



THE TAX INSTITUTE

THE MARK OF EXPERTISE

23 July 2014

Mr Ali Noroozi
Inspector-General of Taxation
GPO Box 551
SYDNEY NSW 2001

By email: taxpractitioners@igt.gov.au

Dear Ali,

Review into the Australia Taxation Office's Services and Support for Tax Practitioners

The Tax Institute welcomes the opportunity to make a submission to the Inspector-General of Taxation in relation to the *Review into the Australian Taxation Office's Services and Support for Tax Practitioners* (**Review**).

Summary

In summary, tax practitioners play a key role in the tax and superannuation system in assisting taxpayers to meet their myriad compliance obligations in the system. Tax practitioners help guide taxpayers through the endless complexities of the tax system, without which many taxpayers would be at a loss. This in turn greatly assists the Australian Taxation Office (**ATO**) to effectively administer the system and collect revenue.

In this regard, it is vital that the ATO respects the role of tax practitioners and that tax practitioners and the ATO are able to work together through appropriately structured consultation forums, efficient electronic means of lodgment and provision of support services that have become essential to current tax practice management.

Discussion

1. ATO – Tax Practitioner – Relationship and Engagement

Role of the Tax Practitioner

Tax practitioners play a vital role in assisting taxpayers to understand and meet their tax and superannuation system compliance obligations. Tax practitioners are clearly a necessary part of the tax system, given that the majority of business and individual taxpayers rely on the assistance of a tax practitioner to meet their compliance obligations¹. Without tax practitioners performing this role, the ATO would be solely responsible for encouraging good compliance among taxpayers, a daunting task.

In this regard, it is essential that the ATO properly support the role of the tax practitioner and that there are appropriate facilities in place to address concerns when that support is inadequate.

ATO Tax Practitioner Advisory Group

The ATO Tax Practitioner Advisory Group (**ATPAG**) is the ATO's peak consultative forum for tax administration established in recognition and support of the role that tax practitioners play in the administration of the tax and superannuation system. The Tax Institute is a long-standing member of this group, representing its members in raising systemic issues in tax administration affecting tax practitioners at large.

Prior to the restructure of the ATO's consultative forum framework on 1 July 2013, formal processes were in place that facilitated members raising tax administration issues for discussion and resolution with the ATO. Since January 2014 this formal agenda setting process, together with a regular meeting schedule, has been absent. This has removed the formal structure through which members would raise issues with the ATO and have confidence that their issue would be addressed.

Currently, members can raise issues on an ad hoc basis with the ATPAG. However, this has led to inconsistency in how the ATO handles the issues (ranging from a separate consultation being held to an issue not being addressed at all) and a lack of confidence in whether an issue that has been raised would be addressed at all (for example, The Tax Institute raised for discussion at the 16 May 2014 ATPAG meeting concerns around the process through which the ATO handled the recent 'dividend washing' compliance project and the issue was not placed on the agenda for discussion at all with no reason given as to why).

¹ Refer to the observation made in the first paragraph to the Background information to the *Terms of Reference and Submission Guidelines* document for this Review on page 2

Tax practitioners have an important role to play in assisting taxpayers to meet their tax compliance obligations and thus play a critical role in assisting the ATO to administer the tax system. Given that the ATPAG's role is to facilitate the ATO's engagement with tax practitioners and strengthen the relationship between these two critical stakeholders in the tax system, the ATO should be encouraged to confirm that its main tax administration consultative forum is operating effectively.

Communication Guidelines

The 'ATO guidelines when contacting clients of tax practitioners'² (**Guidelines**) were developed in 2012 in consultation with members of the ATPAG, including The Tax Institute. The purpose of the Guidelines was to set out the (agreed) circumstances in which the ATO would correspond directly with clients of tax practitioners. The Guidelines simultaneously recognise the important role tax practitioners play as a conduit for taxpayer interactions with the ATO and the ATO's overarching right to engage with taxpayers directly.

