



Navigating economic uncertainty – Financial Review CFO Live 2023

Second Commissioner Jeremy Hirschhorn delivers a speech to Financial Review CFO Live.

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*Jeremy Hirschhorn, Second Commissioner, Client Engagement
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Introduction

Good morning, thank you for welcoming me back to the CFO Live event to provide an annual update on large public and multinational tax in Australia.

Australia is highly reliant on corporate tax, and with this comes great responsibility for both the ATO as administrator, but also for large companies as significant contributors and role models for the entire system.

Today marks my fifth CFO Live keynote address and, reflecting on the past 5 years or so, I am confident that we have more meaningful engagement and higher levels of compliance in the large market than ever before. My challenge to you today is that CFOs (and your boards) need to continue to meaningfully engage in this next chapter where high assurance credentials isn't just a goal, it's a community expectation.

In these uncertain economic times, the ATO can help make tax certain. Today I will focus on:

- the significance of large corporate tax in Australia's economy

- how we will maintain high levels of compliance
- the shift from transparency to public accountability
- international tax developments, and
- what to expect from the ATO in 2024.

The significance of large corporate tax in Australia

Our recently released annual report showed net tax collections in 2022–23 were \$576.2 billion, up \$60.6 billion (11.8%) over the previous year, and \$37.1 billion (6.9%) above the amount expected at the time of the October 2022–23 Budget. Company tax collections were \$150.1 billion, an increase of almost 21% in 2022–23, with tax from large corporates being just over two-thirds of the total company tax collections at \$103.5 billion.

These are significant results, reflecting stronger-than-expected commodity prices flowing through to tax collections (a significant component due to prior year compliance actions) and strong economic conditions.

We have also reported on the impact of our compliance interventions on taxpayer compliance, what we call ‘total revenue effects’. For 2022–23, our estimates for increased tax collections from prevention and sustained compliance are higher than any previously reported year: about \$6.6 billion. Of this, about \$630 million is due to our preventative actions (preventing problems or issues before they happen), and \$6 billion is attributed to compliance interactions (both current year assessments and impacts from locking in compliance in earlier years).

Significantly, the estimate of \$6.6 billion includes a one-off amount of around \$4.4 billion due to our historical compliance efforts across multiple financial years in the oil and gas sector. This amount represents the additional tax paid this year that would not have been paid if not for these compliance efforts, mostly due to the elimination of carry forward losses driven by related party interest expenses.

Contribution of the energy and resources sector

A couple of weeks ago we also released our most recent corporate tax transparency (CTT) report which showed Australia’s 2,700 large

corporates paid a record \$83.8 billion in income tax for 2021–22. The report showed tax paid by these entities was the highest (by far!) since the CTT reporting started, reflecting a rapidly recovering economy post-COVID, high commodity prices and high levels of voluntary tax compliance.

Whilst all industries contributed more tax, the substantial increase can be attributed to the mining sector which contributed just over half of the overall results in 2021–22 (compared to less than a third in 2017–18).

While strong commodity prices and export volumes have been key contributing factors to income and tax paid in this sector, the contribution also reflects efforts of the ATO and in particular our Tax Avoidance Taskforce to influence and improve the tax compliance of large businesses.

As I foreshadowed last year, the published data shows that some large oil and gas companies have moved into a tax payable position, with more than \$1 billion paid by this industry. This is following the completion of LNG projects and the recoupment of start-up costs over several years. Tax payments from this sector have since grown markedly in the 2022–23 income tax year to more than \$11 billion. Some of these companies are now amongst the largest taxpayers in Australia and this will be reflected in next year's CTT report.

Company tax as a percentage of GDP

As a percentage of GDP, corporate tax collections in Australia have historically been significantly higher than other OECD countries, averaging around 5% over the past 20 years, and reaching over 6.5% in 2021, more than double the OECD average. Given general comparability of tax rates across OECD countries over the period, this implies a combination of one or more of the following: a higher share of GDP going to corporate profits, a broader tax base (or fewer implicit concessions), or greater tax compliance (voluntary or involuntary). At the same time, Australia is highly exposed to base erosion and profit shifting, and I will talk to international tax developments a little later.

