

Commissioner of Taxation's responses to Tax Summit audience questions



Compiled by the Tax Policy and Advocacy team at The Tax Institute with the assistance of the Media Unit at the Australian Taxation Office

Current as of 16 October 2024

Overview

Below are responses to questions from the audience from Commissioner Rob Heferen's [address](#) at the Tax Institute's 2024 Tax Summit in Sydney on 12 September 2024. These responses were provided by the ATO to The Tax Institute for distribution to members.

Questions

What approach is the ATO undertaking to train the call centre employees?

- The current approach broadly involves on the job training, and formal coaching and mentoring.
- A review of learning pathways, approach and material for frontline staff is currently underway.

Could the Commissioner commit to an ATO whistleblower protections process?

- There is an existing and comprehensive framework in place through:
 - the Tax Whistleblower Protection Regime under [Part IVD of the Taxation Administration Act 1953](#); and
 - The ATO's [Public Interest Disclosure scheme](#), which meets the Commonwealth's legislative requirements in the *Public Interest Disclosure Act 2013*.

Both frameworks operate independently in the ATO, have anonymous avenues for complaints and follow strict privacy and confidentiality provisions to maintain protections. Our well-established processes also complement other external avenues available to individuals such as the [Inspector-General of Taxation and Taxation Ombudsman](#), [Commonwealth Ombudsman](#) and [National Anti-Corruption Commission](#).

You have acknowledged the call centre delays. Can you give us an assurance that the response time and quality of the response will improve?

Our current service commitment is we will answer 40% of inbound tax practitioner calls within 7 minutes across the 2024–25 financial year, and we will endeavour to do so, noting we are currently meeting this commitment for the 2024–25 financial year to date.

Large companies are now required to disclose tax residency of foreign subsidiaries. Does the ATO plan on scrutinising these disclosures as part of their reviews or will the ATO rely on a company’s auditor’s assertions when signing off on financials?

- The ATO has published guidance setting out our ongoing compliance approach for determining the residency of foreign incorporated companies. See Practice Compliance Guideline [PCG 2018/9](#).
- The ATO commonly uses financial statements as one of many information sources for investigations.
- The ATO has no role in verifying the data or disclosures made in financial statements, including the residency status of foreign entities.

Previous Commissioners have emphasised substance over form. However, in more recent years, there seems to have been a proliferation of pedantic form-based compliance demanded by the ATO. Is it now about form rather than substance?

No. If there are specific examples to the contrary, we would welcome them or a further conversation.

When taking over a new client we noticed that the client's previous years' returns have big issues in respect of Division 7A, section 100A, trust distributions, PSI etc. Would you recommend us to go back to those years and amend them?

- Where you have identified that you or your client have not reported correctly, we would encourage you to make a voluntary disclosure. You can find information about how to make a voluntary disclosure on our [website](#).
- It's important to also be aware of and consider our practice statements [PS LA 2012/4](#) and [PS LA 2012/5](#) on the administration of false and misleading statement penalties.
- We also encourage advisers and tax agents to consider their obligations under:
 - [Code of Professional Conduct](#)
 - [Tax Agent Services Act 2009](#).

What work is being put into recovery of taxpayer funds paid out to criminals via the myGov/GST scams? We hope it's as active as ATO debt collections.

- A lot. And it is.
- We view GST refund fraud seriously. As part of [Operation Protego](#), an ATO-led investigation into large-scale GST fraud, we are taking strong action against individuals suspected of being involved.
- Those who received refunds incorrectly are being actively followed up through the use of our debt treatments. They are subject to Director Penalty Notices and Garnishee action to recover amounts. This includes Garnishee from bank accounts and other sources of income such as salary and wages.
- As part of the ATO work to maximise recovery, we are continuing to take action to recover amounts including, opportunities for legal recovery and seizure of assets and identification of clients for Departure Prohibition Orders to prevent international travel until amounts are paid.
- Amounts owing are not written off and will remain payable until the client pays the amount in full, including applicable interest charges.
- In addition to recovering amounts owed, Operation Protego involved multiple branches within the ATO, and work from multiple external agencies such as the respective State based Police agencies and the Serious Financial Crime Taskforce.
- The ATO has taken action against more than 57,000 alleged offenders.
- As of 31 August 2024:
 - 104 people have been arrested;

- 53 people have been convicted with sentences of jail terms of up to 7 years and 6 months;
- we have finalised 60 investigations and referred 51 briefs of evidence to Commonwealth Director of Public Prosecutions; and
- raised over \$300 million through penalties and interest.

Majority of those taxpayers owing the \$50 billion: with the ATO’s heavy handed approach to this, it’s very likely most of this would need to be written off and unrecoverable and jobs loss. Care to comment on this view?

- Our message to any taxpayers who find themselves in a position where they are not able to pay tax on time is to contact the ATO, or their tax professional – and to do this as early as possible and as soon as they identify any issues in meeting their obligations.
- More than half of the \$50 billion of overdue taxes is less than 12 months old, and businesses who take actions to get back on track sooner are usually best positioned to continue viable trading in the longer term.
- It is important that we take action to ensure that taxpayers who do pay their fair share are not unfairly disadvantaged by those who do not – a level playing field is important.
- That role extends to taking action to minimise the number of businesses who may be trading insolvent, and by taking action we protect other creditors such as employees and suppliers from missing out on greater amounts owing to them.

