

13 May 2022

Nathan Callaway
Director
Performance Audit Services Group
Australian National Audit Office

By email: Nathan.Callaway@anao.gov.au

Dear Mr Callaway,

Australian Taxation Office's Engagement with Tax Practitioners

The Tax Institute welcomes the opportunity to make a submission to the Australian National Audit Office (**ANAO**) in relation to the audit of the Australian Taxation Office's (**ATO**)'s engagement with tax practitioners (the **Audit**).

In the development of this submission, we refer to workshops held between members of The Tax Institute and the ANAO on 25 March 2022. Our submission highlights key issues raised in the workshops and general feedback we have received from our members.

The ATO's engagement with tax practitioners is an important part of our taxation and superannuation systems. An efficient and streamlined engagement process can better ensure that tax practitioners are able to assist taxpayers in meeting their tax obligations. Conversely, an inefficient engagement process that creates extra steps, barriers or compliance burdens will often result in greater time and cost for tax practitioners, resulting in delays and frustrations for taxpayers. We note that tax practitioners generally bear the brunt of taxpayers' frustrations, as they tend to be primarily visible in our taxation and superannuation system.

Broadly, the feedback we have received from our members indicates that their engagements with the ATO are overall positive. The ATO generally manages the engagement channels with tax practitioners with the objective of ensuring efficient dealings.

However, our members raised some concerns that prevent the ATO from meeting this objective. These include communications being sent to the wrong entity, pressures on agents resulting from the emphasis seemingly placed by the ATO on the 85% on-time lodgment requirement (**85% requirement**), and improvements that could be made to the existing online services for tax agents (**OSfA**).

We consider that addressing these concerns, combined with regular reviews to identify and address issues, will improve the ATO's engagement with tax practitioners, thereby reducing compliance costs and taxpayers' frustrations.



Our detailed response is contained in **Appendix A**.

We would be pleased to continue to work with the ANAO on the Audit to ensure that the ATO's engagement with tax practitioners promotes efficiency and streamlines their interactions when assisting taxpayers comply with their obligations under the taxation and superannuation systems.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact our Senior Advocate, Robyn Jacobson, on (03) 9603 2008.

Yours faithfully,



Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration in relation to the Audit.

Experiences with direct ATO communications

Inappropriate recipient of communications

Feedback from our members indicates numerous instances where, despite the tax practitioner being listed as the default contact for a specific taxpayer, communications were sent directly to the taxpayer. The tax practitioner usually receives no indication or alert notifying them that communications have been sent directly to the taxpayer. This has occurred across various tax accounts, including income tax and business activity statements. Communication errors, contrary to selections made in 'Communication – Preferences' in OSfA, often results in taxpayers becoming upset with their appointed tax agent for not handling all their tax-related matters with the ATO, especially if the taxpayer does not appreciate the importance of the communication they have received. This can lead to missed payment dates, resulting in the imposition of penalties and general interest charge (**GIC**).

In one instance, a member provided feedback that one of their clients received communications from the ATO referring them to another tax practitioner for advice on their matter. In this instance, our member had been the authorised contact and registered tax agent for their client for several years. It is unknown from where the other tax practitioner's details were sourced as they did not appear when our member confirmed what was recorded on OSfA.

We consider that the ATO should investigate its administrative approach to storing and contacting taxpayers when a tax practitioner is listed as the relevant contact. Due to the innate complexity of the ATO's administrative systems, it is possible that taxpayers' contact details are stored across several databases that may not all be visible to tax agents on OSfA. If this is the case, streamlining the databases into a universal source that can be edited by the taxpayer (for example, through myGov or the ATO call centre) or by tax practitioners through OSfA.

Insufficient details in communications addressed to taxpayers

We have received feedback from our members that they frequently receive communications addressed to their client, but are not provided with sufficient information to identify the client. For example, members have received letters from the ATO that state only the first name of the taxpayer. The tax practitioner may have multiple clients with the same first name. This often results in extra work and costs for tax agents who are required to check OSfA or call the ATO to determine which client the communication refers to.

In some cases, the name is omitted entirely from the correspondence, with the recipient addressed as simply 'Hello'. This is more likely to occur where the correspondence is in email form where the agent's email is the primary contact. This form of correspondence is unhelpful as it does not enable the practitioner to identify who the correspondence relates to, and the ATO have no way of tracing who the email was directed to. Ultimately, communication issued without any identifying details is ineffective and a waste of valuable time and resources of the practitioner.