Maintaining high levels of compliance

If I can quickly take you back to 2015–16, there was heightened scrutiny of corporate tax.

In early 2016, Commissioner Jordan put large corporates and their advisers on notice. He declared 'enough was enough': that the ATO was sick of a cohort of large corporates avoiding their tax obligations and obstructing investigations. That we would be reasonable with those that genuinely cooperated with the ATO but would take a much harder stance on those who did not. That we would not be stooged.

Since that time, we have secured more than \$27.7 billion in additional tax revenue from multinational enterprises, large public and private businesses (up to 31 August 2023), but perhaps more importantly the governance and culture around corporate tax has shifted.

As a result of our actions, voluntary compliance in the large market segment is the highest it has ever been, reflecting the success of the ATO's justified trust program and our ability to assist taxpayers to avoid tax disputes through innovative products such as practical compliance guidelines.

However, there continue to be some large businesses and multinationals that engage in profit shifting and tax avoidance. Our ability to invest our resources to scrutinise the affairs of these businesses only intensifies as more and more taxpayers demonstrate high levels of compliance. For businesses operating in this space, it's not a matter of if you will be subject to investigation, rather when.

None of this would have been possible without the Tax Avoidance Taskforce which commenced in mid-2016. We are on track to have a 3,000 strong Taskforce, which, when combined with our existing resources, means the ATO now has a proportionately bigger large business division relative to size of the economy than almost any other tax administration.

Certainty on your tax position

The Taskforce has provided us with the resources and the expertise to maintain regular, ongoing engagement with the largest taxpayers in Australia. This is a significantly higher level of scrutiny than the previous ATO approach of targeted audits after identifying red-flags and concerning conduct. Through early engagement we can provide greater certainty on the ATO's view and, in many cases, seek to address issues before disputes arise.

There are simple ways for CFOs to understand your tax risk profile, for example your Justified Trust rating and whether you report any high-

risk arrangements on your group's reportable tax positions schedule (lodged as part the tax return).

Our latest report for the Justified Trust program for the 2023 year shows 83% of top 100 taxpayers maintaining either high or medium overall assurance ratings, with 52% attaining an overall high assurance rating, meaning they have provided the ATO with objective evidence that they are paying the right amount of tax. These assurance reports provide CFOs (and boards) with greater certainty of their own tax position, and our findings reports also help you know where you sit in relation to your peers. Some leading companies are now publicly disclosing their high assurance ratings, providing confidence to stakeholders such as shareholders, customers and employees. Some high profile examples include Telstra, BHP, Woolworths, Origin and BUPA.

These increasing levels of demonstrable compliance, means the ATO is better positioned than ever to tailor its compliance strategies and service offerings having regard to the tax compliance of individual groups. Those groups that have demonstrated high levels of assurance, should and will have the benefit of that in how they engage with us moving forward. Those businesses, that continue to obtain low levels of assurance, showing no appetite for improvement, will continue to find themselves in a world of audit and intensive investigations.

Across both our top 100 program, tax governance remains the critical pillar and we have seen evidence of enhanced tax control frameworks that are being 'lived in practice' and independently verified.

Our Justified Trust program also extends across our most significant privately owned and wealthy groups, with about 74% of our 'top 500' population now achieving Justified Trust or engaging and making progress towards Justified Trust. For this market we remain focussed on getting the basics right with effective tax governance.

Certainty on future tax outcomes

As part of the strategy of the Tax Avoidance Taskforce we have entered several negotiated settlements to resolve legacy issues and importantly, to lock in lasting behaviour change and future tax outcomes. A number of these settlements are starting to 'roll off' and positively we are seeing taxpayers engage with us to renew these agreements. In some cases, this may not be a simple exercise as

business may be evolving giving rise to new considerations. For example, a company's operations may have evolved and now include a completely new function such as providing data warehouse services. As an aside, particularly where clients are provided or demand that these services are provided through a local facility, we are unconvinced by arguments that these are simple 'cost plus' businesses for the Australian subsidiary. However, in any event re-engagement is preferable to reverting to dispute.

