

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

# **2018-19 Commissioner of Taxation Annual Report**

House of Representatives Standing Committee on Tax and Revenue

October 2021  
CANBERRA

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# Chair's Foreword

Over the last five years, as a member of the Tax and Revenue Committee, I have personally witnessed how the Australian Taxation Office (ATO) has undertaken considerable reform and restructuring. The aim of these changes has been to deliver better service to customers, that being tax payers, and improve the efficiency of the administration of the tax system.

However, as with all the best laid plans of mice and people, the ATO has along with the rest of us been thrown a number of curve balls. Along with state-based agencies like Service NSW, the ATO's response has demonstrated the importance of investing in rigorous systems and institutional strength continuously and not waiting until crises hit.

There are many who complain about the ATO, and let us face it tax collectors have never been popular from Jesus's time onwards, however, I believe I speak on behalf of the entire committee in thanking the ATO, its leaders, teams and staff for their considerable efforts on behalf of our nation to ensure that when we were faced with the chasm of COVID, all of us were able to get to the other side.

Having said that, of course, we now expect more. It is the nature of elected parliaments.

This report highlights a number of legislative frameworks that the government should change in order to provide tax payers with better service. Key recommendations in this report are borrowed from observations out of the United States. These include upgrading the Inspector General of Taxation to an office modelled on the Taxpayer Advocate developed in the United States. **Secondly, changes be made to legislation that gives taxpayers the same** protections enjoyed by all other citizens when dealing with debts, namely it is not payable until it has been

proved, and cannot be collected until that time. Further, the onus of proof should lie not with the tax payer but with the ATO.

The scope and reach of the ATO is rarely understood much less appreciated. There are a number of its functions that are neglected, for example, its role over not-for-profits and charities, and the registries functions (which, thankfully is now being modernised).

The Australian Charities and Not For Profit Commission (ACNC) is primarily tasked with ensuring that Australians are donating to ethical organisations that use donations for their intended purpose, not on marketing and events. Too often in the past we have found charities spending over 90 per cent of their funds on marketing instead of breast cancer research. Alternatively, organisations such as the Catholic School system find themselves scrutinised by four separate regulators, including the ACNC, and use considerable resources of the ACNC in their oversight capacity. It may assist the ACNC to provide Parliament with recommendations about the level of scrutiny given to different organisations in its remit especially in instances where they are already being actively regulated, while others remain free of much oversight.

Reform in the business registry area would deliver significant productivity gains for working Australians. Registries, when modernised, could allow people to predict phoenixing rather than leaving it in the hands of departments and agencies to shut the gate once the horse has bolted.

This report strongly advocates that the government build on the registries function to build world class data sets, to look to a number of the land registries in the states and how they have modernised their function, use blockchain technology to ensure security and protect Australians from cyberattack. Finally, to look to leverage the expertise once built and allow it to be deployed for functions such as carbon credits and allocations. There is considerable expertise waiting to be deployed in this area for these outcomes, a renewed push in this area has potentially outsized impacts for the Australian Economy. We encourage urgent intent in this area to get ahead of the global curve.

**Mr Jason Falinski MP**

**Chair**

# Contents

Chair's Foreword .....	iii
Abbreviations .....	vii
Members.....	ix
Terms of Reference .....	xi
List of Recommendations .....	xiii

## The Report

<b>1 Introduction .....</b>	<b>1</b>
Conduct of the inquiry .....	3
Report outline .....	4
<b>2 Tax administration .....</b>	<b>5</b>
Digitising and streamlining processes .....	5
Online tax professional platforms .....	6
Single Touch Payroll.....	7
Activity Statement Financial Processing project .....	7
Greater tax compliance and the Tax Avoidance Taskforce.....	8
Making tax easier - mechanisms to assist taxpayers .....	10
Dispute resolution initiatives .....	11
Small Business Program Pilot.....	11
Dispute Assist Service.....	11
Small Business Concierge Service .....	11

Other taxpayer support initiatives .....	12
Pay As You Go Instalment .....	12
Communication and education with small businesses.....	12
Data collection and reporting .....	13
Is there adequate resourcing?.....	13
The ATO's approach to 'complaints' .....	15
Capturing complaint resolution timeliness .....	16
Tax performance – community confidence in tax collection .....	17
Improving general timeliness.....	18
Committee comment.....	19
<b>3 Modernising the Australian Tax System .....</b>	<b>25</b>
Debt liability and recovery.....	25
Existing tax laws and practice in Australia.....	25
Shifting the onus of proof and enhancing procedural fairness.....	26
ATO interest rates causing hardship.....	28
'Modern world' debt forgiveness and hardship provisions.....	28
ATO communication and assistance .....	29
Advice and guidance products.....	29
National Tax Clinic program.....	31
Taxpayer Bill of Rights .....	33
Taxpayer Advocate.....	36
Committee comment.....	36
<b>Appendix A. Submissions.....</b>	<b>43</b>
<b>Appendix B. Public Hearings .....</b>	<b>45</b>

# Abbreviations

Administrative Appeals Tribunal	(AAT)
Australian National Audit Office	(ANAO)
Australian Small Business and Family Enterprise Ombudsman	(ASBFEO)
Australia Taxation Office	(ATO)
Diverted Profits Tax	(DPT)
Goods and Services Tax	(GST)
Inspector-General of Taxation and Taxation Ombudsman	(IGTO)
Internal Revenue Service	(IRS)
Joint Committee of Public Accounts and Audit	(JCPAA)
Law Administration Practice Statement	(PS LA)
Multinational Anti Avoidance Law	(MAAL)
Online Services for Agents	(OSfA)
Pay As You Go Instalment	(PAYGI)
Practitioner Lodgement Service	(PLS)
Significant Global Entities	(SGEs)
Single Touch Payroll	(STP)
Small and Medium Enterprises	(SMEs)
United Kingdom	(UK)
United States of America	(US)
University of New South Wales	(UNSW)





# Members

## *Chair*

Mr Jason Falinski MP

Mackellar, NSW

## *Deputy Chair*

Ms Julie Owens MP

Parramatta, NSW

## *Members*

Ms Ged Kearney MP

Cooper, VIC

Ms Gladys Liu MP

Chisholm, VIC

Mr James Stevens MP

Sturt, SA

Hon Matt Thistlethwaite MP

Kingsford Smith, NSW

Mr Bert van Manen MP

Forde, QLD

Mr Terry Young MP

Longman, QLD

**Committee Secretariat**

Secretary	Ms Stephanie Mikac (to October 2020) Ms Kate Portus (from January 2021)
Inquiry Secretary	Ms Carole Marchal (from January 2021)
Graduate Officer	Ms Sarah Nguyen
Administration Officer	Ms Tamara Palmer

# Terms of Reference

The Committee will investigate, as relevant, any matter raised in the Commissioner of Taxation Annual Report 2019-20.



# List of Recommendations

## Recommendation 1

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- 2.90 The Committee recommends that the Australian Taxation Office increases its levels of **transparency and communication about its compliance** activities to better foster community trust and confidence in tax administration in Australia.

## Recommendation 2

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- 2.91 The Committee recommends that the Australian Taxation Office raises **awareness and educates taxpayers** and tax professionals about its products, regulations, and the **complaint process** to minimise unmet needs for independent tax advice and better protect taxpayers.

## Recommendation 3

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- 2.92 The Committee recommends that the Australian Taxation Office records in its **annual reports a breakdown** of resourcing both by business areas and job family to increase transparency in the allocation of resources and accountability for resources and funding allocated to special programs and taskforces, and that resources are matched with activities and outcomes.

## Recommendation 4

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- 2.93 The Committee recommends that the Australian Taxation Office adopt the **definition of 'complaints'** as per the Australian and New Zealand Standard AS/NZS 10002:2014 Guidelines for complaint management in organisations, to adequately and consistently capture complaints data.

## Recommendation 5

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2.94 The Committee supports the Inspector-General of Taxation and Taxation Ombudsman's Recommendation 1(d) from the *Review into Taxpayers' Charter* in 2016 and recommends that the Australian Taxation Office categorises complaint cases in line with the principles of the Taxpayers' Charter.

## Recommendation 6

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2.95 The Committee recommends that the Australian Taxation Office provides more detailed reporting for each financial year to reflect:

- the number of complaints, feedback and compliments received; and
- a differentiated reporting of complaints resolved within the 15 business days target timeframe, and those resolved within the adjusted timeframe negotiating with the taxpayer.

## Recommendation 7

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2.96 The Committee commends the Australian Tax Office for work already commenced on modernising the Australian Business Register. The Committee urges the Federal Government to consider the use of blockchain and other leading technologies to optimise the use of the registry, and minimise ongoing costs of maintaining the Registry. Such technical deployments should also future proof the work currently being undertaken by the Australian Taxation Office.

## Recommendation 8

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2.97 The Committee recommends that the Australian Tax Office publish a report into the economic activity gap and its analysis on an annual basis.

## Recommendation 9

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2.98 The Committee recommends that the Australian Government establish a cross departmental team with the intention of drawing up Australian standards for data collection, definition and formatting to further enable the open data objectives of the Australian Government.

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## Recommendation 10

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- 2.99 The Committee recommends that the Australian Charities and Not for Profit Commission review its regulatory burden on all organisations but especially those reporting to more than one regulatory body.

## Recommendation 11

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- 3.75 The Committee recommends that the Australian Taxation Office ensure that debts are not be payable by the tax payer until a final determination is made by the relevant dispute body or court. If the Australian Taxation Office fears that funds will be removed during an enforcement action, it should apply as all other plaintiffs do for a court ordered injunction.

## Recommendation 12

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- 3.76 The Committee reiterates Recommendation 7 from the *Tax dispute inquiry* report and recommends that legislation be introduced to shift the onus of proof to the Australian Taxation Office in relation to allegations of fraud or evasion after a certain period has elapsed.

## Recommendation 13

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- 3.77 The Committee recommends amending section 170 of the *Income Tax Assessment Act 1936 (Cth)* to reduce the statutory timeframe for cases involving fraud or evasion to 10 years after the issue of an assessment by the Australian Taxation Office. The Committee also recommends that the period of review of evidence requested by the Australian Taxation Office should be harmonised with the record keeping requirements. The amendment should contain provisions to extend the period on a case-by-case basis.

## Recommendation 14

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- 3.78 The Committee recommends that the Australian Taxation Office aligns the interest rate it charges taxpayers on any loans for tax liabilities, to the interest rate paid by the Federal Government.

## Recommendation 15

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- 3.79 The Committee recommends that the Australian Taxation Office enhances its staff awareness about taxpayers' rights through guidance and training,

including in the management of complaints, objection and disputes, and in their engagement with vulnerable taxpayers.

### **Recommendation 16**

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3.80 The Committee recommends that the Australian Taxation Office develops and promotes an Australian Taxpayers' Bill of Rights that clearly outlines taxpayers' rights and obligations.

### **Recommendation 17**

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3.81 The Committee reiterates Recommendation 4 of the 2015 *Tax dispute* report, that suspicion or finding of fraud or evasion be made by an officer from the Senior Executive Service.

### **Recommendation 18**

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3.82 The Committee reiterates Recommendation 9 from the 2015 *Tax dispute* report and recommends that the Australian Taxation Office conducts earlier engagement with taxpayers in cases of fraud and evasion, and align the process to that of the tax avoidance process.

3.83 Specifically, the Committee recommends that the Australian Tax Office provides taxpayers with information about suspicion of fraud or evasion, inviting them to provide a submission to ensure that the auditor has access to comprehensive information, ensuring that taxpayers are informed about their rights and the appeal process.