This issue was raised by The Tax Institute through the Tax Practitioner Stewardship Group in July 2020. In one case shared with the ATO at the time, the tax agent was unable to identify which client the ATO's email related to. The agent called the ATO but was advised the ATO could not tell the agent who the taxpayer is. The agent was expected to act within 14 days in response to the email without knowing who the client was.

We consider that the default communication template sent to tax practitioners listed on the taxpayer's record should be amended to contain enough identifying information to remove the extra, and arguably unnecessary, step for tax practitioners. We appreciate the need to ensure that taxpayer information remains secure. However, the inclusion of a surname, address or ABN as a minimum can significantly assist tax agents identify the relevant client. This applies to all forms of communications, including letters sent in the mail and emails.

Automatic changes in default communication method

We have received feedback from many of our members regarding the default communication preferences for taxpayers being inadvertently changed to digital without their knowledge or authorisation. The most frequent example is the default communication preference being automatically, or inadvertently, set to the taxpayer's myGov account when the taxpayer signs up for myGov. The recent surge in the number of myGov accounts due to Australians wanting to access their digital COVID-19 vaccination certificates has, in part, contributed to this.

It is common for taxpayers to miss notifications of messages received in myGov, or fail to regularly check myGov, as they are under the misapprehension that their tax agent has also received the message and is managing their tax affairs.

Users of myGov can set their notification preferences to receive either an email or an SMS text message on their mobile device. However, the notification merely alerts the user that a message is in their myGov inbox but does not identify which government agency issued the correspondence. An SMS message, once received and read, cannot be unread (although more recently, the message can at least be 'pinned' in the message app). No reminder or follow up notification is received from myGov where the user does not access their inbox in response to the initial notification, which is easily overlooked or missed. Most Australians do not regularly check their myGov inbox.

In the case of a Pay as you go (**PAYG**) tax instalment notice sent to the taxpayer's myGov account, it represents the only communication from the ATO that a tax debt is due and payable. This relies on the taxpayer actioning the myGov notification that there is an item in their inbox, without being able to identify from that notification that the item is the issue of an PAYG instalment notice. This form of communication is completely inadequate.

Taxpayers rely heavily on the issue of a paper PAYG instalment notice to remind them to pay their instalment. The decommissioning of the Electronic Commerce Interface software application by the ATO in December 2019 resulted in the unintentional switching paper instalment notices to digital instalment notices, even where the taxpayer had not had a digital engagement with the ATO.

This issue was first raised with the ATO in December 2020. A working group was formed, in which The Tax Institute continues to be involved, that designed an interim solution, ensuring that paper instalment notices continue to be issued until a permanent solution can be implemented. However, this interim solution seems to address only notices issued to taxpayers where they have engaged a tax agent to manage their PAYG instalment obligations. The Tax Institute continues to receive feedback that taxpayers who either have a tax agent but still manage their own PAYG instalment obligations, or who have not appointed a tax agent, are experiencing issues with receiving paper instalment notices.

The missed messages could result in tax consequences, that are often blamed on the tax practitioner. In most instances, the tax practitioner does not receive these communications or notifications of the types of communications that have been sent to their clients. Agents then need to interrogate OSfA to look for client communications, which creates reverse work flow and can increase the likelihood of a lodgment or payment obligation being overlooked.

We consider that default communication preferences should not be changed and should not be offered at the time a myGov account is created, or at those times taxpayers login into their myGov accounts. It is likely that most taxpayers do not fully appreciate the impact of default communications changing, especially when they are represented by a tax practitioner. Instead, taxpayers should be required to go to a specific page on myGov and actively make that choice after being notified of what a change in default communications entails. We also consider that tax practitioners should automatically receive notifications of important messages and correspondence that are sent to their clients while they are the client's representative. Alternatively, messages could be sent to both the taxpayer's myGov account and the tax agent, ensuring all relevant parties are kept informed.

No caller IDs

Concerns have been raised regard the lack of caller identification from ATO officers. It is widely known among tax practitioners that calls originating from the ATO display as a private number or do not provide a caller ID. However, this feature is not well known by taxpayers or the general public. Accordingly, taxpayers often ignore potential phone calls from ATO officers, instead assuming the caller is a scam or spam call.