As CFOs you should be aware that the ATO will seek to mitigate against any backslide risk when entering into any new arrangement. This is not an opportunity to renegotiate from the old base: now that we have raised tax outcomes to a high standard, we want to keep them there.

Certainty on what to expect from the ATO

We have been more transparent than ever before in relation to the large market. We have been more transparent with taxpayers about their own affairs, and where they stand in relation to their peer group. We have been more transparent about our view of certain tax risks, enabling them to self-assess their tax arrangements within the safe zones set out in our guidance materials, or take immediate action in response to arrangements identified as high-risk.

The importance of good advice

The ATO is not directly responsible for the regulation of tax agents or tax professionals. However, we recognise that tax professionals play a key role in influencing the tax outcomes of their clients as well as how they engage with the ATO.

As part of the Tax Avoidance Taskforce we have established a dedicated team that monitors the role of advisers in the large market and how they influence the tax performance of large business. The 'Adviser Strategy' team has a particular focus on the role of advisers in structuring tax avoidance or high-risk arrangements for large business, and obstructing ATO investigations. The team works across the large market to monitor advisers, both on specific cases and their impact on the whole system.

Our actions in relation to the Big 4 firms have been the subject of much attention in 2023. We have been working for several years across the two areas of concern to establish a minimum industry

standard for the provision of tax advice and interacting with the ATO when companies wish to make legal professional privilege claims.

The first went to improving the governance frameworks at the heart of the firms themselves. The development and public adoption of the Large Market Tax Adviser Principles by the Big 4 ensures transparency over the way they govern their tax advisory practices and give confidence that they are not aiding the sale or promotion of tax avoidance or high-risk tax arrangements. Three firms have already published their first annual confirmation statements and we expect the others to publish by the end of 2023. We are now working with mid-tier firms to publicly adopt these principles as well. We are also considering how these principles might be adapted for large law firms.

The second sought to address reckless and unsupportable legal professional privilege claims over vast amounts of documents in an attempt to withhold information from the ATO and delay or frustrate our investigations. Last year we published a Legal Professional Privilege Protocol to support the right of taxpayers to keep their legal advice confidential, while enabling the ATO to have confidence that all other relevant documents have been provided. We have observed improvements in processes, leading to a declining need for the ATO to question or challenge claims.

We believe that tax practices have improved across the Big 4 over time. That said, we do still observe a spectrum of behaviour, and we are yet to see the longer-term impact of these recent initiatives.

We have also established a private wealth adviser program under the Tax Avoidance Taskforce, to ensure both advisory firms and individual advisers are meeting their own tax affairs and enhance our ability to detect those advisers promoting tax exploitation schemes and/or influencing clients to adopt high risk or uncertain positions.

From time to time, we get asked whether the selection of a particular firm or adviser will impact the likelihood of ATO review. We are interested in tax risk and for sophisticated taxpayers such as large business, we observe (and expect) that businesses have sufficient processes in place to understand and make informed decisions about tax risk before entering into arrangements. Whilst we certainly monitor the role of advisers in the market (intervening where appropriate) it is the presence of tax risk that attracts our attention. How your adviser engages with us during a review, will influence how we engage in that process. For example, obstructive behaviour or misleading, incomplete

responses are more likely to lead to us using our formal information gathering powers.

If we do identify that a tax practitioner is engaged in promotion or marketing of schemes or other poor behaviours, we may seek to apply the promoter penalty rules, or level penalties for false or misleading statements. We may also refer the adviser to law enforcement, the Tax Practitioners Board or other professional bodies, subject to our secrecy and privacy provisions.

As a CFO I would be asking for certainty that your adviser is not only meeting their legal obligations, but also maintaining the highest possible professional and ethical standards. You should also ensure that tax advice not only reflects the legal risk, but also the risk that the ATO will have a different view and what that might mean practically.