What prompted the development of these Guidelines was that members consistently reported to us that their clients were receiving letters directly from the ATO querying certain aspects of their tax affairs. These queries caused the client consternation, and often led the client to come to their tax practitioner's office seeking an explanation. This placed the tax practitioners in the very awkward position of not having any prior knowledge of the issue that had been raised with the client directly by the ATO, as well as putting the tax practitioner 'on the spot' of having to explain it to their client (and calm their client down). In addition, members could not understand why the ATO was sending correspondence directly to their client when noted clearly in the ATO's file for that client was the tax practitioner's address for correspondence for that client. Members felt that they were being 'by-passed' and their role as the appointed agent was not respected, putting into question the role they played in the eyes of their client. Members found this very distressing.

In response, the Guidelines were developed. They set out the circumstances agreed between the ATO and the profession³ for when the ATO would correspond with clients who had appointed a tax or BAS agent directly and when they would correspond with clients via their agent.

Since being developed, one instance has arisen (that we are aware of) where tax practitioners and the ATO differed as to the correct course of action that should have been taken in respect of a particular piece of correspondence. This arose in the context of the ATO's compliance action in relation to 'dividend washing', in which the ATO viewed taxpayer activities as high risk and determined they should correspond with taxpayers directly. Tax practitioners took a different view and queried whether the

² <https://www.ato.gov.au/Tax-professionals/Tax-agents/In-detail/Contacting-us/ATO-guidelines-when-contacting-clients-of-tax-practitioners/>

³ The Guidelines were agreed to by the ATO and the members of the ATPAG on behalf of the profession.

Guidelines had been taken into account by the ATO in this instance (which the ATO confirmed they had been) and whether they were working effectively. As a result, the ATO has agreed to review the Guidelines in consultation with the ATPAG. On this occasion, the ATO also acknowledged that they failed to give tax practitioners notice of the correspondence about to be issued to their clients as they were required to do under the Guidelines.

In another example, we have had members raise concerns about Excess Contributions Tax (**ECT**) assessments being sent to clients directly. This is despite advance warning letters and account statements (which would normally accompany an ECT assessment) being sent to the tax agent. When one member contacted the ATO regarding this issue, they were notified that the assessments were sent to the client directly because it related to superannuation and was therefore sent to the address recorded for the member in the superannuation fund. This is despite the assessment being issued under an individual TFN. Corresponding with the client directly in such instances can cause delays in actioning that correspondence. When we raised this concern with the ATO, the ATO responded that this is due to the way 'address preferencing' (per the ATO) currently works in the ATO system which the ATO is working to improve. We consider that 'address preferencing' in the ATO system should be consistent with the Guidelines.

Members have also raised concerns about the ATO contacting them in relation to former clients and the difficulties they face in removing their contact details from ATO databases once a client has left. As one member stated, "when a client leaves the tax agent's practice in favour of another agent, rarely, if ever, do they say goodbye." Once the former tax agent becomes aware that the client has left, that agent can no longer access the former client's record on the Portal in order to remove their contact details from that record. It is up to the new agent or, if the client is no longer represented, the client, to update those details. The ATO has responded that if the client fails to do this and the ATO contacts the previous agent, the ATO can then remove the incorrect details, but this has not been the experience of some members dealing with frontline ATO officers.

We consider that it would be useful for the Inspector-General to review these Guidelines. Should the Inspector-General have any recommendations to make, these recommendations should be fed into the consultation with the ATPAG on these Guidelines.

Risk Differentiation Framework

In Recommendation 7.1 of the Inspector-General's review into Australian Taxation Office's use of compliance risk assessment tools⁴, it was recommended that, in consultation with tax practitioners, the ATO develop and publish a complete guide on

⁴ http://www.igt.gov.au/content/reports/risk_assessment/default.asp

the operation of risk differentiation framework for tax practitioners. The ATO accepted this recommendation and has now published '*Our approach to risk assessment and engagement with intermediaries*' on its website.⁵ The guide was only published very recently on 30 June 2014 and so we have not received any member feedback on its operation to date. Nevertheless, having participated in a consultation process in relation to the draft framework, and based on our initial review of the final publication, it appears to be high level and may be difficult to apply in practice. We consider that it would be useful for the Inspector-General to review this publication to consider whether it is 'a complete guide' and whether it covers the matters that were to be covered by the guide in accordance with Recommendation 7.1.

