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Inspector-General of Taxation
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Dear Inspector-General

IGOT Review into the ATO's change program

The Taxation Institute of Australia (**Taxation Institute**) welcomes the opportunity to provide comments in relation to the Inspector General of Taxation's (**IGOT's**) review into the ATO's change program (**Review**).

We refer to the terms of reference and submission guidelines for the Review dated 5 May 2010. According to the terms of reference, the Review should include an examination of:

- the impacts of the Change Program on taxpayers, taxpayer representatives and other external clients of the Australian Taxation Office;
- the impacts of the Change Program within the Australian Taxation Office (**ATO**);
- the resources used to implement the Change Program and whether these resources have been efficiently applied; and
- any other related matters.

The submission guidelines make it clear that the IGOT will be taking a staged approach to the Review. At this stage, the IGOT will only be focusing on the first two bullet points above. The Taxation Institute's submission will only focus on the first point. The Taxation Institute is not in a position to comment on the impact of the change program within the ATO.

1. Background

The stated objectives of the ATO Change Program are to:

- deliver improvements to the client experience;
- reduce operational costs; and

- improve flexibility and sustainability for future change.

In the ATO's own words, the latest release of the change program 'is the largest and most complex information technology deployment the ATO has ever undertaken'.

The Taxation Institute has been closely involved in the ATO consultative processes in relation to the change program since its inception. The Taxation Institute acknowledges that the ATO has conducted itself in good faith and the many consultations with affected parties have been welcome.

Given both the significance and the size of the ATO's undertaking in deploying the new system, both the Taxation Institute and its members have been willing to extend a measure of goodwill to the ATO in its implementation.

However, eventually, the level of frustration being experienced by members outweighed the level of goodwill extended to the ATO.

The ATO, to its credit, acknowledged the problems and has or is working to rectify them. However, the results were not achieved in a timely manner.

2. Issues caused by the Change program

The Taxation institute considers that it is important to first outline the major issues with the change program before discussing the impacts that these issues have had on taxpayer representatives, taxpayers and others.

The Taxation Institute has been inundated with negative feedback from members in relation to issues caused by the change program. Never in the Institute's history has one issue been the cause of the volume of feedback we have received in relation to the change program.

The Taxation Institute's experienced has been mirrored by other professional bodies and by the ATO itself with the ATO acknowledging that between February 2010 and May 2010, the ATO received 12 times the number of complaints it normally receives during that period.

At **Annexure A**, we have collated the written feedback received by the Taxation Institute from members in relation to the change program. These comments have been edited so that the identity of the members is not disclosed. We have grouped the comments based on the major issues we have identified in relation to the change program. However, please note that many comments are applicable to more than one issue.

In addition to the written comments, the Taxation Institute received more than 60 phone calls in relation to the change program with members expressing problems and issues orally. All these issues have been captured in this submission.

A brief summary of the most significant issues arising in relation to the implementation of the change program is outlined below. These issues have been identified from the written and oral feedback referred to above. Further, the member feedback in Annexure A gives real life examples of all the issues summarised below.

Refund delays

- Although taxpayer representatives (eg tax agents, tax lawyers, in-house tax advisers, BAS agents) were warned by the ATO to lodge returns early to avoid delays, the warning was insufficient and inaccurate.
- The ATO warned that delays should be expected through January and February 2010. However, there were still significant numbers of refunds outstanding in April 2010.

Currently, the Taxation Institute understands that there are still some (not many) delayed refunds.

- Further, many taxpayer representatives who lodged returns early in December 2009 as per ATO warnings to avoid delays were still waiting for refunds in April 2010.
- The time taken to rectify the problems that caused the delayed refunds was not acceptable. A waiting time of up to 4 months (and in some cases more) for a refund is not acceptable at any time least of all when warnings about the delay indicated that delays would only be for up to 6 weeks could be experienced.
- The fact that payment demands from the ATO came through with no delay did nothing but exacerbate the impact of the delayed refunds. This is discussed in more detail below.

Unpaid interest

- The ATO agreed to pay interest where refunds were not processed within 30 days.
- However, when the refund cheques finally arrived, many had no interest and most cheques were backdated to a date where interest would not have been payable despite not being received till a later date (in some cases over 3 weeks or more after the date of the cheque). The ATO have acknowledged that this issue was caused by an internal processing issue.
- Despite the acknowledgement, the ATO did not respond in a timely manner to rectify the issue.

Lodgment deferrals

- Despite many requests, the ATO has provided few lodgment extensions to mitigate the delays caused by the change program.
- Taxpayer representatives have been under immense pressure trying to cope with the issues caused by the change program. The impact of the failure to provide more generous lodgment deferrals is discussed in more detail below. More generous lodgment deferrals could have alleviated this issue.
- When lodgment extensions were granted they were for minimal time periods and did not extend to all entity types. This of itself created confusion among taxpayer representatives in relation to the new lodgment dates. Further confusion was created as some extensions were only granted for lodgment not payment.