This potentially leads to problems for the taxpayer if the call is legitimate from the ATO. For example, amendments may be made to the taxpayer's tax return if the ATO officer deems they have made reasonable efforts to contact the taxpayer. This could result in amendments being made without an opportunity for the taxpayer to seek advice or provide supporting documentation in cases where the taxpayer was deemed uncontactable.

This issue is of particular concern if the ATO officer has not also contacted the taxpayer's representative, as outlined above. Taxpayers are likely to blame their appointed tax agent for not responding; this adds unfair stress to the tax agent, clouds the relationship between the client and their agent and can cause reputation damage to the agent if they have not been contacted by the ATO.

We consider that the ATO should investigate opportunities to display a universally identifiable caller ID from ATO phone numbers. For example, the ATO should investigate whether it is possible to have a special caller ID displayed bearing the name 'Australian Taxation Office.' This would maintain any privacy concerns regarding the ATO officer's phone number becoming publicly available while simultaneously providing certainty for taxpayers and tax practitioners. We note that technological shortcomings or concerns of scam callers using a similar caller identification may be a potential issue that needs to be investigated further.

As an aside, we also note the proliferation of scam SMS text messages being sent to mobile devices in recent months. This creates a wariness of such communications, and a hesitation by taxpayers in identifying which communications are legitimate and trustworthy and which should be avoided. The current digital landscape involving scams should continue to be paramount in designing appropriate forms of communications to taxpayers and their agents.

Tax agents' experiences with OSfA

Lodgment performance metrics

Feedback from our members is that, after logging into OSfA, one of the most prominent items displayed on the dashboard is the tax agent's progress towards meeting the 85% requirement. The score for the 85% requirement takes a central place on the dashboard of OSfA and can often lead to significant stress and anxiety for tax agents, particularly those who are struggling to meet the threshold. Some members have provided anecdotal evidence of colleagues who have suffered from severe anxiety about not meeting the 85% requirement each time they logged on.

The 85% requirement is one of the central metrics that can notably impact tax agents' performance and state of mind. Feedback from our members indicates that the consequences of not meeting the 85% are perceived to be severe and punitive in nature. We note that there are often a range of factors beyond the tax agent's control that are likely to result in them not meeting the 85% requirement. However, we understand that the perception noted above may bear heavily on tax agents, especially those who fail to meet the 85% requirement.

In part, we consider this stress arises from the design of OSfA. Placing the performance metric for the 85% requirement at the front and centre of the dashboard every time a tax agent logs in is likely to aggravate underlying stresses and create further anxiety. We consider that re-positioning the performance metric to an accessible but less central position on OSfA will assist in reducing the stresses associated with meeting the 85% requirement.

We also consider that the ATO should engage in further education and messaging around the real impacts of not meeting the 85% requirement. Contrary to the perception noted above, we understand that the 85% requirement is intended to be an analysis tool by the ATO to assist them in identifying those tax agent who should be supported and assisted by the ATO, so that areas of their practice that may be hindering their efficiency can be identified and addressed.

We understand that, as a blanket rule, the ATO will not remove any lodgment amnesties if a tax agent meets the 85% requirement and instead works with the tax agent to help improve their performance and business. It is likely that the ATO's approach and intention may not be well understood. An education campaign to assist tax agents in better understanding this will likely also assist in reducing the stresses and anxieties reported by our members.

Further, we consider that the ATO should examine the availability of incentives that reward tax agents who continually meet the 85% requirement. Feedback from our members indicates that the primary motivation for tax agents in this regard is the perception of the consequences noted above. Designing incentives that reward tax agents for meeting the 85% requirement is likely to encourage a culture of self-compliance and may also encourage earlier engagement if problems are noted. For example, tax agents who have met the 85% requirement for a number of years may be eligible to automatically claim an exemption from meeting the 85% requirement for one year due to factors beyond their control. This is likely to be consistent with current ATO practice and will streamline the process for tax agents, demonstrating trust and reducing costs for compliant tax agents.

Reliability of OSfA

Generally, feedback from our members indicates that OSfA is an improved system that is becoming more reliable and user friendly. However, tax agents continue to frequently report instances where OSfA is offline, operates slowly, becomes unresponsive or generally lags during use. We consider that investments or upgrades targeted at improving the speed and reliability of OSfA will significantly improve the daily experiences of tax agents' interactions with the ATO.