2. ATO's Tax Practitioner Services

Tax Agent Portal

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 Lodgment Program that returns be lodged electronically). This will require tax agents to increase their reliance on the Tax Agent Portal (**Portal**) (as well as other forms of electronic interaction with the ATO) in the future.

The Portal was made available to tax agents to allow agents to electronically interact with the ATO. 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 running properly 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. As it is 'batch-updated' and does not provide information in 'real time', this can also hamper 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. 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. We do acknowledge that once the ATO is alerted to these problems, it works as quickly as it can to resolve them and does try to alert agents when there is a problem with the Portal in a timely fashion. The ATO also does attempt to avoid peak work times when conducting its maintenance (eg by conducting maintenance over weekends).

⁵ <https://www.ato.gov.au/Tax-professionals/Intermediaries/In-detail/Risk-assessment-and-engagement-/Our-approach-to-risk-assessment-and-engagement-with-intermediaries/>

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 review of 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 functionalities⁶ offered by the Portal that are heavily relied on by tax agents should be delivered by alternate electronic means.

On 17 and 18 June 2014, the ATO conducted a national Tax Practitioner event, *Drivers for Change: National Tax Practitioner Conference*⁷ in consultation with various professional associations including The Tax Institute. Among other things, the conference looked at how technology could be used to assist with tax practice management in the future. Following the event, the ATO has advised us it will be workshopping the information that was gathered from members of the tax profession who attended this event.

A critical part of the work going forward will be to determine the ongoing role of the Portal, or at a minimum, the services offered by the Portal to which tax agents are accustomed. Until this is resolved, 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 Website

The ATO website is another essential tool of trade for tax practitioners. All the guidance that the ATO has created is available on the website. It is a goldmine of information useful to everyone in the profession, but can be a minefield to successfully navigate, particularly when materials practitioners are accustomed to locating in a particular spot are moved or no longer made available.

On 26 June 2013, the ATO launched its new look website. The launch was originally scheduled for May 2013⁸, however it was delayed and instead occurred right before the end of the 2013 financial year, a known very busy time in the 'tax' calendar.

⁶ 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

⁷ <https://www.ato.gov.au/Tax-professionals/News-and-updates/Latest-updates/Drivers-for-change--National-tax-practitioner-conference/>

⁸ Refer to Minutes from the November 2012 meeting of the ATO Tax Practitioners Advisory Group (formerly ATPF) Agenda Item 14: [https://www.ato.gov.au/Tax-professionals/Consultation--Tax-practitioners/In-detail/ATPAG-documents/Minutes-\(previous-years\)/2012/ATPF-minutes,-November-2012/?page=16#14__New_look_website_for_ato_gov_au](https://www.ato.gov.au/Tax-professionals/Consultation--Tax-practitioners/In-detail/ATPAG-documents/Minutes-(previous-years)/2012/ATPF-minutes,-November-2012/?page=16#14__New_look_website_for_ato_gov_au)

The new website removed many essential functions that tax practitioners routinely rely on having available to them in the course of providing their services to clients. This included:

- a) *The search function* – the function did not initially perform well. This function is vital to ensure that tax practitioners are able to find the guidance materials that the ATO have published on their website to support agents in providing services to their clients;
- b) *Links* – many links that tax practitioners had stored to take them to guidance and information that they regularly relied on were disturbed (ie 'broken') such that many practitioners were no longer able to easily find this information. This was very disruptive to practitioners who had to invest time trying to locate the information they were after on the new website or were unable to locate the information they were after;
- c) *Printer friendly function* – The 'printer friendly' function to which practitioners were accustomed had been removed from the new ATO website. As a result, many practitioners found they were no longer able to readily print off information in a concise fashion. They found themselves having to print off excessive numbers of pages if they wanted to obtain a hard copy of the information they had managed to find on the ATO website as each web page had to be printed separately. As they were unable to print a whole document off at once, this took up an excessive amount of tax practitioners' precious time.