Notice of Assessments (NOAs) and Statement of Accounts (SOAs)

- There have been several issues with the new NOAs and SOAs. These issues range from documentation being received with no refund cheques attached to the inability of taxpayers and taxpayer representatives to understand or use the new NOAs and SOAs as a result of content and format changes.

ATO Communications

- The Taxation Institute considers that the ATO spent significant time and effort in an attempt to keep the tax agents and professional associations informed about the issues being caused by the change program. Unfortunately, the Taxation Institute also considers that the timing, content and target audience of the ATO communications in relation to the issues arising as a result of the change program became an issue in itself.

- The timing of the ATO communications often followed significant numbers of complaints by taxpayer representatives. In one sense this is partly understandable as until issues were brought to the attention of the ATO they sometimes did not know the issue existed.
- However, the main issue with the timing of ATO communications was that the goal posts kept changing. The ATO put out several communications stating that a particular issue would be resolved by a certain date only to issue subsequent communications with a different date (or no date) by which the issue would be resolved. Obviously internal constraints meant that the particular issue could not be resolved as soon as the ATO thought that it could be. However, this does not change the fact that this caused issues for many taxpayers and taxpayer representatives who relied on information communicated by the ATO.
- Unfortunately, as a result of changes to communications, mass public distrust developed in relation to the communications from the ATO.
- The content of some ATO communication did not help to alleviate the issues caused by the change program or assist in dispelling the distrust that developed in relation to the ATO's handling of the change program issues. In particular, there were certain comments by the Commissioner of Taxation and others within that ATO that indicated that they considered that the change program was a success. To publicly make such remarks at a time when there were still significant issues in relation to the change program that were adversely affecting taxpayers and taxpayer representatives did nothing but enrage those who were being adversely affected.
- The content of the ATO call centre communications in relation to issues that were caused by the change program also emerged as a significant issue. The ATO call centre communication issues ranged from incorrect information being provided to no information at all being provided except for recorded messages saying that the ATO was aware of a particular issue and not to call as no further information was available. An example of such an issue that had a significant impact was ATO call centre staff incorrectly telling taxpayers and tax agents that returns had not been lodged as no further information was available. Although this is what the system showed, it was caused by an internal issue and returns had in fact been lodged.
- Similarly, ATO systems also sent incorrect communication to tax agents. For example, the Portal showed many refunds as being issued even though there were still extensive delays before they were actually received. By way of a further example, some tax agents received notifications that certain clients would be in breach of payment if the client did not pay \$0.00 (ie a nil amount) by a certain date and that the client would be subject to legal action. Although obviously a mistake, the content of such communications had adverse impacts which are discussed in detail below.
- Finally, many of the ATO communications needed to reach a wider audience to have the needed affect. For example, when it was discovered that there would be longer than expected delays with refunds, tax agents and professional associations were kept informed. However, the main stream public (ie those waiting for their refunds) needed to hear about the issue from the ATO itself. Second hand information from tax agents was inadequate as many taxpayers mistakenly thought the issue was caused by their tax agent and were distrustful of second hand information. The impact of this issue is discussed in more detail below.

Hardship and escalation protocols

- The ATO did develop hardship protocols. However, these protocols should have been in place prior to implementation of the change program. The protocols were developed too

late to assist many taxpayers and taxpayer representatives. The delay in the establishment of such protocols had many adverse impacts which are discussed in more detail below.

- When matters were escalated because taxpayers or taxpayer representatives could not get resolution of an issue they were advised that the waiting time would be twice the standard service time from the date of escalation. The further delays did nothing but exacerbate the issue.

ELS reports not available

- Client lists were not available through ELS. As client update forms were not able to be processed by the ATO, the ATO had incorrect data recorded in relation to taxpayers. For example, until such updates were processed, the ATO had out of date information in relation to who were some taxpayers' tax agents. This prevented some current tax agents from obtaining or providing any information or in any way dealing with the ATO on behalf of those particular taxpayers. These processing delays have occurred since February 2010.

