



The ATO perspective: Alternative pathways in resolving tax disputes

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Introduction

Good afternoon and thank you all for welcoming me here today. I would like to acknowledge the Bidjigal and Gadigal people, traditional owners of the land which we are meeting on today. We pay our respects to them, their cultures, and Elders past and present.

Australia has a very comprehensive tax, super and registry system. To be successful in our administration, and our purpose of contributing to the economic and social wellbeing of Australians, the ATO aims to cultivate and maintain trust and confidence of all Australians in the tax system and our administration of it, and to make the experience of engaging with us as easy as possible.

And the recent Trust in Australian Public Services 2022 Annual Report reflects that concerted and deliberate effort. Across 43,000 responses, the ATO was the most trusted Australian government agency, with 81% of people trusting our services, and also scored the highest of all Australian government agencies in satisfaction with 82% of participants satisfied with the ATO services they use.

As well as being comprehensive, we recognise that Australia's tax system is also quite complex. Whilst much of our work is directed at making it as easy as possible for taxpayers to meet their obligations, and preventing unnecessary disputes, mistakes and disputes are inevitable. Trusted and respected functions that assist in dispute

resolution are essential. And in this respect, we are focussed on resolution at the earliest point in time, appropriately tailored processes to achieve resolution, and an approach that embodies fairness and integrity.

Today, while I will speak about our various dispute resolution pathways, these are the 3 key things I want to focus on – Resolution comes through:

- early and open engagement
- tailored pathways
- an informed, objective and impartial approach.

Disputes happen, but they are not the norm

Disputes happen, but they are not the norm. To give a sense of size and scale, in the 2021–22 financial year there were approximately:

- Over 325 million returns, statements and forms lodged – 40 million being returns
- 537,000 adjustments from audits
- 25,600 complaints across all categories not just relating to audits
- 18,600 objections resolved – of these 55 % were by taxpayers against their own self assessed positions and only 45% were in relation to audit decisions
- 453 settlements
- 455 litigation decisions.

This shows that, for the vast majority, most interactions with the ATO do not end up in dispute.

Resolution through early and open engagement

When disputes do occur, we prefer to resolve them as soon as possible and at minimal cost to all parties.

There are a few things that we see as beneficial to achieving this.

- Personalised engagement which happens early and often.
- Transparency about process and what to expect.
- Understanding of the drivers of and the opportunities to resolve the dispute.
- Positions being clearly explained and reaching a common understanding of what is needed to support that position.

This requires both parties to work together, to seek and to provide all relevant information and evidence. For the ATO, this means explaining our concerns and what we are seeking, in a clear and easy to understand manner. And for the taxpayer, this means being open and transparent, producing all the evidence the ATO needs to consider the application of the law in the taxpayer's circumstances.

Formal dispute and litigation is not your only option. Which pathway will work best for you?

As you might expect in a complex system, there are a multiple review points provided in the law and even more provided administratively through the processes we at the ATO have adopted. In fact, I'm not aware of any other countries that have more opportunities for formal and informal internal review, and that is before considering the essential independent external review mechanism of the AAT.

There are also multiple pathways to resolve disputes. But to know which option is best – which pathway to head down – depends on the nature of the dispute, the circumstances of the taxpayer and the outcome they are seeking to achieve.

If a process or decision is unclear or not able to be understood – a conversation and more information or reasons from the decision maker is the preferable path, and escalation to their manager if concerns remain.

If a concern or issue is with the process or how something was handled, a complaint can be made and investigated by the ATO. If it can't be resolved, the IGTO is a further avenue.

If the issue is an inability to pay, our call centre and Lodge and Pay teams can consider payment arrangements, remitting the imposition of

interest and penalties or, in limited circumstances, compromise a tax debt.

Large businesses and small business taxpayers that disagree with a statement of audit position can request independent review prior to their assessment being amended and prior to any liability crystallising, ensuring their points have been heard.

All taxpayers who are dissatisfied with an audit amended assessment have the statutory right to object and have a fresh set of eyes review their case in an impartial and objective manner.

Vulnerable and unrepresented individuals and small businesses requiring some support, either before or after an objection is lodged, can obtain the assistance of one of our experienced dispute assist guides to guide them through the process.