Portal for all tax practitioners

The term 'tax practitioners' covers a variety of professions. Given the complexity of our tax, superannuation and legal system, taxpayers will often need to engage a variety of specialists including bookkeepers, registered BAS agents, registered tax agents, accountants, lawyers, tax (financial) advisers and self-managed superannuation fund (**SMSF**) administrators and SMSF auditors. Only tax agents and BAS agents have access to OSfA that allows them to securely interact with the ATO.

For example, lawyers are often engaged by taxpayers to assist with objections, litigation or private rulings applications. Currently, unless the lawyer is also a registered tax agent or is working through the taxpayer's existing tax agent, lawyers are often required to initiate contact with the ATO through a physical letter or facsimile. Feedback from our members indicates that this issue is more prevalent for tax practitioners representing individuals and smaller businesses. We consider that both of these methods are antiquated forms of communications and not sufficiently secure in today's digital world where protecting personal identification details is paramount.

These communication methods also have the impact of leaving these tax practitioners in a 'blackhole' where they cannot confirm whether the communication has been received or processed. Feedback from our members indicates that the 'blackhole' period is not mitigated by contacting the ATO for advice, where they are told to wait. This creates enormous inefficiencies for these practitioners, and creates significant pressure from taxpayers who do not appreciate the circumstances and blame the tax practitioner for the ATO's non-response.

We consider that OSfA should be expanded, or a similar portal created, that allows other tax practitioners, such as lawyers, SMSF administrators and SMSF auditors, to communicate with the ATO in a more contemporary manner. This would also allow sensitive information or evidence to be more proficiently provided through a secure channel, and increase taxpayer confidence in tax practitioners as they are able to utilise modern, and perceived professional, communication methods.

The expansion of OSfA, or the provision of a similar online portal would benefit taxpayers who engage multiple advisers to assist them with certain transactions, such as the transfer balance account for superannuation purposes. In these cases, a financial adviser may provide the initial advice to the taxpayer on the establishment of an income stream, and their tax agent would typically deal with the implications if the taxpayer's transfer balance cap is exceeded. It is common for the financial adviser to not have access to the taxpayer's online account. The process could be streamlined if all advisers involved in such dealings had access to the same information (even if the financial adviser could only view information without having access to edit or make any changes to the data).

Experiences with the ATO call centre

Broadly, feedback from our members indicates that, on most occasions when they contacted the ATO call centre, they were able to reach an ATO representative who could assist with their query. Where a fast key code (**FKC**) existed, our members indicated that the code usually led to the right representative with the requisite experience in relation to the query.

However, our members noted difficulty with issues where a FKC did not exist, or they were unsure about who the relevant contact point in the ATO would be. Some members noted that, in these instances, they could be transferred multiple times or wait for a call-back that never eventuated. Each time the member would talk to a new ATO representative, they would be required to re-explain their query in extensive detail. This results in significant inefficiencies and frustration. Some of our members noted that, on occasions, it could take a while — and they were transferred multiple times and had to re-explain their issue each time — before they found the right representative to resolve their issue.

We consider that more in-depth training around internal referral codes and what each area can accomplish would assist in reducing the instances of tax practitioners being transferred multiple times. It would also better assist other taxpayers who contact the ATO call centre with non-standard enquiries. Alternatively, a new FKC for 'other' queries that leads to a group of operators who understand the most appropriate area to transfer tax practitioners to in the first instance would further assist in minimising time and costs spent by tax practitioners in resolving their clients' issues.

Experiences with the ATO website

Feedback from our members indicates that, although the ATO website usually contains a large portion of the information they need, it can be difficult to navigate and find the appropriate pages. In particular, members noted that the search bar feature did not often display the most appropriate page.

Further, minor variations in the search terms that should reasonably not provide a practical difference in the intended page, resulted in notably different search results. In our experience, utilising external search engines (such as Google) often resulted in a faster way to find the relevant ATO web page.

Other ATO engagement

Tax Practitioner Assistance Service

The Tax Practitioner Assistance Service (**TPAS**) is a recent initiative introduced by ATO to assist tax practitioners receive specialised assistance for their queries. We understand that TPAS is not used to assist with lodgment program enquiries, payment of debts, and specialised advice products such as private rulings. Feedback from our members indicates that most are not aware of TPAS and how it can help resolve their queries.

