68 to 8 and the introduction (or re-introduction in the case of the Dispute Resolution Working Group for example) of Working Groups in particular designated areas. In addition, the ATO introduced the “Hub”, being a designated area of the ATO where all stakeholders (ranging from the professional associations to tax professionals through to the ordinary taxpayer) could raise issues with the ATO for consultation.

The purpose behind the changes was to assist the ATO to become more responsive to issues raised with it and to engage with the right people in a timely manner to consult on strategic and systemic issues raised.

Input from stakeholders during the establishment of the new framework caused significant changes to be made (for example the Consultation Steering Group was established at the instigation of The Tax Institute to oversee the operation of the framework).

With the process still being bedded down, external stakeholders to the ATO are also changing the way they interact with the ATO and revising where they may direct their queries as well as the nature of the queries they raise.

The ATO has agreed to conduct a review of the new framework in mid-2014, but, to ensure consultation between the ATO and external stakeholders can continue to be

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<sup>4</sup> The Lodgment Working Group has ceased due to the reorganisation of the ATO’s Consultation Framework.

effective, it would be useful for the IGT to consider conducting a review of the consultation framework as part of a future work program in the next couple of years.

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 0059.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Flynn", followed by a long, horizontal, slightly wavy line.

Michael Flynn  
President