



The practitioner's experience: The latest from the ATO

Remarks delivered to CPA Australia's Public Practice Retreat by Second Commissioner, Jeremy Hirschhorn on 19 May 2022.

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Introduction: Working together

Thank you for having me here today.

We know it has been an uncertain few years through the pandemic and we have felt this directly in the tax and super system.

The tax system as a whole was asked to step up to do more to support the community and work differently – the major economic stimulus measures, JobKeeper, Cash flow boost and Early release of super were all delivered through the tax system. The role of CPAs and other advisers was key in ensuring that this support found its way to real businesses and employees.

We recognise the strain this has had on our key partners in the system and thank you for your continued support, especially as your practices and you personally will have all been affected to varying degrees.

As we continue to emerge from the pandemic we recognise that some parts of the economy are doing very well, but other parts are still struggling. I'm sure you are seeing evidence of this across your client base.

Today I want to share with you some insights on the tax system from my perspective as Second Commissioner, Client Engagement, before moving on to some key areas of interest for the tax profession and then taking your questions.

How the system is operating and how you can help

Australia's tax and super system is in good shape. Our most recent estimate for 2018–19 is that we are operating at about 93% tax performance, pleasingly this is 91% at lodgment and with 'only' a further 2% through the ATO's compliance actions (noting the 2% is still over \$10 billion, leaving an estimated gap of \$33.5 billion or so).

Our tax performance program helps us understand the different markets and where we should focus our efforts.

Our aspiration is to improve tax performance by continuing to improve voluntary compliance. You have a direct role in that by helping your clients get it right at lodgment.

Quite rightly, the community is concerned that large companies 'pay their fair share', and I am happy to report that the ATO, supported by special funding under the Tax Avoidance Taskforce, has been highly successful in holding the largest companies to account, with performance (after compliance action) of around 96%, and a residual gap of circa \$2 to \$3 billion.

Two areas that we want to work closely with CPAs and the broader advisory community to address are:

- Small business, which (across all taxes) represents as much as \$15 billion of the \$33.5 billion gap. Here there are three distinct problems with which we need your help:
 - firstly, a relatively small number of businesses which exist wholly or partly in the shadow economy – how do we bring them into the system?
 - secondly, a relatively large number of businesses which make simple mistakes often based on poor systems and not getting advice (or getting advice from their mate at the barbecue...) – how do we help them operate in a more sophisticated way?

- thirdly, helping your clients with outstanding tax debts re-engage with the system and normalise that position, with the help of payment plans if necessary (noting that the total ATO collectable debt book has grown significantly during the COVID pandemic, and the ATO is looking to normalise this over time)
- Individuals, again with three main problems where your role is key:
 - firstly, over-claiming of work related expenses (some as 'optimistic' characterisation of personal expenses as work related, some as more 'creative' claims) – how do we create a common community understanding of what is allowable?
 - secondly, property investments – a similar problem, particularly with the spectrum from true investment properties through to holiday homes which are occasionally let out in the low season (or listed on Airbnb at exorbitant rates 'just for show')
 - thirdly, asking the question about any assets they might have dealt with during the year, whether cryptocurrencies, NFTs or other digital assets.

Improving your experience

Recognising your important role in the tax system, we are working on a Tax and BAS agent strategy.

This is really about how the tax profession and the ATO can work together to protect and improve the tax, super and registry systems, now and into the future.

Our strategy is focused on:

- protecting the high levels of engagement and integrity of the system
- safeguarding the security of data and the digital environment we operate in
- improving the tax performance of your clients
- increasing the community's trust and confidence in the system
- increasing the sustainability of professional practices

- improving business performance and level the playing field.

We recognise that there is no one size fits all approach to working with the tax profession as your experiences are as varied as the clients you deal with.

The feedback we hear from you ranges from policy implementation to little IT niggles that would make your everyday working life easier. Please feed your ideas through the CPA, whose representatives sit on our working groups and stewardship groups.

I can't guarantee you that we will fix everything. I can commit to addressing those things that will deliver the greatest improvement to performance of the tax system.

Helping you give your clients the best advice

We know that you want to give your clients the best tax advice, but that tax is hard and not always black and white.

