

The Auditor-General
Audit Report No.30 2006–07
Performance Audit

The Australian Taxation Office's Management of its Relationship with Tax Practitioners: Follow-up Audit

Australian Taxation Office

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of Australia 2007

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Canberra ACT
14 March 2007

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Australian Taxation Office in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *The Australian Taxation Office's Management of its Relationship with Tax Practitioners: Follow-up Audit*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Glossary

AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
ANTS	Australia's New Tax System
ATO	Australian Taxation Office
ATPF	ATO Tax Practitioner Forum
BAS	Business Activity Statement
CDDA	Compensation for Detriment caused by Defective Administration
GST	Goods and services tax
IT	Information technology
ITAA	<i>Income Tax Assessment Act 1936</i>
LB&I	Large Business and International business line
NTAPT	National Tax Agents Profile Tool
NTLG	National Tax Liaison Group
PIN	Personal identification number
PKI	Public Key Infrastructure
RM	Relationship Manager
TAB	Tax Agent Board
TAIU	Tax Agent Integrity Unit
TALC	Tax Agent Liaison Centre

TPaLS	Tax Practitioner and Lodgement Strategy business line
TPG	Tax Practitioner Group

Summary and Recommendations

Summary

Background

1. Tax practitioners are an integral part of the tax system in helping many taxpayers deal with their taxation responsibilities.¹ They are intermediaries between taxpayers and the ATO. In a speech delivered in April 2006, the Commissioner of Taxation stated that tax professionals play an essential role in maintaining the integrity and efficiency of the tax system, providing a key compliance leverage point to influence taxpayer behaviour.²
2. With self-assessment as the underpinning policy of tax administration³ and the changes in taxpayers' reporting obligations flowing from more recent tax reforms, tax agents have assumed an increased importance in the operation of the tax system. As at 30 January 2006, there were 26 169 tax agent registrations.⁴ Tax agents lodge about 74 per cent of the approximately 10 million individual tax returns and over 95 per cent of the approximately two million business tax returns.⁵
3. The relationship between the ATO and tax practitioners is multi-dimensional, dynamic and evolving. ATO interactions with tax practitioners serve a number of different functions including client support, service support, regulatory support and active compliance. The ATO and tax practitioners often have different and sometimes divergent interests. These factors ensure the relationship will be complex and at times fractious, despite each party's recognition that the relationship is one of mutual dependency.

¹ Tax practitioners play important roles as intermediaries between the Australian Taxation Office (ATO) and taxpayers because they variously interpret the law, advise and 'educate' taxpayers in tax law matters, and submit information to the ATO on behalf of their clients. In this audit we use the term 'tax practitioner' to mean tax agents and the wider group of professionals working on taxation matters for clients. The main focus of this follow-up audit, however, will be on the ATO's management of its relationship with tax agents. Tax agents are the core element of the tax practitioner grouping and their role is fundamental to the efficient and effective operation of the tax system.

² Commissioner of Taxation, *A new relationship with the tax profession*, April 2006 at <<http://www.ato.gov.au/corporate/content.asp?doc=/content/71870.htm>>. As noted in the Commissioner's speech, the majority of tax agents have multiple registrations; in particular, the majority of tax agents with a client base of less than 100 are linked to more than one registration. As a result the number of tax agent registrations exceeds the number of tax agents.

³ Self assessment, introduced in the mid 1980s, requires taxpayers to interpret the tax law correctly and to calculate their taxable income. Previously, taxpayers submitted required documentation with their returns and the ATO calculated tax payable.

⁴ Commissioner of Taxation, *A new relationship with the tax profession*, April 2006 at <<http://www.ato.gov.au/corporate/content.asp?doc=/content/71870.htm>>.

⁵ *ibid.*

4. All of the ATO's business lines have an active interest in or dealings with tax agents. From 1 July 2006, the Tax Practitioner and Lodgement Strategy (TPaLS) business line assumed corporate responsibility for managing the relationship with tax practitioners.

5. TPaLS also provides a range of specific tax agent support, compliance and co-ordination services. These include developing and delivering education, communication and technology products to tax agents, investigating tax agent compliance and integrity issues, providing secretarial support to the Tax Agent Boards (TABs), analysing and understanding the tax profession, and managing external liaison arrangements with tax, accounting and legal professional bodies.