Alternative dispute resolution in its many forms is often an effective way to clarify or narrow the issues, and to reach resolution. In-house facilitation involving an ATO trained facilitator is an ADR approach we commonly use during audits and objections, especially to overcome obstacles and find common ground in less complex cases. But where we differ on the understanding of the law itself, litigation may be pursued to provide clarity not just for the ATO and the taxpayer, but all participants in the tax system.

Finally, while the ATO does not settle disputes at any cost, the sensible use of settlements at all stages of the process is another part of our commitment to earlier and more effective dispute resolution.

Whilst this represents a buffet of options for dispute resolution, not all will be available, or appropriate, for every taxpayer. Rather, what we need to focus on are which pathway will lead the parties to resolution fairly, quickly and most cost effectively.

I want to talk to you now about a couple of these options.

Dispute assist

Firstly, dispute assist.

Dispute Assist is a free service directed at supporting the most vulnerable people when they need assistance in navigating the ATO and the dispute process. These are individuals and small businesses with exceptional circumstances that put them at a disadvantage in

being able to engage with the ATO, including mental health issues, risk of self-harm, domestic violence, homelessness, addiction, severe financial hardship and disability or illness.

Taxpayers who may benefit from this additional support are provided with a 'Dispute Assist Guide'. A guide is independent from the dispute; they are not an ATO decision-makers, nor a client advocate. The guides connect the taxpayer with the right people. They ensure all options have been explored in resolving the dispute and assist the taxpayer to access services that help them move forward.

Our guides have helped people like Stacey who had feared engaging with the ATO when her employer had incorrectly completed her payment summary, and she had been unable to engage with us for many years as a result of severe mental health issues. We provided her with tailored support, educating her on her tax position, assisting with resolution of her objection and as a result Stacey expressed her gratitude and reflected her confidence in engaging with the ATO into the future.

Adrian, a sole trader with severe anxiety and stress who had long overdue activity statements lodged incorrectly by his partner. Our dispute assist guide took the lead to ensure action and collaboration between our objections, audit, debt and processing teams for a holistic approach to resolution. This approach resulted in Adrian's debt being correctly determined and paid. Adrian is now completely up to date with his lodgments, has no outstanding debt and is able to move forward.

In all of our dispute assist cases the key to resolution is constant communication, being responsive as well as patient and understanding each person's circumstances to guide them through the process to resolve their dispute.

Alternative dispute resolution

Now onto ADR, and in particular in-house facilitation.

ADR is not only used to resolve substantive disputes quicker and cheaper than other pathways, but it may also be used to narrow, clarify or limit issues, maintain relationships or remove any blockers created by relationship issues between the parties.

However, not all cases are suitable for ADR, and it would not be pursued for example where:

- the cost and delay involved in ADR is disproportionate to the likely benefit
- resolution can only be achieved by departure from an established 'precedential ATO view'
- the facts are clear, and the application of the law is straightforward, or alternatively there is a fundamental issue of law that would benefit from clarification
- there is a genuinely held concern that the case involves serious criminal fraud or evasion.

The most common form of ADR that we use is in-house facilitation. This is a free mediation service for individuals and small businesses who may be represented or unrepresented. A trained, impartial and nationally accredited ATO facilitator works with the taxpayer and ATO to reach a resolution.

Using in-house facilitation has been particularly successful to reach a common understanding of the issues in dispute and where each party is coming from.

In fact, last financial year almost 90% of the time in-house facilitation was used, it resolved in part or all of the dispute.

In large, complex disputes, the ATO, or the taxpayer, may seek the engagement of an external practitioner to conduct conciliation or mediation. Over the last three financial years, 70% of the time we used this type of ADR the dispute was resolved in part or in full.

ADR can also be ordered by a court or tribunal to be conducted by a court or tribunal officer. About 85% of disputes were resolved in part or full over recently years this way.

Independent review

Historically, tax disputes have been long, tedious, adversarial and very costly for both taxpayers and the ATO, especially large businesses.

Independent review was originally introduced for the large market to promote the earlier resolution of disputes. Conducted by an officer independent from our auditors and with no prior involvement in the case, the review occurs before any amendment of assessment or liabilities are crystallised. The reviewer considers both parties'

positions, makes a recommendation, and the audit team will finalise the audit accordingly.