For the vast bulk of advisers there is a 'goldilocks' spot – you want to give your clients good, solid advice that is neither overly aggressive, but also not overly conservative (including in relation to other advisers).

Similarly, most clients don't want the excitement of a tax dispute, but equally are not necessarily enthused about paying more tax than they need to.

As noted above, the major contributions to 'tax gap' for individuals and small business are not actually these 'hard' issues, but often relatively simple errors.

The question for the ATO is how do we help you achieve a 'goldilocks' outcome on the hard things, while leaving you enough time and focus to make sure that the simple things are done well. Critically, the ATO cannot and does not expect advisers to be 'tame' – you have a duty to your clients as well as to the tax system in which we all operate.

The cornerstones of our approach that I will talk to you about today are: providing certainty, early engagement and minimising the risk of errors.

We are committed to **providing practical certainty** on those issues that prove most challenging across the system through our advice and guidance products. Our perspective is that it is better for you to know the ATO view.

In some cases, this may help prevent you from making a mistake, or at least give pause for thought.

In other cases, your client may want to avoid the risk of getting caught up in a dispute with the ATO.

More generally, it helps the advisory community (and clients) understand where advice stands relative to the market, which helps in achieving that 'goldilocks' outcome (and also inhibit others from outcompeting by taking risky positions, with that risk not necessarily communicated to clients). It also helps you counter 'barbecue advice'.

We recognise significant interest from the CPA community in two of our most recent guidance products: Section 100A / Division 7A and professional services firms.

These are tough areas of the tax law, where behaviour sits along a spectrum, but the tax consequences are binary (and can be severe). Although it has been uncomfortable for many for us to publish our perspectives in such a detailed way, and there will be areas where reasonable minds will differ, I would argue that it is better that these views are out there for consultation and the knowledge of the entire advisory community, rather than only within the knowledge of our auditors and those relatively few clients chosen for audit.

We are also working to **engage with taxpayers earlier and more transparently** as we continue to emerge from the pandemic and recommence audit activity and refocus on our debt book.

What we ask clients and their advisors in return is to – above all else – maintain engagement with us. We can't help you or your clients if you don't engage with us.

In addition to our regular engagement approaches we have recently written to businesses under two key client awareness programs:

- 30,000 awareness letters for Disclosure of business tax debts
- 52,000 awareness letters about the use of Director penalty notices.

These programs are focused on those who have not responded to our calls and letters – and have significant tax obligations outstanding.

We've seen an encouraging response to our awareness campaigns, with a significant level of payments and clients entering into payment plans. In fact, more than 20,000 taxpayers have already responded to our awareness letters by making payments or entering into payment plans, indicatively around \$4 billion or so already.

Of course, as the rest of the community who meet their obligations would rightfully expect, where taxpayers don't engage the ATO is taking firmer actions. These include garnishees, recovery of director penalties, disclosure of business tax debts, and legal actions including summons, creditors petition, wind-up and insolvency action.

We are harnessing advancements in digitisation and data to **minimise the risk of errors** through real-time nudges and prompts.

For example, we're now using nudge messaging to help small businesses get their GST reporting right by delivering client-specific messaging to clients before their activity statement with a refund claim is lodged online. This allows clients to self-correct where they've made an error and removes the need for follow up contact by the ATO to review an incorrect refund claim. Since introducing pre-lodge nudge messaging for activity statements last year, we have assisted clients to correct their GST reporting with adjustments of around \$73 million – much less painful for all to fix up in real time than wait for the audit.

Security challenges arising from digitisation

What we are seeing across the Public Service is that digitisation goes beyond tax and super, but is becoming the cornerstone of how the community interacts with government.

This of course bring great opportunities, but also great challenges and we remain committed to providing a contemporary, reliable and secure digital experience for all our users.

A key point before I move on, is to discuss a couple of points on how the ATO philosophically views data. Firstly, wherever possible, we will look to share data with the taxpayer 'pre lodgment', saving time for the taxpayer, but also meaning that it is less likely for the taxpayer to make a mistake. Secondly, we will only look to obtain third party data sources where the intrusiveness of the request is outweighed by the 'gap' problem to be solved or the service to be offered.