3.84 The Committee also recommends amending the makeup of review panels to include independent members, and that they be chaired at the Deputy Commissioner level or above.

### **Recommendation 19**

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3.85 The Committee recommends the Inspector General of Taxation be renamed the 'Taxpayer Advocate', and that the role aligns more closely with the powers and structure of the United States Taxpayer Advocate, based on the needs of the Australian tax system.

3.86 The Taxpayer Advocate must continue to have the freedom and independence enjoyed by the current Inspector General of Taxation.



# 1. Introduction

- 1.1 The House of Representatives Standing Order 215(c) authorises the Standing Committee on Tax and Revenue (the Committee) to inquire into and report on the annual reports of agencies allocated to it by the Speaker.<sup>1</sup>
- 1.2 The Speaker's Schedule of 1 August 2019 allocated to the Committee the annual reports of the Australia Taxation Office (ATO).
- 1.3 The Committee may also expand its focus to consider matters of broader significance to tax administration under its power to inquire into annual reports. The Committee may also receive a ministerial referral to investigate areas of tax and revenue policy.
- 1.4 Inquiry into the ATO Annual Reports was a responsibility previously held by the Joint Committee of Public Accounts and Audit (JCPAA), who then reported biannually. The responsibility was transferred to the Committee in the 44<sup>th</sup> Parliament, who continued reporting biannually initially.
- 1.5 The inquiry into the *Commissioner of Taxation Annual Report 2015-16*<sup>2</sup> saw a departure from the Committee's previous practice of biannual annual report scrutiny in order to 'enable examination of 'bigger picture' contemporary tax administration matters.'<sup>3</sup> For the first time, the inquiry report made 'formal

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<sup>1</sup> Parliament of the Commonwealth of Australia, *House of Representatives Practice and Procedures*, Standing Order 215(c)

<sup>2</sup> Standing Committee on Tax and Revenue, *2015-16 Annual Report of the Australian Taxation Office*, tabled 30 March 2017

<sup>3</sup> Standing Committee on Tax and Revenue, *2017 Annual Report of the Australian Taxation Office*, tabled 21 February 2019, p. 1

recommendations on tax administration; rather than merely flagging topics to be examined in the next period's annual report review.<sup>4</sup>

1.6 The following year, the inquiry into the *Commissioner of Taxation Annual Report 2016-17* continued to expand its focus to consider broader matters of the ATO's operations, including issues with digital service delivery and allegations of a misuse of power against small business.<sup>5</sup> This extended focus prolonged the inquiry past the submission of the *Commissioner of Taxation Annual Report 2017-18*. As a result, the 2017-18 Annual Report was not subject to an individual inquiry.

1.7 These two previous inquiries into the Commissioner of Taxation's annual reports had at their centre an 'assessment of the trajectory of the ATO's Reinvention Program.'<sup>6</sup> The Reinvention Program, started in 2015, had a central goal:

To achieve our vision of being a contemporary, service oriented organisation, we are transforming how our clients and staff experience the tax and super systems... We are not starting from scratch, but building on the many things we already do well. This represents the next phase in the evolution of how we administer the tax and super systems. It will be an ongoing and iterative process, encompassing our clients' and staff's entire experience. This means taking a whole-of-system and, where appropriate, a whole-of-government approach, working with government, business partners and other agencies.<sup>7</sup>

1.8 The release of the ATO 2018-19 corporate plan, *Working towards 2024*, marked the end of the Reinvention Program and a shift to new goals for the future:

Building on the gains of our reinvention program, we have developed two aspirations for our journey to 2024 – to build trust and confidence in the tax and superannuation systems and to create a streamlined, integrated and data-

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<sup>4</sup> Standing Committee on Tax and Revenue, *2017 Annual Report of the Australian Taxation Office*, tabled 21 February 2019, p. 2

<sup>5</sup> Standing Committee on Tax and Revenue, *2017 Annual Report of the Australian Taxation Office*, tabled 21 February 2019, pp. 2-3

<sup>6</sup> Standing Committee on Tax and Revenue, *2015-16 Annual Report of the Australian Taxation Office*, tabled 30 March 2017, p. 1; Standing Committee on Tax and Revenue, *2017 Annual Report of the Australian Taxation Office*, tabled 21 February 2019, Chapter 2

<sup>7</sup> Australian Taxation Office, *Program Blueprint: Reinventing the ATO*, March 2015, p. 2 <https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/program-blueprint-march-2015.pdf> viewed 10 May 2021

driven future. Our Corporate plan 2018–19 is the first step in that journey. We will regularly review the steps we are taking to get to 2024 and continually adapt to the broader environment.<sup>8</sup>

1.9 The Commissioner states in the *Commissioner of Taxation annual report 2018-19* (the 2018-19 annual report), that in this period, there has been:

...major progress of our *Towards 2024* Plan to build trust and confidence in the administration of the ATO and develop a more streamlined, integrated and data-driven organisation. At the core of *Towards 2024* is the ongoing focus on improving the client and staff experience and fostering a culture of service.<sup>9</sup>

1.10 This report intends to reflect the Committee continuation of its ‘bigger picture’ approach to the examination of the ATO’s performance in the light of matters raised in the 2018-19 annual report, and other issues raised in evidence put before it. The Committee has also undertaken some further consideration of certain areas that had been canvassed in previous report recommendations or that have been the subject of recent external scrutiny, for example, in relation to disputed debt.

## Conduct of the inquiry

1.11 On 5 March 2020, the Committee resolved to inquire into and report on the 2018-19 Annual Report.

1.12 The Committee called for public submissions to assist its evaluation of ATO performance over 2018-19. In total, 14 submissions were received. Nine of these are primary submissions and five are supplementary. All submissions are listed at Appendix A.

1.13 The Committee held four public hearings in Canberra, one of which was via videoconference due to COVID-19 restrictions. Details of public hearings are listed at Appendix B.

1.14 The Committee heard from government agencies, tax and legal experts and representatives of small and medium enterprises through written submissions and hearings.

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<sup>8</sup> Australian Taxation Office, *Corporate Plan 2018-19*, p. i, <https://www.ato.gov.au/about-ato/managing-the-tax-and-super-system/in-detail/corporate-plan---current-and-previous-years/ato-corporate-plan-2018-19/> viewed 10 May 2021

<sup>9</sup> *Commissioner of Taxation Annual Report 2018-19*, p. II

- 1.15 Submissions and transcripts for all public hearings can be found on the Committee's website.

## **Report outline**

- 1.16 This report covers matters arising over the 2018-19 financial year, as outlined in the annual report, with additional insights on the broader taxation system as discussed at hearings and in submissions.
- 1.17 This report consists of three chapters:
- Chapter two discusses the ATO's tax administration and examines both its achievements and limitations, which give rise to concerns.
  - Chapter three examines the ATO's engagement with some specific taxpayer cohorts and tax professionals, and considers some international perspectives to draw on options to modernise the Australian tax system.
- 1.18 The impact of COVID-19 on taxpayers in relation the ATO's management of the JobKeeper and cash flow boost programs, or the ATO's administration of early release of superannuation following the COVID-19 crisis was discussed at length by the witnesses.
- 1.19 While the Committee acknowledges the seriousness of the COVID-19 impact on the community, businesses and the ATO, the evidence gathered on these issues will not be examined as part of this report given the scope of this inquiry is limited to the 2018-19 reporting period.

## 2. Tax administration

- 2.1 This chapter explores the Australian Taxation Office's (ATO) achievements, and the steps it undertook to improve its administration of the tax system and taxpayers' experience over the 2018-19 reporting period, including through more robust compliance measures, and improvements in digitisation.
- 2.2 Evidence put before the Committee raised concerns about the ATO's resource allocation, complaint handling and processing timeliness and how it captures and reports this data. Witnesses told the Committee that some of this data was not captured in the 2018-19 annual report, which prevents the building of a clear and accurate picture of these issues and called for more granular data collection and reporting.

### Digitising and streamlining processes

- 2.3 The ATO administers revenue collection on behalf of the Australian Government, and the Goods and Services Tax on behalf of the states and territories. The ATO is also responsible for managing the superannuation system and is the custodian of the Australian Business Register. It also has purview of the charities sector, which includes some organisations that are self-evidently not meant to be captured by the Australian Charities and Not for Profit Commission.
- 2.4 Throughout the 2018-19 financial year, the ATO collected taxation to the value of approximately \$533 billion gross, or \$426 billion net, post refunds. This marked an increase of 7.4 per cent compared to the previous financial year.<sup>1</sup>

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<sup>1</sup> Australian Taxation Office, Submission 6:1, p. 1.

- 2.5 In addition to the tax collection, the Commissioner of Taxation (the Commissioner) highlighted a series of milestones that were delivered by the ATO over the 2018-19 reporting period. These included further steps towards the creation of a streamlined, integrated and data-driven future, as announced in the ATO Corporate Plan 2018-19. This included achievements in the realm of digital service delivery and compliance activities.
- 2.6 In particular, the Commissioner cited the implementation of 'major technology initiatives to streamline processes and facilitate engagement. This included the Online Services for Agents (OSfA), the extension of Single Touch Payroll (STP) for more businesses, and the modern and secure authenticated credential for business in myGovID.<sup>2</sup>

### **Online tax professional platforms**

- 2.7 In January 2019, the ATO released the OSfA, a secure system wherein tax professionals can access services and information and conduct transactions. The initiative is part of the ATO program of activities to streamline engagement with tax professionals and enable 'smoother, more functional service for tax professionals.'<sup>3</sup> The system won the 2019 AMY award, 'a utility campaign which focuses on the best in tools, apps and online services.'<sup>4</sup>
- 2.8 In addition, the Practitioner Lodgement Service (PLS) allows tax practitioners to electronically lodge tax returns. Although not a standalone product offered by the ATO, the PLS offers but 'a series of related Application Program Interfaces software vendors and digital providers', which enables tax practitioners to 'choose the practice management software solution that best meets their needs while ensuring they can continue to interact with the ATO electronically.'<sup>5</sup>
- 2.9 The ATO submitted to the Committee that the interactive service model delivered a number of productivity benefits, including quicker tax refund processing, improved data validation resulting in reduced surname and date

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<sup>2</sup> Australian Taxation Office, Submission 6, p. 3

<sup>3</sup> Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, Canberra, 31 July 2021, p. 12

<sup>4</sup> Australian Taxation Office, Submission 6, p. 10

<sup>5</sup> Australian Taxation Office, Submission 6, pp. 8-9

of birth mismatches by over 99 per cent since July 2018, and higher quality support for tax professionals.<sup>6</sup>

- 2.10 These online systems support approximately 25,000 registered and active tax agents and approximately 10,000 active, registered Business Activity Statement agents. The ATO acknowledged the ‘critical role’ tax practitioners have in ‘facilitating willing participation’ and influencing taxpayer compliance. Approximately 95 per cent of small businesses, 86 per cent of self-managed superannuation funds and 63 per cent of taxpayers choose to manage their tax and superannuation affairs through a tax practitioner.<sup>7</sup>

## Single Touch Payroll

- 2.11 Over the 2018-2019 period, the ATO deployed STP - a real-time reporting mechanism for PAYG withholding and superannuation<sup>8</sup> - that ‘streamlines reporting for employers and provides faster access to pre-filled data in tax time.’<sup>9</sup>
- 2.12 At 30 June 2019, 160,000 employers (both substantial and those with less than 20 employees) reported tax and superannuation information through STP.<sup>10</sup> And in turn, STP collected information to fill tax returns for around 8.1 million individuals.<sup>11</sup> The ATO told the Committee:

For the first time, the ATO can help protect an individual’s superannuation by reconciling what an employer reports to the ATO against how much has been paid to each super fund. Individuals can now look up on myGov how much their employer is contributing each pay day and call the ATO if they are concerned about missing amounts, knowing the ATO had the same information and can act decisively if it needs to.<sup>12</sup>

## Activity Statement Financial Processing project

- 2.13 The ATO reported that another of its digitisation activities over the period was the Activity Statement Financial Processing project, which the

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<sup>6</sup> Australian Taxation Office, Submission 6, p. 9

<sup>7</sup> Australian Taxation Office, Submission 6, p. 8

<sup>8</sup> Australian Taxation Office, Submission 6, p. 10

<sup>9</sup> Mr Jordan, Australian Taxation Office, *Committee Hansard*, Canberra, 31 July 2020, p. 12

<sup>10</sup> Australian Taxation Office, Commissioner of Taxation Annual Report 2018-19, p.14

<sup>11</sup> Australian Taxation Office, Commissioner of Taxation Annual Report 2018-19, p.iii

<sup>12</sup> Australian Taxation Office, Submission 6, p. 10

Commissioner described as ‘one of the biggest data migrations in the public sector,’ where multiple client accounting systems were merged into one.<sup>13</sup>

- 2.14 The Activity Statement Financial Processing project involves combining taxpayers’ income tax and activity statement accounts to allow them to more easily understand their outstanding tax obligations.