Miscellaneous Errors

Many miscellaneous errors were noticed as the change program was implemented. These errors included the following issues:

- Incorrect due dates on debit assessments - In some cases, the ATO changed due dates for assessments bringing payment dates forward when compared to earlier correspondence from the ATO to the taxpayer.
- Incorrectly issuing letters of demand before due date for payment – Some taxpayers received letters of demand from the ATO in relation to amounts that were not yet due for payment. In some cases, the letters of demand were actually followed up with recovery action before the appropriate time.
- Amounts incorrectly applied - Some agents experienced the situation where their clients' refunds were incorrectly applied to debts not yet due and payable.
- Refunds incorrectly transferred – The ATO notified many taxpayers that their refunds were sent to their nominated bank accounts in circumstances where no such bank accounts had been nominated.
- Calculation errors – There were various calculations errors in relation to the new NOAs. These errors included errors in relation to the family tax benefit from Centrelink, the baby bonus claims not being processed and low income rebates being omitted.

Portal outage before lodgement deadline

- The ATO shut down the ATO Portal over the weekend of 15/16 May 2010. With a lodgement deadline looming on Monday, 17 May 2010, this enraged many taxpayer representatives.
- Unfortunately, the Portal was not fully functional until after Thursday, 20 May 2010. The ATO did provide a lodgment extension to tax agents in an attempt to mitigate the impact of the issue. However, given all the delays and time pressure on tax agents already as a result of the delays and increased work load caused by the change program, this proved to be the breaking point for many patient tax agent in our member base.

3. Impacts of the Change Program

3.1 Impacts on taxpayer representatives

In summary, the main impacts for taxpayer representatives (eg tax agents, BAS agents, in-house tax advisers, tax lawyers) have been:

- Increased work load and time wastage;
- Financial hardship;
- Reputation damage; and
- Unreasonable time pressure.

Each of these impacts is discussed in more detail below.

Increased work load

Taxpayer representatives have experienced increased work loads as a direct result of dealing with the issues caused by the change program.

The increased work load has been caused by the constant need to follow up the ATO in relation to issues caused by the change program (refer above). This has literally wasted thousands of hours for taxpayer representatives and has placed an unfair burden on their practices.

For example, practitioners have spent an inordinate amount of time following up the ATO with emails, phone calls and checking the Portal in relation to all the issues that have been outlined above. For example:

- Delayed refunds – taxpayer representatives were often compelled to call the ATO on a daily basis to find out the progress of delayed refunds where there were cases of severe financial distress or where their clients concerns necessitated such action.
- Interest – following up the ATO on unpaid interest was a time consuming task especially when considering the amounts of interest that this usually involved (usually under \$5). One has to question the value of this activity. However, taxpayer representatives were compelled to follow up such issues or face the wrath of their clients who were already distrustful of whose fault the delay was.
- Lodgment deferrals – the increased work load put immense time pressure on taxpayer representatives. Unfortunately, this was only exacerbated by having to apply on an individual case by case basis for lodgment extensions as only minimal blanket extensions were provided by the ATO (such extensions were also not provided for all entity types). This created more work.
- NOAs and SOAs – dealing with the new NOAs and SOAs increased the work load of taxpayer representatives. The increased work load was largely due to the time it took to understand and explain the new format of the notices to taxpayers and staff. However, in addition, formatting issues also caused scanning issues that meant that some work had to be done manually. The fact that these documents were not being sent at the same time also added to the work load and costs (ie additional envelopes and postage) of taxpayer representatives who had to send these to their clients at different times and answer clients questions about why they were receiving one and not the other. To say the taxpayer representatives could have waited till they had both was not an option given the delay and the fact that some came with a cheque which meant that they could not delay sending the

already delayed cheque to the client to enable other things to be received and dealt with in the same communication with the client.

- ATO communications – as stated above taxpayer representatives had to spend thousands of hours dealing with the ATO to get updates and progress reports on the issues that were affecting them and their clients as a result of the change program. The communication messages themselves often increased the work load of taxpayer representatives. For example, when call centre staff incorrectly informed taxpayers that their returns had not been lodged (when they in fact had been) this only caused reverse work flow for the taxpayer representatives. Further, revising the clients' expectation each time the ATO changed a date for resolution of an issue also increased the work load of taxpayer representatives. Lastly, as the ATO had not communicated with the community at large about the refund delays it was left to taxpayer representatives to make sure their clients were informed about the delays. All these factors added to work loads.
- Hardship and escalation protocols – applying for hardship relief and escalating matters on a case by case basis added to the work load of taxpayer representatives.
- ELS reports – taxpayer representatives had to spend fruitless time trying to prove to the ATO that they were in fact the current tax agents for certain taxpayers as the ELS client lists were not able to be updated.
- Miscellaneous errors – taxpayer representatives spent thousands of hours following up the miscellaneous errors outlined above.
- Portal outage – taxpayer representatives wasted time and money trying to access and use the Portal during week following the shutdown on the 15/16th May 2010 to meet lodgment deadlines. This proved to be largely a waste of time until at least Thursday, 20 May 2010 when the Portal was at least functional (even though not fully functional).