A good 'compare and contrast' here is our approach towards rental data versus eInvoicing.

Firstly, I must note that the ATO has a key role in encouraging the adoption of eInvoicing across the economy, with potentially significant productivity benefits for all businesses, and small businesses in particular.

But going back to the data elements, we have a high appetite to obtain third party data about rental properties. This is because there is significant non-compliance, either deliberate or accidental, as well as the opportunity to remind taxpayers pre-lodgment to help them avoid making mistakes.

By contrast, we do not see significant non-compliance by businesses which operate 'on the books' (as contrasted from the shadow economy). As such, obtaining eInvoicing data would involve the acquisition of large swathes of data with relatively small compliance dividend. It also appears of limited ability to assist taxpayers (as not all invoices are likely to go through eInvoicing, pre-fill based on eInvoicing is unlikely to be of assistance).

And turning now to the challenges of digitisation, 'cyber security' in a broad sense is probably the number one issue that faces the ATO. Every month, there are between 2 and 3 million direct attacks on ATO systems of varying degrees of sophistication, that's about one per second.

The challenge for the tax and superannuation system is that we cannot simply haul up the drawbridge – we want clients and their advisers to be able to interact digitally with the ATO, either directly or through their natural systems.

At the ATO we are playing our part by continuing to adapt and improve our technology to address emerging cyber risks for our IT systems and data sets. This may mean that we ask you for a stronger level of identity proofing and additional verification before accessing our systems or seeking information. We may also start sending prompts to your clients when key details are updated, akin to the alerts you might get about your Apple ID if it's used on a new device.

The challenge then is, as we harden our systems, criminals are seeking to access the broader tax system through other channels, for example your systems. Increasingly we are seeing cascading penetration

attempts, where criminals attempt to obtain information from different places before putting it together for fraud attempts.

As we rely on tax practitioners in a more distributed model we want to work with you to protect your systems and the client information you hold.

We are also asking you to take some simple, but effective steps:

- verify that your clients are who they say they are before acting on their behalf (this is often a way of trying to steal a next layer of information) (be particularly careful if you allow new clients to engage with you 'digital only' and then look into their tax information via your systems)
- know how to keep your practice safe from physical and cyber threats, including the systems you use and your clients' data. Even last week, the TPB has sent out an alert that criminals are trying to impersonate the TPB to gain access to your systems.
- stay up-to-date with our alerts and warnings around scams and other suspicious activity.

Earlier this year we released our **Strengthening client verification guidelines** which complement Tax Practitioners Board's (TPB) guidance around proof of identity, and are intended for registered tax practitioners using Online services for agents or practitioner lodgment service software.

If you are ever unable to verify a client or the information they provided and suspect potential fraud, do not confirm or provide client information and contact us immediately.

Conclusion: What a great CPA looks like

Thank you for having me here today – I hope it has given you an insight into how the ATO will continue to work with tax practitioners to support a high performing tax system.

Before I go, I wanted to share with you some personal thoughts about the CPA that I would like as my adviser if, knowing what I know now, I were in business:

- keeps their skills and knowledge up to date and aligned to their client base, and aims to hit that 'goldilocks' spot on an informed basis (and those in the room are doing exactly that!)

- displays high practice and professional standards
- has strong internal controls and practices and harnesses technology in their own practice
- looks to advocate technology to their clients
- when their client's position doesn't make sense, asks that extra question (eg: do you have crypto or other assets? Your business seems to be reporting less cash takings than similar businesses, are you sure you're capturing all your receipts?)
- provides business advice to optimise their client's business (not just tax!), including cash flow advice (especially where it appears a client is funding through the 'ATO overdraft' e.g., PAYGW or SG)
- ensures that, if in trouble with their tax debts, a client doesn't put their head in the sand, but helps them engage with the system
- and more broadly, supports tax morale in the community and calls out bad behaviour where they see it (here, a great recent example is a practitioner from a small regional firm who came across the recent GST fraud and helped warn their local community).

I thank you again for the opportunity to talk with you today. The Australian tax system needs a strong and flourishing tax adviser community to continue at its current high level of performance (and to improve even further), and it was a privilege to be able to share thoughts today with this highly engaged group of high performing CPAs.

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