6. TPaLS has a staffing level of 821 for 2006–07 and total funding of some \$60 million.⁶ Of this, 312 staff and approximately \$24 million are dedicated to the tax practitioner function. A diagram showing the structure and lines of reporting within the business line can be found at Appendix 2.

7. During 2002–03 the ANAO completed an audit of the ATO's management of its relationship with tax practitioners.⁷ At that time, the ANAO found that the relationship between the ATO and tax agents and the tax and accounting professional bodies could best be described as strained and tense. The audit acknowledged that managing the relationship well was an ongoing and challenging task and that the ATO had recognised the need to better manage and enhance the relationship. The ANAO concluded that the ATO needed to implement new initiatives to restore sound relationships with tax practitioners and ensure the effective operation of the tax system.

8. The 2002–03 report contained 10 recommendations directed at improving the ATO's management of its relationship with tax practitioners. The recommendations focused on three main areas:

- *improved governance;*
- *enhanced services for agents; and*
- *improved stakeholder liaison.*

⁶ This amount does not include \$8.569 million allocated for the new Tax Practitioner Legislative Framework.

⁷ Auditor-General Report No. 19 2002–2003 Performance Audit. *The Australian Taxation Office's Management of its Relationship with Tax Practitioners*. Tabled in the Commonwealth Parliament on 2 December 2002.

9. In the May 2006 Budget, the government announced an initiative to provide \$57.5 million over four years, commencing in 2006–07, for the implementation of a new Tax Practitioners' Legislative Framework.⁸ The new framework is designed to ensure nationally consistent, high quality and accessible tax practitioner services to the community. The new regime will:

- establish a national Tax Practitioner Board, to replace existing state TABs;
- create a code of practice to govern provision of tax practitioner services;
- allow a more flexible approach to regulating tax practitioners through a wider range of disciplinary sanctions; and
- provide for a safe harbour from tax shortfall penalties for false and misleading statements for taxpayers where they engage a registered tax agent to prepare their return and take reasonable care to provide that person with all the information necessary to complete it.

10. The new framework will also introduce registration for BAS service providers and enable registration for certain types of tax specialists.⁹

11. Over time the proposal is expected to provide benefits to the ATO's core activities in terms of more accurate returns from taxpayers, a reduction in general enquiries, a greater take up of electronic reporting options and scope to reduce audit activity.¹⁰

Audit objective

12. The objectives of this follow-up audit were to:

- examine the ATO's implementation of the ten recommendations in *The Australian Taxation Office's Management of its Relationship with Tax Practitioners* (Audit Report No.19, 2002–03), having regard to any changed circumstances, or new administrative issues, affecting implementation of those recommendations; and

⁸ The Hon. Peter Dutton MP, Minister for Revenue and Assistant Treasurer, *New Tax Practitioners Regime*, May 2006 at <<http://assistant.treasurer.gov.au/pcd/content/pressreleases/2006/016.asp>>.

⁹ The need for a new legislative framework was first identified in a report published by the Commonwealth of Australia in 1994 titled 'Tax Services for the Public: The Report of the National Review of Standards for the Tax Profession'.

¹⁰ Budget Paper No. 2 Budget Measures 2006–07, *Tax Practitioner Legislative Framework – Implementation*, May 2006, at <http://www.budget.gov.au/2006-07/bp2/html/bp2_expense-17.htm>.

- identify scope for improvement in the ATO's management of its relationship with tax practitioners.

13. Follow-up audits are recognised as an important element of the accountability processes of Commonwealth administration. Parliament looks to the Auditor-General to report, from time to time, on the extent to which Commonwealth agencies have implemented recommendations of previous audit reports. Follow-up audits keep Parliament informed of progressive improvements and current challenges in areas of Commonwealth administration that have previously been subject to scrutiny through performance audits.

Conclusions and key findings

Implementation of the recommendations of Audit Report No.19, 2002–03

14. In relation to the first part of the audit's objective, the ANAO concluded that the relationship between the ATO and tax agents, which had been strained and tense at the time of the previous audit, had improved significantly. This has been partly a result of the easing of pressures placed on practitioners and the ATO's operational systems by tax reforms such as Australia's New Tax System (ANTS). It also reflects the substantial progress made by the ATO in implementing the recommendations of Audit Report No.19, 2002–03.