Financial hardship

The implementation of the change program has caused financial hardship to many taxpayer representatives on a number of levels.

Firstly, as described in detail above, tax agents have wasted time and experienced increased work loads to deal with the implementation. In this case the phrase "time is money" is appropriate. In a profession that charges based on time spent or outcomes, the wasted time dealing with the issues caused by the change program (which could not be recovered from clients) has cost these businesses money. The time spent dealing with change program issues could have been spent dealing with other income producing matters.

Secondly, many tax agents structure their businesses so that their fees are paid from clients' refunds. Therefore, until a refund is received the tax agent does not get paid. The delayed refunds have caused severe financial distress to tax agents whose business works on this common operating model. Some such tax agents have needed to obtain overdrafts or other financing facilities just to keep their businesses operating (eg timely payment of rent and wages to staff). There is a financial cost attached to this.

Based on anecdotal evidence the Taxation Institute has heard, other businesses have not been able to keep their businesses operating and have been forced to significantly downsize staff levels, sell or go bankrupt as a result of the financing issues caused by the change program. The Taxation Institute has no direct evidence available on this point.

Reputation damage

Taxpayer representatives have suffered damage to their reputation and to their business as taxpayers blame them for the issues caused by the change program.

In this regard, one of the biggest issues for taxpayers was the delayed refunds. Many taxpayers thought that the refund delays were caused by their taxpayer representatives rather than by internal processing problems within the ATO. Given the lack of information to the public at large from the ATO to the contrary, this view on the part of taxpayers was understandable. Despite efforts by taxpayer representatives to explain the issues, some taxpayers continued to believe that this was an issue caused by their taxpayer representatives.

The issues with the delays were compounded when the refunds finally started to arrive but were dated up to 3 weeks (or more) before the actual cheque was received by the taxpayer representative. This again was an internal processing problem caused by the implementation of the change program. However, most taxpayers understandably (but incorrectly) took the view that their tax agent had been sitting on the refund cheques for weeks.

As a result of these and other issues in relation to the change program, taxpayer representatives have suffered damage to their reputations. Further, some taxpayer representatives have actually lost clients over these issues as frustrated taxpayers believing that the delays are their representatives' fault change representatives.

Unreasonable time pressure

As a result of the delays and increased work load caused by the implementation of the change program, taxpayer representatives have faced increased time pressure as the timeframe in which they have to perform their work has been dramatically reduced.

Rather than being able to concentrate on lodging returns and other documentation required by the ATO at various dates since the implementation of the change program (eg 31 March, 15 May), taxpayer representatives have been forced to put in extra hours just to deal with returns that they have already lodged (some as early as December). The time taken to deal with these issues has not left taxpayer representatives with sufficient time to keep up to date with up coming lodgment deadlines.

The ATO's response to this issue has been inadequate. The responses have ranged from no lodgment extensions to extensions for a couple of weeks. This is not adequate when considered in light of the fact that the ATO refund delays lasted for well over 4 months (and in some cases are on-going at 6 months).

3.2 Impacts on taxpayers

The biggest impact on taxpayers has been financial hardship caused by the delayed returns.

Although the ATO introduced hardship protocols to expedite issues where genuine hardship was established, these protocols were developed too late into the process. Many taxpayers had already suffered irreparable damage by the time these protocols were developed. Further, there have been many complaints about the restrictive nature of the hardship protocols.

The delayed refunds had many practical impacts on taxpayers including:

- Preventing property acquisitions – in some cases purchasers were required to produce their 2009 NOA for financing purposes without which the purchase could not proceed.
- Business taxpayers budgeted their tax payables based on due dates provided by the ATO that were subsequently brought forward by approximately 6 weeks.

- Debt collection proceedings were instigated as a result of some taxpayers' inability to cover their debts as they were relying on their delayed refunds.
- Debt collection proceedings were instigated based on incorrect information being provided by the ATO (eg in one case debt recover action was instigated to recover a taxpayer's baby bonus as ATO records mistakenly showed the taxpayer's return had not lodged – lodgment was a requirement to receive the baby bonus).
- Overdrafts or credit arrangements required – some taxpayers needed to obtain overdrafts or use credit cards to fund bills that were to be satisfied using their delayed refunds

3.3 Impacts on other bodies

The Taxation Institute is not in a position to comment on the impacts the change program has had on other bodies. However, the Taxation Institute considers that submissions from Centrelink, the Child Support Agency and other such bodies that interact with the ATO would provide valuable insight into the implementation of the change program from another perspective.

If you require any further information or assistance in respect of our submission, please contact David Williams on 02 9958 3332 or the Taxation Institute's Tax Counsel, Angie Ananda, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink that reads "D Williams". The signature is written in a cursive, slightly slanted style.

David Williams
President