## **Greater tax compliance and the Tax Avoidance Taskforce**

- 2.15 The Committee heard that the ATO has built a robust tax compliance program and that such a program is ‘crucial to supporting community confidence in our tax system.’<sup>14</sup> The Committee also heard that there are strong held perceptions in the Australian community about taxation fairness, in particular about addressing the tax compliance of large corporate organisations.<sup>15</sup>
- 2.16 A key compliance achievement occurred in November 2018 with the ATO’s high profile settlement with BHP Group Ltd, resolving a long-standing dispute in relation to BHP’s Singapore marketing hub. Marketing hubs typically provide marketing and sales functions for goods or commodities that are produced in Australia and sold offshore.<sup>16</sup>
- 2.17 BHP paid the ATO \$529 million cash, and ‘restructured its marketing hub so that all profits from the hub’s sale of Australia commodities will be taxable in Australia.’<sup>17</sup> The ATO said that this was a ‘landmark’ and that this would ‘send a strong signal to other industry participants.’<sup>18</sup>
- 2.18 The settlement was the outcome of compliance activities undertaken by the Tax Avoidance Taskforce (the Taskforce). The Taskforce was established to ensure large corporations and wealthy individuals pay the right amount of tax. The Taskforce focuses on the top 1000 public and multinational

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<sup>13</sup> Australian Taxation Office, Submission 3, p. 10

<sup>14</sup> Australian Taxation Office, Submission 6, p. 3

<sup>15</sup> Inspector-General of Taxation Office, Submission 1, p. 42

<sup>16</sup> ATO media release *Marketing hub disputes* 19 November 2018 <https://www.ato.gov.au/Media-centre/Media-releases/Marketing-hub-disputes/> viewed on 10 May 2021

<sup>17</sup> Australian Taxation Office, Submission 6, p. 6

<sup>18</sup> ATO, ‘Marketing hub disputes’, < <https://www.ato.gov.au/media-centre/media-releases/marketing-hub-disputes/>> viewed on 24 May 2021



businesses and the top 500 privately owned groups, which together are responsible for generating more than two thirds of all corporate tax.

- 2.19 On 1 July 2016, the Taskforce received \$678 million over four years, and an additional \$1 billion in the 2019-20 federal budget to extend its operation to 2022-23. The ATO reported that \$13.9 billion in tax liability had been raised and \$8.2 billion collected between the Taskforce's inception in July 2016 to June 2019<sup>19</sup> and that 213 reviews had been completed.<sup>20</sup>
- 2.20 However, the Committee understands from the evidence that it is not only the Taskforce that the ATO uses to increase and encourage compliance. It is also supported by a range of legislation and rules, including:
- the Multinational Anti Avoidance Law (MAAL), which focusses on ensuring that multinationals pay the right amount of tax on profits earned in Australia;
  - the Diverted Profits Tax (DPT), which ensures that taxes paid by significant global entities (SGEs) accurately reflect their economic activities; and
  - the anti-hybrid mismatch rules, which are designed to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits.<sup>21</sup>
- 2.21 However, evidence received by the Committee indicates there remains an element of tax administration mistrust amongst the Australian community, despite the ATO's actions to hold large corporations and wealthy individuals to account. The Committee heard an articulation of the issues, and some suggestions for the way forward.
- 2.22 Mr Ashley King of TaxResolve told the Committee that the ATO was 'one of the best administrations in terms of compliance levels in Australia' but suggested publishing 'the number of evasion findings or cases' on a scorecard-like system to increase visibility and build public confidence about the ATO's compliance activities.<sup>22</sup>

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<sup>19</sup> Australian Taxation Office, 'Tax Avoidance Taskforce highlights 2018-19', <<https://www.ato.gov.au/General/Tax-avoidance-taskforce/Tax-Avoidance-Taskforce-highlights-2018-19/>>, viewed on 3 June 2021

<sup>20</sup> Australian Taxation Office, Submission 6, p. 5

<sup>21</sup> Australian Taxation Office, Submission 6, p. 5

<sup>22</sup> Mr Ashley King, TaxResolve, Principal, *Committee Hansard*, Canberra, 19 March 2021, p. 4

- 2.23 The Inspector-General of Taxation and Taxation Ombudsman (IGTO), established under the *Inspector-General of Taxation Act 2003* (Cth), undertakes reviews and investigations to identify systemic issues in the administration of tax law. In its submission to the committee it pointed to the 'lack of transparency in understanding the ATO's tax position as administered, [and is likely to have] follow-on impacts regarding taxpayers' perceptions of trust and confidence in the ATO.'<sup>23</sup>
- 2.24 The IGTO suggested that 'since large corporate groups are considered, by many, to be a benchmark for tax compliance and influence the willingness of other markets to voluntarily comply, increasing the transparency in the reporting of such performance measures would only improve taxpayer compliance and overall confidence in the administration of the tax system.'<sup>24</sup>
- 2.25 Self Employed Australia directed the Committee's attention toward compliance measures taken in the United States of America (US) and recommended these as a model of reform:
- The US reforms detailed here offer a model, even a template, for tax administration reform in Australia...Of course, the US and Australia have different institutions and circumstances, so it's not a matter of simply 'plonking' what has been done in the US on to Australia. Rather, it's a matter of identifying the principles and practices of the IRS reforms to see what, if and how those principles and practices could be applied to the Australian setting.<sup>25</sup>
- 2.26 In 2006, a taxation law was passed in the US to provide greater protection to whistle-blowers, and to assist the Internal Revenue Service (IRS) with its compliance activities. The legislation provides 'financial incentives to whistle-blowers who expose fraud of up to 30 per cent of the revenue raised as a result of their whistleblowing.' This resulted in the IRS raising \$US13.7 billion in extra tax revenue in 2017.<sup>26</sup>
- 2.27 Self Employed Australia suggested adopting and adapting the system to the Australian taxation system, to assist the ATO with its compliance activities.

## Making tax easier - mechanisms to assist taxpayers

<sup>23</sup> Inspector-General of Taxation Office, Submission 1, p. 27

<sup>24</sup> Inspector-General of Taxation Office, Submission 1, p. 42

<sup>25</sup> Self-Employed Australia, Submission 5, p. 3

<sup>26</sup> Self-Employed Australia, Submission 5:1, p. 1

## Dispute resolution initiatives

- 2.28 The Committee is aware that the ATO has implemented a series of initiatives to assist taxpayers with dispute prevention and resolution, including through the introduction of the Small Business Program Pilot, the Dispute Assist Service and the Small Business Concierge Service.

### *Small Business Program Pilot*

- 2.29 On 1 July 2018, the ATO launched the 12-month Small Business Pilot Program to reduce the likelihood and cost of disputes. The program, which provides an additional independent review service to eligible small businesses disputing income tax audits, was extended until 31 March 2021. The Office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomed the extension of the independent review.<sup>27</sup>

- 2.30 As at June 2020, the ATO had completed 153 reviews, 14 of which resulted in the taxpayer's view being supported in full, and 34 supported in part.<sup>28</sup>

### *Dispute Assist Service*

- 2.31 The ATO, through the Dispute Assist Service, offers small business taxpayers an independent review prior to finalising their income tax audits and provides in-house facilitation and dispute assistance services.<sup>29</sup>
- 2.32 Between 1 July 2018 and 30 June 2020, the Dispute Assist Service received 584 requests - 60 per cent from individual taxpayers and 37 per cent from small businesses. Among these, 344 were found not eligible for the service or no longer required the service, and 248 dispute assist cases were finalised.<sup>30</sup>

### *Small Business Concierge Service*

- 2.33 On 1 March 2019, the ASBFEO, in collaboration with the ATO, established a Small Business Concierge Service 'to assist small businesses whose tax

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<sup>27</sup> Australian Small Business and Family Enterprise Ombudsman, Submission 4, p. 1

<sup>28</sup> Australian Taxation Office, Submission 6:1, p. 4

<sup>29</sup> Australian Taxation Office, Submission 6, p. 7

<sup>30</sup> Australian Taxation Office, Submission 6.1, p. 4

dispute has been rejected by the ATO' on options to appeal the decision to the Administrative Appeals Tribunal.<sup>31</sup>

## **Other taxpayer support initiatives**

2.34 The ASBFEO told the Committee it welcomed a series of ATO initiatives to support the small business taxpayer community, declaring:

the ATO has implemented a wide range of concessions and practical support measures to assist small businesses, such as automatic deferrals of lodgements, extended payment dates, remission of general interest charges and an overarching ability to negotiate further concessions on a case-by-case basis.<sup>32</sup>

### ***Pay As You Go Instalment***

2.35 The ATO's flexible payment arrangement is another of its support initiatives designed to assist taxpayers with their tax liabilities. This arrangement allows small businesses to defer payment of the principal of their Pay As You Go Instalment (PAYGI) income tax for up to 22 months without incurring any late payment penalties.

2.36 These arrangements are in accordance with the ATO practice statement PSLA 2011/14. The Commissioner has the power to provide further flexibility for taxpayers experiencing financial hardship and difficulty meeting their current and ongoing tax liabilities. For example, low interest terms can be applied.<sup>33</sup>

2.37 The ATO also reported that in the 2018-19 period, the PAYGI assisted taxpayers to pay their liabilities on time and recorded a 0.4 percentage point increase in the proportion of liabilities paid on time compared to the previous year.