Our independent review service has since been extended to eligible small businesses. For these businesses an independent review can be requested if they disagree with some or all of the audit position on most income tax and indirect tax obligations.

We have found in practice that for many of the small business cases it has not been as simple as either that the audit team's or the taxpayer's position is preferred. But rather the independent review uncovers ways in which the ATO and the taxpayer may be at cross-purposes, or that further work required to really get to the bottom of the issue. It gets the parties back on the right track to resolution. Feedback from small businesses who have participated in an independent review, irrespective of the outcome, have found the process to be fair and independent.

Objections

Next, objection. This is the formal pathway for a taxpayer that is dissatisfied with their assessment. And it is a mandatory pathway for those who seek an external review by the AAT or the Courts.

Given this, it is in each parties' interest that the process for objections is as effective and efficient as possible.

There are, for example, some particular things that taxpayers can do to ensure the process runs smoothly.

- Issues such as authority to act, whether the objection is within time, and the validity of the objection, are considered before lodging.
- When the objection is lodged, explanations are set out clearly about what you do not agree with in the audit decision and why.
- All relevant supporting information is provided as early as possible, and the relevance explained.
- Be upfront about how much time is required to provide any additional information and about what can and cannot be provided.
- The taxpayer as well as their representatives are prepared to discuss the issues with us.

We understand, and the statistics I referred to earlier bear out, that very few people will need to engage with the objection process. And that the vast majority of people that do, including tax professionals, will never have done so before. We also understand that, as a statutory and legal process, this can be daunting and confusing.

We are committed to supporting people exercising their review rights and have a project underway directed at this. We want to demystify the objections process using simpler non-legal language, make the process easier to engage with and be clearer about who we are and what we do.

A part of our aspiration is a digital future, supporting taxpayers by facilitating online rather than manual lodgment of objections, guiding them through the process and prompting and capturing supporting information early, fully and electronically.

We also understand that an effective review requires fresh eyes. That's why taxpayer objections are managed within the Law Design and Practice Group that I lead at the ATO, separate from the areas that conduct audits, meaning that the people reviewing decisions are not those involved in making the original decisions. Our objections officers will re-consider the case in an impartial and objective manner and will make a well-informed decision. The fact that a proportion of these decisions are to allow the objection is consonant with a review function operating fairly.

Litigating the right cases

As we all know, some disputes end up in court. Unfortunately, a proportion of our litigation matters are intractable disputes, unable to be resolved by other means.

However, we are determined to be deliberate and purposeful, preventing cases ending up in litigation unnecessarily.

Litigation is important. It is a valid resolution strategy for cases where it is important for the community to see us take action – for example in cases of fraud or evasion.

It is also essential to create precedent, to shape the system and provide clarity for all taxpayers in a transparent way. Recognising that this broader public value benefit should not come at the cost of any individual taxpayer is what underpins our funding of litigation through

our test case funding program and the funding of representation in cases in the Small Business Taxation Division of the AAT.

It is worth noting that over time around 85% of litigation cases are resolved by agreement between the ATO and the taxpayer. Of the remainder which proceed to a hearing about 3 quarters of litigation cases go the way of the ATO. The other quarter is split between those where the taxpayer is completely successful and those where both parties are partly successful. I do not cite this statistic to boast about our success. But rather to highlight it as a result of our concerted effort to avoid litigating cases unnecessarily and our approach to first looking for all opportunities to resolve disputes appropriately.

Closing

There are 2 key things I wanted to reiterate as I wrap up.

One. Disputes happen. Engaging fully and early is the fastest way to resolution.

And 2. There are different pathways to resolving disputes. Both parties need to know what is required for resolution and what is the desired outcome, then choose the path most likely to resolve the dispute fairly, as soon as possible and at minimal cost.

Of course, the way that the ATO handles disputes has always been, and will continue to be, the subject of commentary and scrutiny. That helps us to identify how we can continue to improve and where to focus our efforts. The role that the IGTO plays in dispute investigations and in their review of administration of the tax and superannuation laws is another important part to the system. I now welcome Karen Payne.

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