Any organisation that has revamped its website would know that it is not possible to test for and ensure every foreseeable problem can be prevented from arising when the new website is launched. Therefore, it is not surprising that problems were experienced after the new ATO website was launched.

Following the launch of the new website, we received a multitude of complaints from members centred on the three issues noted above. This was compounded by the fact the launch of the new website occurred during a known peak period.

We took these issues to the ATO and in response, and to the ATO's credit, the ATO formed the ATO Website Limited Life Working Group in October 2013. This Working Group, made up of representatives from the professional associations, including The Tax Institute, worked quickly to resolve the issues which were resolved in the main by February 2014. This is a great example of the ability of the ATO to listen to practitioner concerns in relation to an essential tool of practice and appropriately address the concerns.

However, it is also an example of unnecessary frustrations caused to tax practitioners that might have been avoided, or at least reduced, if more extensive testing of the website was conducted prior to its launch, particularly when it was likely to be known that significant functionalities had been removed that would likely cause frustration to

practitioners. The ATO has clearly demonstrated its ability, and agility, to respond to tax practitioner complaints in this area and work closely and quickly with the profession to resolve the issue. This is very clearly a positive outcome.

Nonetheless, prevention is better than cure. This experience demonstrates that the frustration caused by the removal of the 'printer friendly' function and a lot of the problems with the search function could have been avoided with a little more forward planning. It would not necessarily have been possible to avoid all the 'broken links' that arose, but more thorough testing of the new website prior to its public release may have prevented many of them from arising.

Separately, members have raised concerns about the diminishing number of ATO forms and instructions available in a print-friendly html format or a pdf format on the ATO website. Printed forms are used by many agents as a useful reference tool and are easier to access offline. The ATO responds that, as a government agency, it was required to comply with the government's web content accessibility guidelines which stipulate that an html version of all online products should be available. Those guidelines do not preclude the ATO from also providing a pdf format of those products. However making an additional pdf formatted document available requires more time and expense on the part of the ATO. Accordingly, the ATO has been limiting the number of pdf forms available. Members noted that printing html versions of forms page by page causes significantly more time and expense for them.

Standard Business Reporting

Standard Business Reporting (**SBR**) is a whole of government initiative aimed at providing a method by which financial reporting can be made to government agencies in a uniform and seamless way. Businesses are able to use SBR-enabled software to prepare and lodge information with government agencies directly from their own software. There are clear benefits for businesses in using SBR which are required to provide the same financial information to a variety of government departments

It has been the intention of the ATO for some time now to encourage tax practitioners (and taxpayers) to start to use SBR as a way of communicating information with the ATO. This will become imperative once the Electronic Lodgment Service (**ELS**) that was introduced in 1990 begins to be decommissioned from 1 July 2016⁹.

⁹ It is intended that no new forms pertaining to lodgments due after 30 June 2016 will be made for the ELS system. The ELS system will remain in place for a further two years to 30 June 2018 to allow tax practitioners to continue to lodge only prior year forms and facilitate the transition away from ELS altogether. On 1 July 2018, ELS will be decommissioned altogether. This was announced at the *Drivers for Change* conference. (<https://www.ato.gov.au/Tax-professionals/News-and-updates/Your-practice/National-Tax-Practitioner-Conference/>)

It is essential that if the ATO is going to require tax practitioners to lodge forms on behalf of their clients using SBR-enabled software, the ATO should also give sufficient warning to tax practitioners to allow them to adjust to this impending change. Though for some time the ATO has discussed the 'ELS to SBR' transition project in a variety of its consultative forums (which we have reported to our members), it appears the message has not properly filtered through to the profession, and where it has, there is uncertainty around what SBR offers and what will be the effect on tax practices.