### ***Communication and education with small businesses***

2.38 The ATO further explained to the committee how its engagement with tax professionals, industry representatives and government agencies facilitates dialogue and reduces complexity in tax administration, to enable better compliance. In particular, the ATO acknowledged the important contribution to the economy of small and medium enterprises (SMEs), and

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<sup>31</sup> Australian Small Business and Family Enterprise Ombudsman, Submission 4, p. 1

<sup>32</sup> Australian Small Business and Family Enterprise Ombudsman, Submission 4, p. 2

<sup>33</sup> Australian Taxation Office, Submission 6:1, p. 86

described how it ‘engages with, educates, assists and guides taxpayers through contemporary products and tailored services to continually improve the small business experience.’<sup>34</sup>

- 2.39 The ATO provided details of its approach to communication and education with SMEs, advising that it was underpinned by the ‘Small Business Newsroom and the New-to-business-essentials email services’, 50 education products delivered via workshops and webinars, coaching kits, and set payment reminders via the ATO application.<sup>35</sup>
- 2.40 However, the University of New South Wales (UNSW) Tax Clinic has found that between 30 to 40 per cent of Australian taxpayers across all socio-economic groups have unmet needs for independent tax advice. The UNSW Tax Clinic told the Committee that small businesses and sole traders and microbusinesses, in particular, are faced with both financial literacy issues and tax literacy issues.<sup>36</sup>
- 2.41 The UNSW Tax Clinic anticipates the figure to continue to grow as a result of recent economic shocks, including the COVID-19 pandemic and a series of natural disasters, from bushfires, to floods and droughts.<sup>37</sup>

## Data collection and reporting

### Is there adequate resourcing?

- 2.42 The IGTO noted in its submission to the Committee that while the ATO has had its functions extended over time, its workforce has experienced the opposite fate. The agency’s 2018-19 annual report noted a reduction in the number of employees, both ongoing and non-ongoing, of approximately six per cent over the reporting period.<sup>38</sup>
- 2.43 On 1 July 2018, the ATO took over the management of compassionate release of superannuation, previously administered by the then Department of Human Services. It is unclear what volume of additional work this has

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<sup>34</sup> Australian Taxation Office, Submission 6, p. 6

<sup>35</sup> Australian Taxation Office, Submission 6, p. 6

<sup>36</sup> Dr Ann Kayis-Kumar, Tax Clinic Director, UNSW Tax Clinic, *Committee Hansard*, Canberra, 26 June 2021, p. 1

<sup>37</sup> University of New South Wales (UNSW) Tax Clinic, Submission 3, p. 2

<sup>38</sup> Inspector-General of Taxation Office, Submission 1, p. 9. The reduction includes employees from the Tax Practitioners’ Board and the Australian Charities and Not-for-Profits Commission

placed on the ATO as the 2018-19 annual report does not provide the number of applications received for the compassionate release of superannuation.<sup>39</sup>

- 2.44 Further, the IGTO noted the lack of detailed data included in the 2018-19 annual report to accurately assess the 'sufficiency of resources for the ATO to deliver services to the community' and the adequacy of 'ATO resourcing allocation' to undertake its new functions.<sup>40</sup>
- 2.45 The IGTO suggested that the level and allocation of the ATO's resourcing may be impacting on its performance and 'community dissatisfaction and complaints.'<sup>41</sup> However, the IGTO's true assessment of this was limited due to the absence of data on resourcing allocation.
- 2.46 The Tax and Transfer Policy Institute noted to the Committee that the 2018-19 annual report did not explain how the ATO Tax Avoidance Taskforce resourcing was linked to the revenue outcome of the Taskforce.<sup>42</sup>
- 2.47 The Tax and Transfer Policy Institute commented that the ATO's reporting was confusing and called for more transparency and clarity in the reporting of resourcing for specific activities and numbers, and the associated revenue and other outcomes of that resourcing.<sup>43</sup>
- 2.48 Similarly, in oral evidence to the committee, Ms Karen Payne, the IGTO, noted that the 2018-19 annual report did 'not include details on how the ATO resources are committed to managing complaints.' Ms Payne added:

we've identified a number of areas where ATO resourcing allocation may be impeding an efficient delivery of ATO services, leading to community dissatisfaction, complaints and concerns being raised, including with the IGTO in some cases...The Australian Taxation Office is one of the largest employers within the Australian Public Service and one of the largest service delivery agencies of the Commonwealth of Australia. Better insight on areas where ATO resources are deployed for improved transparency, accountability and oversight would benefit parliament, its committees and the broader tax and business community.<sup>44</sup>

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<sup>39</sup> Inspector-General of Taxation Office, Submission 1, p. 33

<sup>40</sup> Inspector-General of Taxation Office, Submission 1, p. 10

<sup>41</sup> Inspector-General of Taxation Office, Submission 1, p. 10

<sup>42</sup> Tax and Transfer Policy Institute, Submission 2, p. 2

<sup>43</sup> Tax and Transfer Policy Institute, Submission 2, pp. 2-3

<sup>44</sup> *Committee Hansard*, Canberra, 31 July 2021, pp. 6-7

- 2.49 The IGTO recommended for the Committee's consideration that the ATO provide more granularity in its reporting of resourcing, both by business areas and job family, to increase transparency.<sup>45</sup>

### **The ATO's approach to 'complaints'**

- 2.50 The ATO reported that in the 2018-19 period it recorded its lowest level of complaints received—less than 20,000—since 2009.<sup>46</sup> Further, the ATO reported that 88 per cent of the complaints were resolved within 15 business days (or within the date negotiated), which exceeded their target of 85 per cent.<sup>47</sup>
- 2.51 However, the IGTO noted in its submission to the committee that the ATO itself acknowledges that the categories of complaint issues have changed in the reporting period, so could not be compared to the 2017-18 annual report complaint figures.<sup>48</sup>
- 2.52 The IGTO advised the Committee that the 2018-19 annual report did not capture data on the number of feedback and compliments received, making it difficult to adequately assess the level of clients' satisfaction.<sup>49</sup>
- 2.53 The IGTO noted that the ATO does not always record complaints that are successfully resolved during the first telephone call as 'complaints'.<sup>50</sup> Further, the IGTO expressed concern that where a complainant reported having lodged a complaint with the ATO, the ATO treated the complaint as 'feedback'.<sup>51</sup>
- 2.54 The IGTO further remarked that the ATO has not adopted the Australian Standard's (the Standard) definition of a 'complaint'<sup>52</sup>, which has been developed as best practice guidance to ensure consistency in complaint management across organisations in Australia and New Zealand. Instead,

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<sup>45</sup> Inspector-General of Taxation Office, Submission 1, p. 10

<sup>46</sup> *Commissioner of Taxation Annual Report 2018-19*, p. II

<sup>47</sup> *Commissioner of Taxation Annual Report 2018-19*, p. 68

<sup>48</sup> Inspector-General of Taxation Office, Submission 1, p. 14

<sup>49</sup> Inspector-General of Taxation Office, Submission 1, p. 16

<sup>50</sup> Inspector-General of Taxation Office, Submission 1, p. 15

<sup>51</sup> Inspector-General of Taxation Office, Submission 1, p. 16

<sup>52</sup> AS/NZS 10002:2014 Guidelines for complaint management in organisations

the IGTO believes that the approach that the ATO takes to the definition of a 'complaint' is more akin to a 'dispute' as defined in the Standard.<sup>53</sup>

- 2.55 The IGTO believes the danger with this approach is that 'there may be risks that complaints as defined in the Standard are under-reported and comparisons of complaints handling service across agencies are made more difficult.'<sup>54</sup>
- 2.56 The IGTO told the Committee that while the Standard is not legally binding, it 'considers that adopting the Standard promotes consistency and credibility in the ATO's management of complaints.'<sup>55</sup>
- 2.57 The IGTO also noted that the ATO was yet to report on complaint cases against the principles of the Taxpayers' Charter, which the ATO had previously agreed to, further to an IGTO review.<sup>56</sup>
- 2.58 The IGTO raised the issue of public awareness of the complaint mechanisms available, which had been brought to light through a survey of mainly professional tax advisers conducted in July 2020 via an online webinar. While the sample size was not given to the Committee, the IGTO noted that 67 per cent of the group reported not being aware of the channel for lodging formal complaints with the ATO, and 72 per cent were not aware of the Taxation Ombudsman Complaints Service.<sup>57</sup>

### ***Capturing complaint resolution timeliness***

- 2.59 In addition, the IGTO commented that the ATO did not differentiate between the complaints that were resolved within 15 business days from the time they were first raised and those whose timeframe had been adjusted in agreement with the complainants.<sup>58</sup>
- 2.60 The IGTO pointed to an Australian National Audit Office (ANAO) report<sup>59</sup> that recommended that the ATO capture the complaint resolution timeliness

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<sup>53</sup> Inspector-General of Taxation Office, Submission 1, p 14

<sup>54</sup> Inspector-General of Taxation Office, Submission 1, p. 14

<sup>55</sup> Inspector-General of Taxation Office, Submission 1, p. 16

<sup>56</sup> Inspector-General of Taxation and Taxation Ombudsman, *Review into Taxpayers' Charter and Taxpayer Protections*, 2016

<sup>57</sup> Inspector-General of Taxation Office, Submission 1:1, p. 2

<sup>58</sup> Inspector-General of Taxation Office, Submission 1, p. 17

<sup>59</sup> Australian National Audit Office, *Management of Complaints and Other Feedback Australian Taxation Office*, 2014



with adjusted and non-adjusted timeframes separately to increase transparency.<sup>60</sup>

- 2.61 The IGTO added that the ATO had not yet reported the two sets of data separately in their annual reports, despite agreement to the ANAO's 2014 recommendation.<sup>61</sup>

## **Tax performance – community confidence in tax collection**

- 2.62 The Committee was told that at the heart of 'tax performance' is the community's confidence in the tax administrator to reduce the tax gap and provide tax and superannuation assurance.<sup>62</sup> The Committee heard that the ATO annual report also lacked reporting data on this key performance indicator.

- 2.63 Tax performance is measured by a series of markers, including 'tax gaps' and 'tax assured' indicators, and the 'correlation between resourcing and funding.'<sup>63</sup>

- 2.64 A 'tax gap' is the difference between the amount of tax expected to be collected and the actual amount collected. As the IGTO put it – 'in essence, tax gaps measure the level of tax non-performance.'<sup>64</sup>

- 2.65 'Tax assured', also referred to as 'justified trust', refers to an indicator that measures the level of confidence in the tax system that the amount of tax collected is correct. This marker assesses the overall health of the taxation system.

The ATO reported its tax assured for the first time in the FY19 Annual Report, with an estimated total tax of 45.6% being assured for FY17, which is a decrease from the revised FY16 estimate of 47.4%.<sup>65</sup>

- 2.66 The IGTO noted in its evidence that 'most tax gap estimates are not available for the FY18 and FY19 years due to data lags.' The IGTO acknowledged the 'relative infancy of these performance measures and the potential sensitivity

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<sup>60</sup> Inspector-General of Taxation Office, Submission 1, p. 12

<sup>61</sup> Inspector-General of Taxation Office, Submission 1, p. 17

<sup>62</sup> Inspector-General of Taxation Office, Submission 1, p. 37

<sup>63</sup> Inspector-General of Taxation Office, Submission 1, p. 39

<sup>64</sup> Inspector-General of Taxation Office, Submission 1, p. 37

<sup>65</sup> Inspector-General of Taxation Office, Submission 1, p. 38

concerns in publishing such information,' but asserted the need for the ATO to provide 'an insight into how it manages its tax performance activities.'<sup>66</sup>

2.67 The ATO advised the Committee that that latest published net tax gap was 6.4 per cent, equating to a tax performance ratio of 93.6 per cent.<sup>67</sup> Mr Jeremy Hirschhorn, Second Commissioner of Taxation at the ATO, indicated that the tax gap represented about \$30 billion.<sup>68</sup>

2.68 The ATO told the Committee:

we know that more than 90 per cent of income tax paid by high wealth private groups is paid voluntarily or with little intervention from the ATO, and we see that the vast majority of high wealth private groups pay the right amount of tax.<sup>69</sup>

2.69 In its evidence Self-Employed Australia drew the Committee's attention to the cost of collecting tax in the US with Australia, and found that while the ratio in the US was lower, resulting in a leaner tax administration, the ATO was, in 2016, at least three times less efficient.<sup>70</sup>

## Improving general timeliness

2.70 The IGTO drew the Committee's attention to 'a number of areas where the ATO resourcing allocation may be impeding efficient delivery of ATO services leading to community dissatisfaction and complaints or concerns being raised, including with the IGTO in certain cases.' The key areas raised were:

- longer timeframes for complaint resolution and for issuing binding advice; and
- a backlog of several thousand objections.<sup>71</sup>

2.71 As referred to earlier, the ATO reported 88 per cent of complaints being resolved within 15 business days, exceeding the ATO's performance benchmark at 85 per

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<sup>66</sup> Inspector-General of Taxation Office, Submission 1, p. 37

<sup>67</sup> Australian Taxation Office, Submission 6:1, p. 3

<sup>68</sup> *Committee Hansard*, Canberra, 31 July 2021, p. 20

<sup>69</sup> Australian Taxation Office, Submission 6, p. 11

<sup>70</sup> Self-Employed Australia, Submission 5, p. 10

<sup>71</sup> Inspector-General of Taxation Office, Submission 1, p. 10

cent.<sup>72</sup> However, the IGTO noted that the number of complaints resolved within the timeframe had decreased from 93 per cent in 2016-17, to 88 per cent in 2018-19, and questioned whether this was correlated to the increased functions of the ATO and the decrease in resourcing.<sup>73</sup>

2.72 The 2018-19 annual report indicated an increase in the number of objections compared to previous reporting periods. Objections are where a taxpayer objects to a decision made by the ATO. Sometimes objections are made by the taxpayer about their own self-assessed returns to amend their declaration of income and expenses.