Following Dr Ann Kayis-Kumar’s comments on the impact of tax debt on domestic violence survivors, is the ATO considering a change in its approach and using its discretion more to support taxpayers who have tax debts as a result of an abusive partner’s actions?

- We recognise that domestic violence, including financial abuse and coercive control, are serious social issues impacting victims, their families, and the wider community.
- Where these impacts play out in a tax administration environment, we are continuing to look for new and improved ways to support this cohort of individuals because while we have an obligation to collect tax, we also have a social responsibility to consider people’s circumstances and work with them to resolve issues.
- We have introduced some administrative support services and initiatives that are intended to make engaging with the ATO easier for those experiencing or having survived financial abuse or coercive control.

- We continue to further invest in improving the capability of our staff in identifying and responding to the needs of taxpayers experiencing vulnerable circumstances. This includes through improved staff procedures and training to transform the way the ATO understands and helps those experiencing vulnerability.
- Managing how this manifests in the presence of tax debts is important, however identifying earlier opportunities that can either prevent the tax system being used against victims, or that can enable victim survivors to access assistance/engagement from the ATO that prevents there being a debt to be managed are ideal.
- We are working with industry experts to further mature a holistic approach and to ensure we do our part to enhance the way the system can operate to both prevent and improve the response to these impacts.

Please explain the change in stance on collecting overdue tax debts. Taxpayers have become accustomed to the COVID approach and is now the right time to come down tough when economic conditions are much more difficult?

- We have a job to do, and it is important that we do it according to the law.
- Paying tax isn't optional and we have an obligation to collect unpaid amounts of tax and superannuation to ensure the Government can fund vital services and employees receive their entitlements. It's also our responsibility to ensure a level playing field.
- This is critical for supporting other creditors and businesses who are doing the right thing and paying on time, and who themselves can often be left out of pocket by businesses who aren't taking steps to manage their financial situation.

To combat fraud and ballooning GST and PAYG withholding debt, why isn't there a proper education program when an ABN is issued? There is nothing provided to a new ABN registrant to educate them on their tax obligations – why?

We provide comprehensive materials for those who choose to take them up.

The comprehensive materials are as follows:

- They are auto-subscribed to our New to business essentials email series that delivers information to businesses at key times in the business lifecycle.
- We have a dedicated [small business newsroom](#) that provides updates on tax, superannuation and registry services for small businesses and a free subscription-based monthly newsletter service.

- Earlier this year, we launched our free, self-paced online learning platform [Essentials to strengthen your small business](#). This resource was designed with and for small businesses. It currently offers 30 free and flexible online courses and support materials that can be accessed at a time that suits small businesses and their advisors. We have received positive feedback from users, with the top 5 popular courses covering starting a small business, recording keeping and goods and services tax (GST).
- We regularly publish messages on [social media](#), [ATO Community](#), through our public relations outreach, and in ATO newsletters for businesses, not-for-profits and tax professionals reminding ABN holders of their obligation to keep their ABN details up to date.

Is there clear guidance on the ATO parameters on penalties for overdue lodgments/GIC. There was flexibility but it seems there is none or it is inconsistent. This is adding financial stress on clients. Is there a guide we can communicate with client?

Yes.

- Information about failure to lodge penalties is on our [website](#).
- Information about when we may apply and remit GIC is on our [website](#).

Why is the ATO still relying on fax communication (for lawyers)? No confirmation is received and no receipt no. to follow up. Less support to lawyers than there used to be from the ATO to begin engagement.

- We are aware of the concerns raised by the legal profession and we are continuing to explore how we can make further improvements to the processes for legal practitioners to contact us. This includes ongoing engagement with the NTLG and the Law Council of Australia.
- Individuals and non-individuals can nominate their legal representative through our online services or the ATO app. Prior nomination of a legal representative assists in the ATO responding to objection queries faster.
- Depending on the enquiry being made, there are alternative avenues to contact us.
 - Phone lines are available for debt and DPN matters.
 - If the matter relates to legal proceedings, depending on the state jurisdiction, the initiating court document will contain an email address where you can contact us, in addition to a fax number, telephone number or mailing address.

Personal services businesses: When will the ATO fund a test case program to get current court guidance on the relevance of the old tax rulings for PSBs?

- In 2022, we refreshed our rulings on personal services income (PSI) and personal services businesses (PSBs) in [TR 2022/3](#). It was a rewrite and update of two Taxation Rulings from 2001.
- [TR 2003/6](#) on attribution of PSI and [TR 2003/10](#) on deductions related to PSI remain current. The recent Practice Compliance Guideline [PCG 2024/D2](#) on Part IVA and PSBs provides additional practical guidance in this space.
- A taxpayer may seek judicial guidance on the PSI rules where they disagree with our position.
- For a case to be approved for test case litigation funding, it must:
 - involve issues where there is uncertainty or contention about how the law operates;
 - be in the public interest to be litigated;
 - not involve a tax avoidance scheme unless it tests the proper meaning within the legal framework of the anti-avoidance provisions; and
 - not appear to be an attempt to gain a windfall or an outcome contrary to policy intent.
- A taxpayer's funding request involving the application of an ATO view in a public ruling relating to the PSI rules may qualify for test case litigation funding if it meets the above-mentioned criteria.