We consider that further education and guidance on TPAS will assist tax practitioners appropriately direct their queries to the ATO. In particular, we consider it useful to educate on the range of issues TPAS can assist with, what issues they cannot assist with, and where tax practitioners can direct their issues if TPAS is unable to assist them.

We would also consider it useful for the ATO to publish statistics regarding the enquiries sent to TPAS and their resolution or outcome. These statistics can help identify the types of queries TPAS is receiving, how effective TPAS is at resolving the issues, and highlight areas of education that the ATO or professional associations can engage in to better educate tax professionals on frequently asked queries.

ATO consultations

Feedback from our members, and based on our own experiences, the ATO consultative process has generally been well run, adopted feedback on key issues and perceived to be undertaken with the intention of providing clarity on issues to tax practitioners.

We note that the ATO consultation process can often involve a targeted consultation with a select group of industry stakeholders. In our experience, professional associations are often approached and involved to provide an industry view and a collective view of their diverse membership. However, our representative is often subject to strict confidentiality requirements and, depending on the terms of the agreement, may be precluded from discussing any detail with The Tax Institute's Tax Policy and Advocacy team. As a result, the representative is unable to provide a considered view representing all of our members, and is limited to their own experiences and knowledge. A consultation process involving professional associations who are prevented from even discussing the issues with their own representative can significantly reduce the quality and effectiveness of the consultation. It also prevents the representative from being able to put forward the view of the professional association.

This occurred during the consultation preceding the recent release of the draft guidance materials on section 100A of the *Income Tax Assessment Act 1936* on 23 February 2022. While The Tax Institute was represented during this consultation by one of our members, the strict nature of the confidentiality agreement signed by our member prevented them from being able to share information with us about the consultation or converse with us to seek our counsel, input or direction.

We consider that representatives of professional associations involved in such targeted consultations should not be subject to such strict confidentiality agreements that they are prevented from even being able to discuss the matter with the professional association they are representing. It is imperative that input provided to the ATO considers the impacts on a wide category of tax practitioners and taxpayers, often requiring that the representatives engage with a small group of knowledgeable individuals, and at the very least with the policy team at the professional association.

Members of The Tax Institute's Tax Policy and Advocacy team would be willing to sign similar confidentiality agreements to that signed by our member, and we consider this is a reasonable approach to maintaining the confidentiality around these very sensitive consultations. We note that the Tax Practitioners Board takes a more pragmatic approach when it comes to allowing the representative of a professional association at a consultation to brief or otherwise engage with their immediate colleagues within the same association.

Concerns were also raised by tax practitioners and professional bodies regarding the consultation process in the lead up to the release of practical compliance guideline (**PCG**) [PCG 2021/4: Allocation of professional firm profits – ATO compliance approach](#) (**PCG 2021/4**). Despite a lengthy consultation period, concerns were raised that the tax profession's views were not addressed to a satisfactory level of detail. In part, these concerns may arise from a misunderstanding of the purpose of a PCG compared to other ATO view products such as Taxation Rulings. Fundamentally, a PCG does not outline the ATO's interpretation of the law. It is intended to allow greater visibility over the ATO's categorisation of risk factors on a particular area of the law, and demonstrate how they will allocate compliance resources. Greater education on the difference between a PCG and other ATO guidance products, combined with information regarding the types of feedback that will assist in improving PCGs, may assist in reducing the concerns raised for PCG 2021/4.

We also consider it crucial that the ATO engage in consultations in the most constructive manner, with a view to educating tax practitioners and taxpayers, and addressing key issues. For contentious topics, oversight mechanisms may be useful to ensure that this is achieved. For example, there could be a requirement that all public guidance is to be subject to review by a Rulings Panel, or that industry stakeholders should be involved during the drafting and review process of public guidance. These enhancements would ensure a greater level of scrutiny over the published content and better ensure that draft guidance considers the practical implications on tax practitioners.

We refer to our [submission](#) to the Inspector-General of Taxation and Taxation Ombudsman regarding their investigation into the Commissioner of Taxation's use of his general powers of administration for detailed suggestions on how the consultation process can be improved to ensure more equitable outcomes.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.