2.73 The IGTO received complaints about the timeliness of objections being actioned, seemingly linked to the ATO's backlog of several thousand objection cases,<sup>74</sup> and possibly a result of the decrease in resourcing and resource allocation.

2.74 The IGTO commented:

The taxpayer's right of review is one of the key pillars of the rule of law and tax system. The objections framework continues to be a vital part of tax administration as it enables a taxpayer to seek an internal review of an ATO decision.<sup>75</sup>

2.75 The IGTO also commented on the decline in timeliness of the provision of binding advice, which impacts on taxpayers' certainty and increases risks of adverse findings by the ATO. The IGTO observed that a 10 per cent decrease in resourcing in the Tax Counsel Network where the ATO's Public Advice and Guidance Centre is, in the 2019 financial year, may have resulted in extended timeframes to finalise public rulings.<sup>76</sup>

## Committee comment

2.76 The Committee was pleased to hear about the ATO's initiatives to increase digitisation to facilitate and streamline engagement with taxpayers and tax professionals, in particular. The Committee notes the mixed reaction from tax agents about these improvements and enhancements, and encourages

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<sup>72</sup> Inspector-General of Taxation Office, Submission 1, p. 15

<sup>73</sup> Inspector-General of Taxation Office, Submission 1, p. 17

<sup>74</sup> Inspector-General of Taxation Office, Submission 1, p. 31

<sup>75</sup> Inspector-General of Taxation Office, Submission 1, p. 29

<sup>76</sup> Inspector-General of Taxation Office, Submission 1, pp. 26-28

the ATO to continue efforts to identify stakeholders' needs and adjust processes accordingly.

- 2.77 The Committee welcomes the ATO's report on compliance activities, especially in relation to the Tax Avoidance Taskforce and congratulates the ATO for the resolution of high-profile disputes. The Committee feels that more communication is needed from the ATO to the community to build public confidence that large corporations and wealthy individuals are being held to account. The Committee also encourages compliance from these groups.
- 2.78 The Committee acknowledges the positive impact of the mechanisms to engage and assist taxpayers with their tax disputes and liabilities. However, the Committee feels, in the view of the evidence collected, that more education is needed to ensure that taxpayers understand the complaint and complaint resolution processes.
- 2.79 The Committee finds that limited data collection and reporting in the areas of resourcing, complaints, including for complaint resolution, and tax performance meant that the 2018-19 annual report drew an incomplete picture of the situation. The Committee heard and supports calls for the ATO to increase transparency and better report on the allocation of funding and resources, including by segmenting resourcing data and matching it to activities and outcomes.
- 2.80 The Committee is further concerned by the IGTO's observations that potentially inadequate allocation of resources might be impacting on the ATO's service delivery and resulting in increasing taxpayer dissatisfaction. The Committee is of the view that it is important to have current, accurate and adequate data to make informed decisions and ensure the accountability and integrity of the tax administration.
- 2.81 The Committee notes that the ATO's definition of a 'complaint' is not aligned with the definition in the Australian and New Zealand Standard AS/NZS 10002:2014 Guidelines for complaint management in organisations to adequately and consistently capture complaints. The Committee agrees that this may impact on transparency and accurate reporting and cause dissatisfaction among taxpayers when what they see as complaint is treated as feedback. In addition, the Committee notes that this causes discrepancies when comparing data with other government agencies.

- 2.82 The Australian Business Register (ABR) stores business and organisation details to allow the community and government to verify business information.<sup>77</sup>
- 2.83 The ABR was established under the *A New Tax System (Australian Business Number) Act 1999* (Cth), which stipulates that the Registrar of the ABR is responsible for its administration including registration and maintenance of Australian Business Numbers (ABNs) and a range of activities to maintain the ABR integrity. From 2015-16 onwards, the ABR annual report was merged into the ATO's annual report. The Registrar of the ABR is also the Registrar of the Australian Business Registry Services and the Commissioner of Taxation, Chris Jordan AO.<sup>78</sup>
- 2.84 When businesses and other organisations, including government bodies and non-profit organisations register for an ABN, their identity information is stored in the ABR. An agency can then use the data for a range of purposes including:
- service delivery – promoting new government services or grants, informing legislative changes, licensing of business activities and identifying and supporting new businesses
  - procurement – validating supplier's ABNs, identifying local suppliers and trades people for council initiatives and conflicts of interest checks
  - planning and economic development – identifying changes in business growth and establishing future strategic plans to meet the needs of community growth and change
  - compliance – validation of business details, risk profiling, work planning and site visits
  - disaster management – identifying businesses, in a disaster area, that have been affected and those that can provide support.<sup>79</sup>
- 2.85 Given the important role the Register plays, the administration of the ABR has been subject to previous scrutiny, including, to a limited extent, by this Committee in 2019 (who noted that there was limited comment from participants in that inquiry on the administration of the ABR per se) and three audits by the Australian National Audit Office, the latest being a report into the Administration of the Australian Business Register in 2014, a

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<sup>77</sup> <https://www.abr.gov.au/who-we-are/our-work/abr-explained>, accessed 8 October 2021

<sup>78</sup> <https://www.abr.gov.au/who-we-are/our-work/abr-explained>, accessed 8 October 2021

<sup>79</sup> <https://www.abr.gov.au/media-centre/fact-sheets/australinan-business-register>, accessed 8 October 2021

Gateway Review<sup>10</sup> commissioned by the (then) Department of Finance and Deregulation on the development and implementation of the national business names registration scheme; and a review by Industry of the Australian Business Account. All reviews found significant shortcomings.

- 2.86 The Committee notes the ABR is now controlled and managed by the ATO. These registries are significant assets. Arguably, the registries are expensive, badly organised, housed on legacy technology that is in desperate need of replacement, present material cyber security issues, are hard to access, hard to analyse and enable levels of fraud in Australian society that just should not be possible in the 21st century.
- 2.87 The Committee notes with significant interest that the Australian Government has recently funded and announced the full implementation of the Modernising Business Registers (MBR) program. This program will establish the new Australian Business Registry Services (ABRS) and streamline how a business registers, views and maintains its business information with government.<sup>80</sup> The ATO recently told the Committee that this reform program, including the introduction of new legislation to modernise the collection of data, will assist businesses and companies in Australia to better interact with government by giving their data once only, and that it will also provide the government with a framework to collect better quality data.
- 2.88 The Committee is concerned that it has been a number of years since the ATO first introduced the idea of the activity or tax gap. It was initially unable to specify what it believed that number to be in the Australian economy. Some estimates put it as high as \$50 billion a year. The Committee is of the view that the ATO should publish a report into the economic activity gap and its analysis on an annual basis.
- 2.89 The Committee has been made aware that a big problem faced by researchers is that government data sets are not consistent in their definition or format. Making collection, synthesis and analysis unnecessarily difficult.

## **Recommendation 1**

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- 2.90 The Committee recommends that the Australian Taxation Office increases its levels of transparency and communication about its compliance activities to better foster community trust and confidence in tax administration in Australia.**

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<sup>80</sup> <https://www.ato.gov.au/general/gen/modernising-business-registers/>, accessed 19 October 2021

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## Recommendation 2

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- 2.91 The Committee recommends that the Australian Taxation Office raises awareness and educates taxpayers and tax professionals about its products, regulations, and the complaint process to minimise unmet needs for independent tax advice and better protect taxpayers.

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## Recommendation 3

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- 2.92 The Committee recommends that the Australian Taxation Office records in its annual reports a breakdown of resourcing both by business areas and job family to increase transparency in the allocation of resources and accountability for resources and funding allocated to special programs and taskforces, and that resources are matched with activities and outcomes.

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## Recommendation 4

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- 2.93 The Committee recommends that the Australian Taxation Office adopt the definition of 'complaints' as per the Australian and New Zealand Standard AS/NZS 10002:2014 Guidelines for complaint management in organisations, to adequately and consistently capture complaints data.

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## Recommendation 5

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- 2.94 The Committee supports the Inspector-General of Taxation and Taxation Ombudsman's Recommendation 1(d) from the *Review into Taxpayers' Charter* in 2016 and recommends that the Australian Taxation Office categorises complaint cases in line with the principles of the Taxpayers' Charter.

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## Recommendation 6

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- 2.95 The Committee recommends that the Australian Taxation Office provides more detailed reporting for each financial year to reflect:
- the number of complaints, feedback and compliments received; and
  - a differentiated reporting of complaints resolved within the 15 business days target timeframe, and those resolved within the adjusted timeframe negotiating with the taxpayer.

## **Recommendation 7**

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- 2.96** The Committee commends the Australian Tax Office for work already commenced on modernising the Australian Business Register. The Committee urges the Federal Government to consider the use of blockchain and other leading technologies to optimise the use of the registry, and minimise ongoing costs of maintaining the Registry. Such technical deployments should also future proof the work currently being undertaken by the Australian Taxation Office.

## **Recommendation 8**

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- 2.97** The Committee recommends that the Australian Tax Office publish a report into the economic activity gap and its analysis on an annual basis.

## **Recommendation 9**

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- 2.98** The Committee recommends that the Australian Government establish a cross departmental team with the intention of drawing up Australian standards for data collection, definition and formatting to further enable the open data objectives of the Australian Government.

## **Recommendation 10**

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- 2.99** The Committee recommends that the Australian Charities and Not for Profit Commission review its regulatory burden on all organisations but especially those reporting to more than one regulatory body.



## 3. Modernising the Australian Tax System

- 3.1 The Inspector-General of Taxation and Taxation Ombudsman (IGTO) described to the Committee that there exists a legislative gap in Australia that could be addressed to achieve a fairer and more balanced tax system.
- 3.2 This chapter examines how those gaps result in only limited taxpayer protection, and what more can be done to improve this, including further enshrining in law the rights of the Australian taxpayer.
- 3.3 This chapter also explores the mechanisms available to assist taxpayers understand and exercise their rights, including in relation to tax debt and liabilities, the services offered by Tax Clinics and the effectiveness on the provision of advice and guidance by the Australian Taxation Office (ATO).