Can you please bring back relationship managers for tax agents? The only way we can escalate a client issue is by lodging a complaint.

- With nearly 77,000 registered agents in the system, a relationship manager service for agents is not feasible. This would take considerable resourcing and would take staff away from critical processing and issue resolution work.
- However, with the increase in services and transactions that can be undertaken within Online services for agents (OSfA) and the move towards digital interactions, there are numerous resolution channels available for agents depending on the nature of the client issue.
- Where you have not been able to resolve client specific or practice management matters through our existing channels, you can submit a tax practitioner assistance request via the ATO's 'practice mail' function in OSfA to help resolve the matter. This is designed as an escalation avenue for agents where you have been unable to resolve a matter using the existing channels. This is not designed to be the first contact you make with us on the matter as most matters can be resolved more efficiently through the established channels.

Cooperative engagement has become more difficult where there is a negative bias against the taxpayer from the ATO. Any work with the profession to improve the engagement process?

- Our preference is to engage with taxpayers in a collaborative and transparent manner.
- Where the ATO has concerns that taxpayers are not engaging co-operatively or transparently, it will impact our engagement approach. For example, in audits, we may take firmer actions such as issuing formal notices, or for rulings, we may require additional supporting evidence rather than making assumptions.
- Advisers play an important role in helping their clients understand and meet ATO expectations. We work with the profession through various channels so that they can understand our view of tax risks and behaviours and also the expectations of our programs.
- The Big 4 accounting firms have also all adopted the [large market adviser principles](#). Signing up to these principles provides confidence that the firms have governance and controls in place in relation to the provision of tax advice.
- We continue to encourage other firms to adopt the principles.

Getting help for mental health issues is less taboo now. However, when taxpayers provide information regarding impacts of mental health issues to the ATO it is disregarded or impact minimised. Is this consistent with community expectations?

- Your mental health and wellbeing are important and we understand that it can affect your ability to manage your tax and superannuation obligations.
- If you are having difficulty paying your tax, see [Support to lodge and pay](#). You should [talk to us](#) as early as possible so we can work with you, but it's never too late to ask for help.
- We are committed to treating people fairly and with respect, and we will act in a way that meets the community's expectations as outlined in [our charter](#).
- For more information on the support options available, refer to [Support in difficult times](#).
- We also offer dedicated contact channels for advocates such as financial counsellors and tax clinics when assisting taxpayers who are experiencing difficult circumstances.

Re: client to agent linking – what problem did this solve and what specific things will be done and when to fix client to agent linking

- Client to Agent Linking (CAL) was introduced because we observed criminals committing fraud by taking over the identities of honest tax agents, accessing their clients' personal information without permission, changing the agent of unknowing businesses and committing refund fraud in the businesses' names.

- For us not to respond would have been unconscionable.
- We were compelled to act quickly to strengthen the system, protect client information and prevent this type of fraud proliferating. CAL ensures that a client must digitally authorise who can act for them and access their information when they choose to appoint a new tax or BAS agent. It leverages existing whole of government digital infrastructure (myGovID (soon to be renamed myID), Relationship Authorisation Manager (**RAM**) and ATO online services).
- We continue to see many clients setting up and nominating an agent in Online Services for Business. As of 30 August, 358,000 nominations have been completed by clients in Online Services for Business since we deployed to businesses (except sole traders) in November 2023.
- After each phase of the deployment, we have undertaken feedback sessions with users of the process to listen and identify opportunities for enhancements. We continue to refine our processes and support material in response to this feedback.
- We acknowledge the strong advocacy of the tax professional associations on behalf of their members. While good consultation does not always achieve consensus, we continue to listen and will continue to engage with the professional associations. We will also look for opportunities to further capitalise on any changes to the technology that will improve the process for agents and clients, while ensuring this does not undermine fraud prevention.
- Improvements following feedback and consultation include:
 - pushing out the nomination period from 7 to 28 days
 - allowing adding of an FBT role with no nomination
 - updating the whole of practice transfer process
 - adding in-system messaging to prevent accidental delinking of BAS agents
 - updating help materials
 - removing call blocking from RAM and myGov ID calls from 1 July 2024.

The ABN registration process for inbound international businesses can take months to process by the ABR and there are duplications from Director ID requirements as well as identification of foreign associates. Are there plans to improve this process?

The ATO is considering approaches to the use of proof of identity across ABN and director ID applications, noting that obtaining assurances of a client’s identity across their interactions plays an important role in safeguarding system integrity. Other ABN processing improvements will also be explored.

Further guidance and information

Further guidance and information are available from the [ATO website](#).

If you have any specific concerns that have not been outlined above, please email taxpolicy@taxinstitute.com.au.

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