The *Drivers for Change* event was intended to raise the profile of the transition from ELS to SBR, and to some extent this was achieved. However, much more needs to be done to ensure practitioners are not only ready for the change but will be supported through it (eg their software providers will have SBR-enabled software available in time; practitioners understand what forms they will be able to lodge with the ATO using SBR-enabled software, etc).

We recommend that the ATO be strongly encouraged to formulate its clear message about when SBR will apply, what functionality it offers and what systems it is replacing as soon as possible and to publicise this widely.

Relationship Management program

The vast majority of the service delivery projects outlined above that have been provided to the tax agent community by the ATO over the last decade or more have been in the form of more generic, 'self-help' style services (such as the Portal, ELS, use of the ATO website and the dedicated registered agent telephone service). While the availability of these services has substantially increased efficiency for agents (and positively affected their productivity), it does not replace in full the "relationship management" program.

Broadly, some members have found that having a 'link' to the ATO through the relationship management program can work well to assist them to resolve more difficult issues that cannot be resolved through other 'self-help' style means. It is effective where the ATO officer involved is helpful and sees their role as being to assist the agent to achieve congruent goals among the ATO and the agent. In some instances though, the program's effectiveness can be affected by a particular ATO officer's 'proclivity' to be helpful. In a world where efficiency is driven through self-help services, this program still has a role to play and should be retained to assist agents to deal with the minority of difficult issues that will continue to arise.

3. ATO's Lodgment Program

In recognition of the important role that tax and BAS agents have in assisting taxpayers to meet their lodgment obligations, the Lodgment Program has been specifically

developed to assist tax and BAS agents to manage their workloads throughout the (financial) year¹⁰.

The law provides the Commissioner of Taxation with the ability to defer the time when lodgments are required to be made to the Commissioner in respect of a taxpayer's tax obligations¹¹. The Lodgment Program is developed each year at the discretion of the Commissioner by exercise of this power¹².

The Program contains concessional lodgment due dates to assist 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.

New Framework

Effective 1 July 2012, the ATO brought in a new differentiated framework¹³ for the Lodgment Program 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 purpose of differentiating between agents was to recognise agents who met the concessional due dates in the Program and to identify the agents that have not been meeting those requirements and provide them with appropriate assistance.

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 etc¹⁴).

There is also a system in place by which the ATO alerts tax agents of their performance progressively throughout the duration of the Lodgment Program for a particular income year so that agents are aware of their performance level.

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

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 lodgments that are late and therefore they are not eligible to access the

¹⁰ Paragraph 231 of *Practice Statement Law Administration: Lodgement Obligations, due dates and deferrals* (PS LA 2011/15)

¹¹ Section 388-55(1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth)

¹² Paragraph 153 of PS LA 2011/15

¹³ <http://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/>

¹⁴ <http://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Lodgment-program-framework/If-you-do-not-meet-the-performance-requirement/>

concessions offered through the Lodgment Program or they are recalcitrant clients. A 15% margin has been allowed to accommodate these circumstances.

Members affected remain highly concerned about the impact of these requirements on their business and the stress they cause as a result.

The Tax Institute is also concerned that the ATO Lodgment Working Group, which was involved in the design of the framework, has not met for nearly a year¹⁵. This group was a useful resource to the ATO to consult on issues and concerns with the Lodgment Program, and it is particularly concerning to not have the group active while the new framework is still being bedded down.

A particularly critical part of the framework, the part where, for the first time, treatments will be applied to agents who have not met the 85% performance requirement, will now start to be applied. It is essential that the implementation of this aspect of the framework be monitored to ensure it is working appropriately.

New framework – post-implementation review

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

Reinstatement of regular meetings of the Lodgment Working Group for the purpose of conducting a post-implementation review of the new framework, particularly in the case of the Tax Agent Lodgment Program, would be beneficial for both the ATO and tax agents affected. This review should examine whether the framework is working smoothly and resolve issues arising from tax agents (and the ATO) adjusting to the new framework.

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 flourish line.

Michael Flynn
President

¹⁵ The last time the Lodgment Working Group met was 30 August 2013; the next meeting is scheduled for 11 August 2014.