### Debt liability and recovery

#### Existing tax laws and practice in Australia

- 3.4 In Australia when the ATO has formed the opinion that a debt exists, it issues a notice of assessment that gives it the power to collect the debt. The debt stands payable even if disputed by the taxpayer, and is being challenged in Administrative Appeals Tribunal (AAT) or a federal court.
- 3.5 Sections 14ZZM and 14ZZR of the *Taxation Administration Act 1953* (Cth) (TAA 1953) provide that the ATO has the power to collect a disputed debt, before appeals and objections have been heard or decided.
- 3.6 The ATO told the Committee that several practice statements had been published about the use of the ATO legislative debt recovery power, including in the context of objections and audits. These include the Law

Administration Practice Statement (PS LA) 2011/4 Collection and recovery of disputed debts, and the PS LA 2011/18 Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts.<sup>1</sup>

- 3.7 The ATO added that the practice was ‘generally to not enforce payments while a debt was subject to a review, dispute or objection,’ and that when payment was being enforced it was ‘based on a careful risk assessment’ on the likelihood of the debt standing as recoverable once the dispute has been finalised.<sup>2</sup>
- 3.8 In comparison, in the United States of America (US), Canada, New Zealand and the United Kingdom (UK), the tax authorities cannot collect a disputed tax debt until the dispute has been resolved. However, legislative provisions exist in those jurisdictions that enable collection of disputed debt when there is a risk of debt recovery, such as in cases of tax avoidance for example.
- 3.9 Self-Employed Australia told the Committee that the US Internal Revenue Service (IRS) cannot collect a disputed tax debt until all appeals have been exhausted, and that the US has a dedicated Tax Court that adequately deals with such disputes.<sup>3</sup> Mr Ken Phillips, Executive Director at Self-Employed Australia, commented that the UK had similar mechanisms and processes.<sup>4</sup>

### Shifting the onus of proof and enhancing procedural fairness

- 3.10 Under sections 14ZZK and 14ZZO of the TAA 1953, the onus of proof rests with the taxpayer once the ATO has determined that a tax liability applies. TaxResolve raised their concerns with the Committee about the protection of taxpayers’ rights in this regard, and specific to the incidence of fraud and evasion.
- 3.11 TaxResolve explained that taxpayers must disprove the findings from the Commissioner of Taxation (the Commissioner) for each item of income or deduction in dispute and each applicable tax return. TaxResolve commented that:

This can be a very challenging task that is very unfair to the taxpayer, particularly when the tax year ended many years prior and documentary and

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<sup>1</sup> Australian Taxation Office, Submission 6:1, p. 90

<sup>2</sup> Australian Taxation Office, Submission 6:1, p. 90

<sup>3</sup> Self-Employed Australia, Submission 5:1, p. 1

<sup>4</sup> *Committee Hansard*, Canberra, 26 June 2020, p. 12

other evidence has not been kept and is very difficult to locate. The burden of proof in these cases always sits with the taxpayer.<sup>5</sup>

3.12 Self-Employed Australia drew the Committee's attention to the 1998 reform of the US tax system (the 1998 US reform), and advised that it consisted, in part, of shifting the onus of proof from the taxpayer to the tax administration, adding that the reform met bipartisan support and rebalanced taxpayers' rights.<sup>6</sup>

3.13 In 2016, the then Standing Committee on Tax and Revenue, as part of the *Inquiry into Tax Disputes*, inquired into this legislative impediment and recommended that a change be made to:

place the burden of proof on the Australian Taxation Office in relation to allegations of fraud and evasion after a certain period has elapsed. The change should be harmonised with the record keeping requirements.<sup>7</sup>

3.14 The recommendation was not supported by the Government of the day.

3.15 TaxResolve also expressed concerns about the procedural fairness afforded to the Australian taxpayer. It highlighted the absence of a statutory time limit on the age of the evidence requested by the ATO after the issuance of an assessment, for cases involving fraud or evasion. It recommended for the Committee's consideration the amendment of section 170 of the *Income Tax Assessment Act 1936* (Cth) to reduce the statutory timeframe to 10 years for these cases.<sup>8</sup>

3.16 Similarly, the IGTO commented on this lack of a statutory timeframe and described it as a 'potential gap' in Australia's legislation. The IGTO looked to the 'Right to Finality' in the US tax system, where the IRS can collect taxes up to a limit of 10 years after the assessment date. The IGTO explained:

By limiting the time in which the IRS can collect debt in legislation, taxpayers in the USA are provided with assurance against later recovery actions when documentary evidence may no longer have been kept making it harder for the taxpayer to properly dispute or challenge the revenue authority's claims for debt. This approach differs to that in Australia, where the statute of limitations

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<sup>5</sup> TaxResolve, Submission 8, p. 3

<sup>6</sup> Self-Employed Australia, Submission 5, p. 19

<sup>7</sup> Standing Committee on Tax and Revenue, *Tax Disputes*, 2015, p. 36

<sup>8</sup> TaxResolve, Submission 8, p. 10

(usually six years) does not apply to the recovery of tax debts where an assessment has been raised within the appropriate timeframe.<sup>9</sup>

3.17 TaxResolve further stressed the discrepancy between the ATO's administration of fraud and tax evasion cases to that of tax avoidance, and provided a series of recommendations to improve transparency, taxpayer engagement and procedural fairness, including:

- informing taxpayers of concerns prior to a determination being made;
- allowing them to provide a submission to address those concerns early and to participate to discussion panels;
- having the ATO panel chaired by an Officer of the Deputy Commissioner level or higher;
- appointing officers at a senior executive level to make determinations of fraud and tax evasion; and
- undertaking a revision to the ATO's Practice Statement on Dispute Resolution.<sup>10</sup>

### **ATO interest rates causing hardship**

3.18 Evidence provided to the Committee suggests that the above market interest rates the ATO charges for loans it has granted to taxpayers to assist them to repay tax debt may in fact increase taxpayers' hardship.

3.19 Self-Employed Australia submitted to the Committee that the ATO charges seven per cent more in interest than the Australian Government itself pays on its debts. It noted that one of the provisions of the 1998 US reform is the prohibition on the IRS charging a higher rate of interest on an unpaid tax debt than the interest rate paid by the US Federal Government itself.<sup>11</sup>

### **'Modern world' debt forgiveness and hardship provisions**

3.20 The Committee heard that while the ATO is generally supportive of taxpayers who are taking steps to rectify their tax position, it has limited powers to forgive tax debt under the income tax law hardship provisions.

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<sup>9</sup> Inspector-General of Taxation, *Review into the Taxpayers' Charter and taxpayer protections*, December 2016, pp. 51-52

<sup>10</sup> TaxResolve, Submission 8, p. 9

<sup>11</sup> Self-Employed Australia, Submission 5, p. 3

For example, if a taxpayer's financial hardship is caused by a Goods and Services Tax (GST)-related tax debt, the provisions cannot be exercised.<sup>12</sup>

- 3.21 In her oral evidence Dr Ann Kayis-Kumar, Tax Clinic Director, University of New South Wales (UNSW) Tax Clinic provided the Committee with the following example:

We've got an increased incidence of the gig economy, and those liabilities will be classified as GST based in many instances. At the moment, there's no ability for tax relief for GST liabilities, but there is relief for things like CGT [Capital Gains Tax] liabilities. So one hypothetical scenario that presents a perverse problem in outcome is that you can have taxpayers getting relief for CGT debts that they incurred as a result of the sale of investment properties if they have since experienced financial hardship, but you can't have a sole trader, a subbie, who has not been able to keep up with their financial obligations and tax obligations get relief for GST related debts.<sup>13</sup>

- 3.22 Mr Kevin O'Rourke, Director of O'Rourke Consulting, told the Committee that in most cases, it is not until businesses have become insolvent that the ATO can write the debt off.<sup>14</sup>
- 3.23 The UNSW Tax Clinic suggested to the Committee for its consideration that the ATO adopts a wider interpretation of 'hardship' where tax debt is only one of the components needed to meet the definition, to adjust to current realities and provide hardship relief rather than wait for insolvency.<sup>15</sup>
- 3.24 Dr Ann Kayis-Kumar suggested implementing law reforms to adapt serious hardship relief provisions to the 'modern world.'<sup>16</sup>

## ATO communication and assistance

### Advice and guidance products

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<sup>12</sup> Dr Ann Kayis-Kumar, Tax Clinic Director, UNSW Tax Clinic, *Committee Hansard*, Canberra, 26 June 2020, pp. 5-6

<sup>13</sup> Dr Ann Kayis-Kumar, Tax Clinic Director, UNSW Tax Clinic, *Committee Hansard*, Canberra, 26 June 2020, p. 5

<sup>14</sup> Mr Kevin O'Rourke, Director O'Rourke Consulting, *Committee Hansard*, Canberra, 31 July 2021, p. 4

<sup>15</sup> Prof Michael Walpole, Head of School, School of Taxation and Business Law, UNSW, *Committee Hansard*, Canberra, 31 July 2020, p. 2

<sup>16</sup> *Committee Hansard*, Canberra, 26 June 2020, pp. 5-6

- 3.25 In the ATO's PS LA 2008/3 'advice' is explained as the Commissioner's opinion on the application of the law that the Commissioner administers. It is binding on the Commissioner and is generally provided in the form of a ruling. Further, in PS LA 2008/3 ATO 'guidance' is explained as help provided to taxpayers to understand their obligations and entitlements under the laws administered by the Commissioner. Guidance is not binding on the Commissioner.<sup>17</sup>
- 3.26 The IGTO commented that in the ATO's view 'the key to administering an effective tax system is fostering a high level of willing participation' by building 'trust and confidence amongst taxpayers.'<sup>18</sup>
- 3.27 The IGTO told the Committee that the ATO's advice and guidance products were 'key tools' to 'deliver consistent tax outcomes' and 'deter non-compliance'. Yet, the IGTO noted reports of a shift in the ATO's practice towards producing non-binding products, which was marked by the decline in advice products provided between 2009 and 2019. The IGTO suggested that Committee may wish to inquire about the causes of the decline.<sup>19</sup>
- 3.28 Between the financial years 2016-17 and 2018-19, binding products (advice) declined by 27.6 per cent and non-binding products (guidance) increased by 14.6 per cent.<sup>20</sup> The IGTO explained:

Advice products are generally in the form of a ruling that explains the taxpayer's obligations or entitlements under a provision of tax or superannuation law. A ruling is generally binding on the Commissioner and can be relied upon by the taxpayer for the purposes of calculating an assessment of tax.<sup>21</sup>

- 3.29 The IGTO observed 'growing concerns' amongst taxpayers and tax practitioners about the decline in the level, timeliness and value of public binding advice produced, especially in an environment where tax and superannuation laws are becoming increasingly complex. The IGTO added

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<sup>17</sup> Australian Taxation Office, Law Administration Practice Statement (PS LA) 2008/3: Provision of advice and guidance by the ATO (20 February 2014) at [12] and [206]

<sup>18</sup> Inspector-General of Taxation Office, Submission 1, p. 20

<sup>19</sup> Inspector-General of Taxation Office, Submission 1, p. 24

<sup>20</sup> Inspector-General of Taxation Office, Submission 1, p. 24

<sup>21</sup> Inspector-General of Taxation Office, Submission 1, p. 21

that 'an absence of this exposes the taxpayers to an increased risk of adverse ATO views, eroding taxpayer certainty and confidence in the ATO.'<sup>22</sup>

3.30 Taxpayers may apply for a private ruling to reduce uncertainty, but at a cost, raising questions about the 'fair treatment of all taxpayers in providing consistent binding advice,' especially as small businesses may not have the same financial resources as larger organisation.<sup>23</sup>

3.31 The IGTO commented further that according to the ATO's Taxpayers' Charter, a 'critical role' for the ATO to play is to help taxpayers navigate through the complexities of the taxation system. It said:

The IGTO observes that taking a proactive approach in identifying areas of uncertainty and compliance risks will further tailor the ATO's Advice and Guidance products in addressing the taxpayer's needs, encouraging compliance and potentially minimising risk to revenue.<sup>24</sup>

3.32 In 2018, the Standing Committee of Tax and Revenue recommended that a review of the Australian tax system be undertaken before 2022 to: simplify the tax system; reduce the 'quantum of tax law'; and improve compliance by allowing taxpayers to understand the tax regulations without the need for taxation law expert to provide advice or guidance.<sup>25</sup>

3.33 The persisting complexity of the tax system and the need to streamline it was again raised as an issue as part of this inquiry. Limited financial and tax literacy was reported to be particularly challenging for vulnerable taxpayers and sole traders and microbusinesses with limited funds to access professional tax expert advice.<sup>26</sup>

## National Tax Clinic program

3.34 In 2019, the Commonwealth Government launched a pilot program called the National Tax Clinic program, which is designed to provide financially vulnerable taxpayers with *pro bono* tax advice. The initiative provides government-funding to 10 universities across Australia to establish and run tax clinics offering this service.