Beyond voluntary transparency to public accountability

Transparency has been a theme in each of my CFO Live keynotes and remains an area of tax administration that I am passionate about.

Over recent years we have seen the introduction and take-up of transparency measures designed to make the tax affairs of large corporates more open and accessible to the Australian community. About 200 taxpayers have signed up to the Voluntary Tax Transparency Code which is encouraging. However, given the ATO's justified trust program covers the top 1,100 public and multinational businesses, it shows there is still more to do. I congratulate those who have embraced the spirit of voluntary transparency measures by following through beyond the minimum requirements. Some businesses have set a high transparency bar, such as Woodside, BHP and Rio Tinto.

From an ATO perspective we see voluntary tax transparency is now an expected minimum standard by the Australian community for those large corporates operating here. We have seen in more recent years that tax is increasingly playing a critical role in the integration of environmental, social and governance (ESG) in businesses. Our experience shows that tax transparency (to the regulator, the board, the market and/or clients) is a key contributor to instilling confidence in a business and their ESG commitments. We often say that tax is the silent 'T' in ESG.

We have also seen uncertain economic conditions again putting large corporate and public organisations under the spotlight. We are increasingly seeing private sector organisations being expected to match public sector accountability and scrutiny, not just for their tax affairs. With the number of businesses achieving high assurance ratings increasing, many businesses should be well positioned to demonstrate their tax contribution credentials. However, this will require more businesses to adopt greater transparency about their tax affairs.

International tax developments

You would be aware of the ongoing OECD negotiation around the Two Pillar agreement to set a global minimum tax rate, and that the Government has committed to prioritising Australia's early take-up of the agreement.

The ATO continues to work closely with the Treasury, the OECD, other tax administrations around the world, as well as many of you, on the implementation of the Global Anti-Base Erosion rules (Pillar 2).

As an administrator we are focused on practical compliance with the rules. We recognise that Pillar 2 is a complicated undertaking being rolled out on a global scale. So, working with others to ensure have a regime that is fit for purpose for the Australian tax landscape is our priority.

In particular, we recognise that providing education and assistance to help corporates meet their reporting requirements (and ensuring those reporting requirements are fit for purpose) will be critical to the success of the rules in Australia. It is also important because it will enable the community to be confident that corporates are meeting their reporting, lodgment, payment and compliance obligations as the rules mature.

There has been some recent commentary that the development of the Pillars may mean that some other international tax law, principally developed out of the original Base Erosion and Profit Shifting Actions, may no longer be necessary. The specific term being used is 'decluttering'. I find this a little surprising. It seems a bit early to make such a call - after all the first returns under Pillar 2 are not expected until 2026 and Pillar 2 involves a number of novel and untested features.

While Pillar 2 is certainly a step forward in the global tax landscape, the minimum tax rate under the rules is only 15%, half the rate faced by large corporates in Australia. With various forms of concessions permitted under the regime to encourage local business activity, even that 15% may not be payable. So, it seems likely that Australia, a country open to trade, a high reliance on corporate tax, and a tax rate significantly above 15%, will continue to face intense pressure from base erosion and profit shifting.

As such, it is an odd proposition that effective tools developed in recent years, like the Diverted Profits Tax, our Multinational Anti-Avoidance Law and the Hybrid Mismatch rules, implemented so effectively and pragmatically in Australia by a series of governments, would be so quickly discarded for what is, at this point in time, a novel and untested regime with a rate that is half that of our statutory tax rate.

It is important to note that last week there was a significant vote at the United Nations, so we can expect to see an increased focus on tax matters from the UN in the years ahead. While Australia voted against the resolution as it was crafted, we (along with Canada and New Zealand) reiterated our commitment towards more inclusive international tax cooperation.