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<sup>22</sup> Inspector-General of Taxation Office, Submission 1, pp. 26-27

<sup>23</sup> Inspector-General of Taxation Office, Submission 1, p. 27

<sup>24</sup> Inspector-General of Taxation Office, Submission 1, pp. 26-27

<sup>25</sup> Standing Committee on Tax and Revenue, *Taxpayers Engagement with the Tax System*, 2018, p. 93

<sup>26</sup> Dr Kayis-Kumar, UNSW Tax Clinic, *Committee Hansard*, Canberra, 26 June 2021, p. 2

- 3.35 While the ATO offers eligible taxpayers free tax assistance to help them lodge their annual tax returns through the ATO's Tax Help Program, the service does not provide tax advice. Only registered tax agents are authorised to provide tax advice, pursuant to section 90.5 of the *Tax Agent Services Act 2009* (Cth).
- 3.36 Tax clinics have been designed to act as an independent continuation of the ATO's guidance activities. Their role involves offering professional tax advice and representation to eligible individuals, small businesses, not-for-profit organisations and charities.
- 3.37 Dr Kayis-Kumar from the UNSW Tax Clinic told the Committee that tax clinics are now deeply integrated into the existing 'social impact ecosystem,' including the financial counselling sector and the community legal sector.<sup>27</sup>
- 3.38 The UNSW Tax Clinic highlighted how critical it is that tax clinics provide tax advice and support to vulnerable people to prevent them becoming further marginalised. Dr Kayis-Kumar explained that many of their clients are eligible for Centrelink payments, but that their outstanding returns acted as a barrier to accessing such payments.<sup>28</sup>
- 3.39 In Australia approximately 840,000 financially vulnerable people are in financial distress and in need of independent tax advice. On average, 90 per cent of cases tax clinics review related to tax lodgement and debt collection support, amounting to 93 and 88 per cent of cases respectively, rather than litigation matters, which represent 7 per cent of cases.<sup>29</sup>
- 3.40 The UNSW Tax Clinic estimates that 40 per cent of their client base is small business in financial distress. Dr Kayis-Kumar suggested to the Committee that it consider recommending the creation of more tax clinics to provide adequate tax advice to vulnerable people, adding that:

tax clinics provide a cost-effective approach to dealing with this cohort of taxpayers, because they are facing long-term outstanding lodgements and other issues, like mental health and potentially fear of government agencies, including the ATO.<sup>30</sup>

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<sup>27</sup> Dr Kayis-Kumar, UNSW Tax Clinic, *Committee Hansard*, Canberra, 31 July 2021, p. 1

<sup>28</sup> Dr Kayis-Kumar, UNSW Tax Clinic, *Committee Hansard*, Canberra, 26 June 2021, p. 3

<sup>29</sup> UNSW Tax Clinic, Submission 3, p. 1 and p. 3

<sup>30</sup> Dr Kayis-Kumar, UNSW Tax Clinic, *Committee Hansard*, Canberra, 26 June 2021, p. 2



- 3.41 The Committee also heard from the Curtin Tax Clinic, which expressed support for a ‘fully independent, low-cost external support mechanism’ to provide legal or taxation representation and encouraged Australian tax clinics to adopt the ‘design and operation of the US Low Income Taxpayer Clinic’ and adjust it to the Australian system.<sup>31</sup>
- 3.42 The Curtin Tax Clinic advocated for expanding the vulnerability criteria to avoid ‘unintentionally excluding taxpayers who require tax-related assistance’ and for a continuation of the funding for the program.<sup>32</sup>
- 3.43 The Curtin Tax Clinic encouraged ‘the Committee to consider endorsing the establishment of a National Tax Clinic Board or Steering Committee’ to inform tax clinic funding models, identify need across Australia, promote best practice approaches, and advise on taxpayer eligibility.<sup>33</sup>

## Taxpayer Bill of Rights

- 3.44 The Committee was interested to hear further evidence on the 1998 US reform and how that led to further moves to protect taxpayer rights. Self-Employed Australia and Ms Nina Olson, Executive Director at the Center for Taxpayer Rights in the US provided the Committee with an overview of this reform.
- 3.45 Over the period June 2014 to December 2015 the Taxpayer Bill of Rights was adopted administratively by the IRS and was eventually passed in the US Congress. Ms Olson explained:
- At that point, less than half of the US taxpayers believed they had rights before the IRS and only 11 per cent of them said they knew what those rights were. Two years after the Taxpayer Bill of Rights had been adopted, that had gone up to 75 per cent of taxpayers believing they had rights before the IRS and 50 per cent knowing what those rights were.<sup>34</sup>
- 3.46 By July 2019, the US taxpayers’ rights were being further protected and enshrined in law with the passing of the Taxpayer First Act. Self-Employed Australia outlined in its evidence to the Committee the primary protections afforded by this law:

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<sup>31</sup> Curtin Tax Clinic, Submission 7, p. 1

<sup>32</sup> Curtin Tax Clinic, Submission 7, pp. 2-3

<sup>33</sup> Curtin Tax Clinic, Submission 7, p. 4

<sup>34</sup> Ms Nina Olson, Executive Director, Center for Taxpayer Rights, *Committee Hansard*, Canberra, 13 August 2020, p. 3

- enhanced access to independent appeal process for taxpayers and increased transparency to resolve dispute without litigation;
- improved customer service through the development of a Congress produced customer service strategy for the IRS;
- streamlined and less costly early settlement procedures;
- increased limitation to the authority to seize properties derived from illegal sources;
- greater protection for non-complicit spouses;
- fewer 'fishing expeditions' of foreign bank accounts;
- reduced used of private debt collectors;
- earlier notification to taxpayers when a third person is contacted for information;
- added restriction to IRS' contractors' access to taxpayers' information;
- new and extended powers allocated to the Taxpayers Advocate;
- increased measures to protect taxpayers from identity theft; and
- the IRS obligation to accept credit and debit cards for payment of tax liabilities.<sup>35</sup>

3.47 Self-Employed Australia recommended to the Committee that these reforms be mirrored in Australia to modernise the ATO, 'by creating a fairer, just, transparent and accountable tax administration system that enhances voluntary compliance, efficiency and revenue collection.'<sup>36</sup>

3.48 Self-Employed Australia argued that increased tax justice leads to higher productivity in tax collection, and therefore saw fairness as critical to enhance ATO's cost efficiency.<sup>37</sup>

3.49 In 2018 the Committee raised the idea of a framework that clearly and transparently outlined the rights and obligations of taxpayers and the taxation office. The concept was encapsulated in Recommendation 11 of the *Taxpayer Engagement with the Tax System* inquiry report:

In the interests of promoting fairness and taxpayer confidence in Australia's tax system, the Committee recommends that the ATO should work to develop a framework which clearly outlines the rights and obligations of both parties in the tax engagement process for adoption in the near future.

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<sup>35</sup> Self-Employed Australia, Submission 5, pp. 26-27

<sup>36</sup> Self-Employed Australia, Submission 5, p. 1

<sup>37</sup> Self-Employed Australia, Submission 5, p. 11

The process, involving the review of high level ATO mission statements, would be consistent with the ATO's principle-based approach to service delivery and support design of a Regulatory Philosophy document.<sup>38</sup>

3.50 Mr Ashley King of TaxResolve described how the ATO Taxpayers' Charter was designed to grant rights to taxpayers but highlighted the non-binding nature of the document. He commented that:

a taxpayer bill of rights and having a taxpayer advocate, like they do in America, is a much more substantial area for having those rights situated. Certainly it would give much more power and balance to the whole tax system, in my view.<sup>39</sup>

3.51 Mr Phillips of Self-Employed Australia also described the powers of the Commissioner as 'uncontrolled', explaining that when the ATO formed 'an opinion of a debt that is owed, that opinion becomes law.'<sup>40</sup>

3.52 To illustrate the argument, Self-Employed Australia quoted Mr Mark Leibler AC, a long-standing specialist tax lawyer, in his speech to 33rd National Convention of the Tax Institute of Australia:

The Commissioner effectively continues to act as lawmaker [...] The Commissioner can raise an assessment on almost any basis he pleases, and then require the taxpayer to prove before the Administrative Appeals Tribunal or the Federal Court what their liability should have been. Merely proving that the Commissioner's assessment was incorrect will not suffice.<sup>41</sup>

3.53 Mr Phillips explained how an 'adverse statement of tax record' prevented organisations to do business with government agencies, even when the case was disputed, and called for reforms in the tax administration to be legislated rather than self-initiated by the ATO.<sup>42</sup>

3.54 Similarly, Mr King emphasised that while 'currently most of the taxpayers' rights are legislated, for example the rights of objection, review and period of amendments, the ATO 'has enormous power,' which 'far outweighs the power of taxpayers.'<sup>43</sup>

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<sup>38</sup> Standing Committee on Tax and Revenue, *Taxpayer Engagement with the Tax System*, 2018, p. 198

<sup>39</sup> Mr King, TaxResolve, *Committee Hansard*, Canberra, 19 March 2021, p. 4

<sup>40</sup> Mr Phillips, Self-Employed Australia, *Committee Hansard*, Canberra, 26 June 2020, p. 12

<sup>41</sup> Self-Employed Australia, Submission 5, p. 5

<sup>42</sup> Mr Phillips, Self-Employed Australia, *Committee Hansard*, Canberra, 26 June 2020, pp. 13-14

<sup>43</sup> Mr Ashley King, TaxResolve, Principal, *Committee Hansard*, Canberra, 19 March 2021, p. 4

## Taxpayer Advocate

- 3.55 Mr Phillips of Self-Employed Australia described to the Committee the role of the independent Taxpayer Advocate in the US, which is staffed with 1,600 officers (as at June 2019), and in his view creates effective checks and balances in the tax administration.<sup>44</sup>
- 3.56 Ms Olson, who 'founded the first low-income taxpayer clinic in the country,' explained how the Taxpayer Advocate Service 'started out as a complaints function inside the [IRS] in 1998.'<sup>45</sup>
- 3.57 Ms Olson described the original proposal in 1992, 'to make the taxpayer advocate a position outside the IRS and report directly to the Treasury secretary, but also be appointed by the President.' Ms Olson explained how the proposal received bipartisan support but was vetoed by the then US president, before being revived a few years later:
- what the commission recommended [in 1998] was that you create this independent agency inside the IRS. What the legislation ended up being was that the National Taxpayer Advocate is appointed by the Secretary of the Treasury, and the IRS is under the Treasury department. The Secretary of the Treasury appoints the taxpayer advocate, but the taxpayer advocate reports to the commissioner, so that you're inside the IRS.<sup>46</sup>
- 3.58 Ms Olson commented that having the Taxpayer Advocate inside the IRS allowed her to exchange information with the IRS before decisions were made and rapidly identify and defuse issues, rather than 'just coming from behind like our inspector-general' of taxation or the Government Accountability Office.<sup>47</sup>
- 3.59 Ms Olson explained that the Taxpayer Advocate is required by law to produce two reports annually and provide them to the Tax-Writing Committee of the US Congress.<sup>48</sup>