Beyond the OECD, the ATO has also been working with senior leaders of like-minded large business tax administrations (Canada, the Netherlands, the United Kingdom, and the United States) under the large business five (LB5). Under the LB5 we have developed a flexible program of engagement under the theme of encouraging voluntary compliance across the large business population. This involves agile projects focused on staffing and recruitment, use of data, agent behaviours, building trust and cooperative compliance.

What to expect in 2024

While not strictly related to large business taxation, I did want to touch on 3 areas of focus for the ATO in the coming year which are likely to impact your suppliers and clients.

Protecting the system and clients against fraud

Like all large organisations we are also taking steps to address cyber-enabled crimes, and recently launched a suite of new protections to

help secure people's personal information amid an unprecedented rise in identity-related fraud attempts.

Under 'client-to-agent linking', all entities with an ABN (excluding sole traders) are now required to digitally nominate their agent through our secure Online Services before the agent can access their ATO data or act on their behalf with the ATO. As a CFO, I encourage you to ensure your directors and employees with tax system access obtain a myGovID credential and that your accesses are kept up to date. If you identify any suspicious behaviour or potential breaches, report it to us immediately.

We have also boosted the digital identity requirements for individuals to access ATO online services through myGov. I would encourage everyone in the room today to take 2 simple steps to protect their information: firstly, get a myGovID (if you don't already have one) and set it at the strongest level you can obtain, secondly, once you're in myGov, authenticate your identity using myGovID to link to the ATO.

Addressing growth in the collectable debt book

We are committed to addressing our debt book, the 'collectable' component of which now sits at about \$50 billion (this is mostly 'self-assessed' debt, disputed debt is treated separately). Small businesses owe 67% of the total collectable tax debt. During the pandemic we took a different audit posture with individuals and small business, chased fewer lodgments and recovered less debt. While we resumed stronger action in late 2021, we have observed a behavioural shift as to the priority of paying tax and super. We are concerned with an increased reliance on unpaid tax and unpaid super to prop up the cashflow of some businesses.

While we are seeking to engage with these businesses, we are also taking action to protect employees, clients, and customers. One feature you may not be aware of is the ATO may now report debt information to credit reporting bureaus, where taxpayers do not engage with the ATO and meet certain criteria. Since 1 July 2023, we've disclosed the debts of more than 10,500 businesses that have significantly overdue (undisputed) tax debts of at least \$100,000.

Improving small business tax performance

Small business tax performance is running at about 87%, with two distinct drivers: the large majority is driven by a small minority of

dishonest businesses operating (wholly or partly) in the shadow economy, and a small proportion by honest businesses who make simple mistakes and errors. Our ambition here is to build a digital-first ecosystem to help small businesses comply with their tax and super obligations, by moving tax reporting (or payment) closer to the tax event through greater integration of ATO systems with the natural systems of their businesses. Seamless tax and reporting from business source systems offers a key opportunity to improve the tax performance of the small business market by placing greater assurance in the system, increasing digitalisation to reduce errors and mistakes, and decreasing new debt as payments move closer to events. We believe this will both support a level playing field between small businesses and boost their broader contribution to the Australian economy.

Conclusion

I hope this has been a useful reflection on the significance of large corporates in Australia's tax system. As the CFOs of our largest taxpayers, you set the tone for the broader tax system, and we are committed to being transparent with you about what to expect from the ATO and how to engage with us.

Going into 2024, my top 7 tips for CFOs to achieve tax certainty are:

- Know your assurance rating and what you need to do to achieve (or maintain) high assurance.
- Ensure your tax adviser has signed up to the Large Market Adviser Principles, or is committed to an equivalent standard.
- If you are in dispute with the ATO, ensure your lawyers are following the LPP protocol.
- Fully commit to tax transparency, and look at best practice examples across the market.
- Ensure all company directors have a director ID.
- When procuring services, do due diligence checks on your provider's ABN (that it is valid and matches their name) and credit history.
- Revisit the 'CFO quick tax risk checklist' that I published last year.

And remember, for your own tax affairs: sign up to myGovID and use it to securely link to the ATO.

Thank you again for your time today. I'm happy to take questions.

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