## Committee comment

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<sup>44</sup> Mr Phillips, Self-Employed Australia, *Committee Hansard*, Canberra, 26 June 2020, p. 13

<sup>45</sup> Ms Olson, Center for Taxpayer Rights, *Committee Hansard* Canberra, 13 August 2020, p. 1

<sup>46</sup> Ms Olson, Center for Taxpayer Rights, *Committee Hansard*, Canberra, 13 August 2020, p. 1

<sup>47</sup> Ms Olson, Center for Taxpayer Rights, *Committee Hansard*, Canberra, 13 August 2020, pp. 1-2

<sup>48</sup> Ms Olson, Center for Taxpayer Rights, *Committee Hansard*, Canberra, 13 August 2020, p. 2

- 3.60 In 2015, the then Standing Committee on Tax and Revenue recommended to the Government of the day that it introduce legislation to place the onus of proof on the ATO in relation to allegations of fraud and evasion after a certain period has elapsed. It also recommended that the 'change should be harmonised with the record keeping requirements. These periods could be extended, subject to concerns of regulatory costs on business and individuals.'<sup>49</sup>
- 3.61 The ATO, as part of the Government response, advised that it would review its processes and guidance material to reinforce staff messages about not unfairly relying on the burden of proof and the absence of records beyond the required record-keeping periods.
- 3.62 The Government, in its response, did not support the recommendation.
- 3.63 Yet, during this inquiry, the Committee again received calls to shift the burden of proof to the ATO. The Committee agrees that there are gaps in the protection of taxpayers in the current legislation and tax administration practices when a taxpayer disputes a tax debt.
- 3.64 The Committee reiterates its support for shifting the onus of proof to the ATO, and putting in place a statutory timeframe of 10 years on the age of evidence requested by the ATO, to enhance taxpayers' protection and align to similar practice in other jurisdictions, including in the US.
- 3.65 The Committee was encouraged to see that in the 2021-22 Federal Budget it was announced that the Government will make it simpler, faster and cheaper for small businesses with an aggregated turnover of less than \$10 million per year, to pause or modify ATO debt recovery actions for cases under review by the AAT. This will be done by broadening the AAT's powers to pause actions until the underlying dispute is resolved, and such actions includes the recovery of the underlying debt, application of garnishee notices, and/or related penalties and interest.<sup>50</sup>
- 3.66 The Committee accepts that the determination of a tax liability is a serious matter and that adequate and rigorous processes should be in place, or developed where necessary. This is to ensure that taxpayers' are aware of their rights, that those rights are protected and taxpayers feel empowered to

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<sup>49</sup> Standing Committee on Tax and Revenue, Recommendation 7, *Tax disputes*, 2015

<sup>50</sup> Australian Government, *Tax incentives to support the recovery. Supporting households, driving business investment, and creating jobs*. 11 May 2021 [https://budget.gov.au/2021-22/content/factsheets/download/factsheet\\_tax.pdf](https://budget.gov.au/2021-22/content/factsheets/download/factsheet_tax.pdf), viewed on 12 May 2021

exercise them, and to ensure that the tax administration is fair, transparent and accountable.

- 3.67 In 2015, the House Standing Committee on Tax and Revenue received compelling evidence about the need for tax determinations to be made by senior officers given the costly and long-lasting impact of those determinations on taxpayers and businesses. The then Committee recommended that 'that the Australian Taxation Office amend its internal guidance so that findings or suspicion of fraud or evasion can only be made by an officer from the Senior Executive Service.'<sup>51</sup>
- 3.68 As part of the Government response the ATO advised that it was:
- reviewing its existing guidance material and working through how best to provide further clarity for its staff about the responsibilities and necessary consideration for an allegation or finding of fraud or evasion.<sup>52</sup>
- 3.69 Yet, the Committee received evidence during this inquiry suggesting that determinations are still being made below the Senior Executive Service level.
- 3.70 The Committee notes the evidence put to it on the US reform of the IRS, including the alignment of the interest rate taxpayers are charged on their outstanding loan amounts, to the interest rate paid by the government. The Committee accepts that this would assist taxpayers to meet their tax liabilities and would help in the prevention of further financial hardship.
- 3.71 Recommendation 9 of the 2015 *Tax dispute* inquiry report provided that taxpayers should be engaged prior to litigation. The ATO responded in the Government response that discussion with the Attorney-General's Department had been engaged on this issue.
- 3.72 Yet, evidence received by the Committee during this inquiry is that taxpayers are still only informed of the allegation of fraud or evasion after a determination has been made.
- 3.73 The Committee notes reports and evidence provided to it that highlighted the power imbalance between taxpayers and the ATO, and agrees with the need to establish a more balanced tax system.

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<sup>51</sup> Standing Committee on Tax and Revenue, Recommendation 4, *Tax disputes*, 2015

<sup>52</sup> Australian Government, 'Australian Government response to the House of Representatives Standing Committee on Tax and Revenue report: Tax disputes', December 2015, file:///C:/Users/carole/Downloads/Government%20Response%20by%20the%20Government%20and%20the%20ATOTax%20Disputes%20(1).pdf, viewed on 3 June 2021

3.74 The Committee believes that a Taxpayer Advocate would provide the Australian tax system with meaningful checks and balances that would better protect taxpayers' rights.

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### Recommendation 11

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3.75 The Committee recommends that the Australian Taxation Office ensure that debts are not be payable by the tax payer until a final determination is made by the relevant dispute body or court. If the Australian Taxation Office fears that funds will be removed during an enforcement action, it should apply as all other plaintiffs do for a court ordered injunction.

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### Recommendation 12

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3.76 The Committee reiterates Recommendation 7 from the *Tax dispute* inquiry report and recommends that legislation be introduced to shift the onus of proof to the Australian Taxation Office in relation to allegations of fraud or evasion after a certain period has elapsed.

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### Recommendation 13

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3.77 The Committee recommends amending section 170 of the *Income Tax Assessment Act 1936* (Cth) to reduce the statutory timeframe for cases involving fraud or evasion to 10 years after the issue of an assessment by the Australian Taxation Office. The Committee also recommends that the period of review of evidence requested by the Australian Taxation Office should be harmonised with the record keeping requirements. The amendment should contain provisions to extend the period on a case-by-case basis.

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### Recommendation 14

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3.78 The Committee recommends that the Australian Taxation Office aligns the interest rate it charges taxpayers on any loans for tax liabilities, to the interest rate paid by the Federal Government.

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### Recommendation 15

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3.79 The Committee recommends that the Australian Taxation Office enhances its staff awareness about taxpayers' rights through guidance and training, including in the management of complaints, objection and disputes, and in their engagement with vulnerable taxpayers.

## **Recommendation 16**

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- 3.80 The Committee recommends that the Australian Taxation Office develops and promotes an Australian Taxpayers' Bill of Rights that clearly outlines taxpayers' rights and obligations.

## **Recommendation 17**

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- 3.81 The Committee reiterates Recommendation 4 of the 2015 *Tax dispute* report, that suspicion or finding of fraud or evasion be made by an officer from the Senior Executive Service.

## **Recommendation 18**

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- 3.82 The Committee reiterates Recommendation 9 from the 2015 *Tax dispute* report and recommends that the Australian Taxation Office conducts earlier engagement with taxpayers in cases of fraud and evasion, and align the process to that of the tax avoidance process.
- 3.83 Specifically, the Committee recommends that the Australian Tax Office provides taxpayers with information about suspicion of fraud or evasion, inviting them to provide a submission to ensure that the auditor has access to comprehensive information, ensuring that taxpayers are informed about their rights and the appeal process.
- 3.84 The Committee also recommends amending the makeup of review panels to include independent members, and that they be chaired at the Deputy Commissioner level or above.

## **Recommendation 19**

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- 3.85 The Committee recommends the Inspector General of Taxation be renamed the 'Taxpayer Advocate', and that the role aligns more closely with the powers and structure of the United States Taxpayer Advocate, based on the needs of the Australian tax system.
- 3.86 The Taxpayer Advocate must continue to have the freedom and independence enjoyed by the current Inspector General of Taxation.



A handwritten signature in blue ink that reads "Jason Falinski". The signature is written in a cursive style with a large initial 'J' and a trailing flourish.

**Mr Jason Falinski MP**

Chair

**20 October 2021**



# A. Submissions

- 1 Inspector-General of Taxation & Taxation Ombudsman
  - 1.1 Supplementary to submission 1
  - 1.2 Supplementary to submission 1
- 2 Tax and Transfer Policy Institute
- 3 UNSW Tax Clinic
- 4 Australian Small Business and Family Enterprise Ombudsman
- 5 Self-Employed Australia
  - 5.1 Supplementary to submission 5
- 6 Australian Taxation Office
  - 6.1 Supplementary to submission 6
  - 6.2 Supplementary to submission 6
- 7 Curtin Tax Clinic
- 8 TaxResolve
  - 8.1 Supplementary to submission 8
- 9 *Confidential*



## **B. Public Hearings**

### **Friday, 26 June 2020**

Parliament House, Canberra

*UNSW School of Taxation & Business Law (UNSW Tax Clinic)*

- Dr Ann Kayis-Kumar, Senior Lecturer and Tax Clinic Director
- Mr Gordon Mackenzie, Senior Lecturer, Tax Clinic

*Self Employed Australia*

- Mr Ken Phillips, Executive Director

### **Friday, 31 July 2020**

Parliament House, Canberra

*UNSW School of Taxation & Business Law (UNSW Tax Clinic)*

- Professor Michael Walpole, Head of School, School of Taxation and Business Law, Business School
- Dr Ann Kayis-Kumar, Senior Lecturer and Tax Clinic Director
- Mr Gordon Mackenzie, Senior Lecturer, Tax Clinic

*Inspector-General of Taxation & Taxation Ombudsman*

- Ms Karen Payne, Inspector-General of Taxation and Taxation Ombudsman
- Mr Andrew McLoughlin, Deputy Inspector-General of Taxation and Taxation Ombudsman
- Mr David Pengilly, General Manager
- Mr Kuan-Kuan Tian, Manager, Complaints Services

- Mr Duy Dam, Director, Review and Engagement
- Ms Anita Hong, Investigator
- Mr Travis Pereira, Investigator
- Ms Rosina Lai, Acting Director, Complex Complaints

*Australian Taxation Office*

- Mr Chris Jordan, Commissioner of Taxation
- Mr Jeremy Hirschhorn, Second Commissioner of Taxation, Client Engagement Group
- Ms Janine Bristow, Chief Finance Officer
- Ms Jacqui Curtis, Chief Operating Officer
- Mr Ramez Katf, Chief Information Officer
- Mr Jeremy Geale, Chair, COVID Taskforce
- Ms Catherine Willis, General Counsel

*O'Rourke Consulting*

- Mr Kevin O'Rourke, Director

**Thursday, 13 August 2020**

Parliament House, Canberra

*Center for Taxpayer Rights*

- Ms Nina Olson, Executive Director (Washington)

**Friday, 19 March 2021**

Parliament House, Canberra

*TaxResolve*

- Mr Ashley King, Principal