15. The ATO had fully implemented four, substantially implemented four, and had partially implemented one other of the report's ten recommendations. Action on one recommendation hinged on the Government's new legislative initiative.

16. Surveys of tax agents show a marked improvement in the attitudes of tax agents towards the ATO since 2003. These surveys are carried out independently, but on behalf of, the ATO by the international social survey group, TNS Social Research. The surveys are conducted regularly throughout the year and for each year since 2003. They also track tax agents' attitudes to a range of experiences with the ATO.

17. The proportion of tax agents satisfied with the ATO's services increased from 39 per cent in 2003 to 70 per cent in 2005. The level of dissatisfaction dropped from 38 per cent to 14 per cent. The ANAO notes that since 2003 there has been a consistent upward trend in levels of satisfaction with the quality of

ATO staff assistance, the ease of access to ATO services and the value of the Tax Agent Portal.¹¹

18. Whilst TPALS has corporate responsibility across the whole of the ATO for managing the relationship with tax practitioners, all of the ATO's business lines and most of its service lines necessarily interact with tax practitioners as part of their day to day work. The nature and quality of this interaction can have a bearing on the quality of the ATO's relationship with tax practitioners.

19. A challenge for TPALS is to co-ordinate and support the multiplicity of the ATO's interactions with tax practitioners so as to maintain good and consistent relations. In addition, TPALS has to ensure that the specific tax practitioner functions for which it has corporate responsibility are performed as efficiently and effectively as possible. A key responsibility is to provide the tax practitioner infrastructure and co-ordination services at such a level that if the tax practitioner industry is stressed by systemic governmental and/or ATO initiatives, the ATO/tax practitioner relationship remains balanced and constructive.

Scope for further improvement in the ATO's relationship with tax agents

20. In relation to the second part of the audit's objective, to identify scope for improvement in the ATO's management of its relationship with tax practitioners, the ANAO found four key areas of administration that warranted further attention. These concerned:

1. the clarification of the role and functions of the Tax Agent Boards and the ATO;
2. scope for improvement in the performance of the Relationship Management function;
3. the ATO's level of knowledge about the tax agent population and ability to analyse details of tax agents and their associated registrations; and
4. the ATO's approach to various tax agent compliance matters, specifically:

¹¹ The operation of the ATO's tax agent and business portals was the subject of a recent performance audit. The report of this audit is *Tax Agent and Business Portals Australian Taxation Office Audit Report No. 4 2006–2007*. This report was tabled in the Parliament on 12 September 2006.

- the adoption of a more strategic and corporate approach to the detection and management of serious integrity risks presented by a small proportion of practising tax agents;
- the detection and management of some additional risks associated with the structures and practices of some tax agents; and
- the potential for the ATO to address industry concerns about the incidence of unregistered tax return preparers.

21. In this report, the ANAO has made six recommendations to address these four areas. The key issues concerning these four areas are summarised in the following paragraphs.

Clarification of the roles of the Tax Agent Boards and the ATO

22. The ANAO noted that in the tax practitioner industry and some areas of the ATO there was a lack of clarity about the roles of the TABs and the ATO in relation to a range of administrative issues. These included such matters as the TAB's accountability to the Treasurer, the Minister Assisting, and the Commissioner of Taxation; the ownership and access arrangements for the files containing the records of TAB deliberations; and the requirements of procedural fairness. Two of the six recommendations of this report are intended to address these matters.

Improvements to the ATO's relationship management function

23. Through the ATO's Relationship Manager (RM) function, the ATO provides tax agents with a wide range of personalised services. These services have a number of benefits. For example, they can help agents manage their practices better by the more skilful use of IT systems and a better understanding of ATO requirements. The RM staff can help improve tax agents' compliance with tax law in their own affairs as well as in relation to the tax issues of their clients.

24. Since tax agents have such a pivotal role in the community in taxation matters generally, there are benefits to the Commonwealth from the improved across-the-board compliance facilitated by the RM function. An improvement in the RM function could yield significant benefits as a result of improved compliance by tax agents and their clients.

25. The ATO expects staff carrying out the RM function to report tax agents' concerns on a corporate, whole-of-ATO, level and to convey to tax agents the whole-of-ATO view of the business lines' concerns and priorities about tax agent activity. The ANAO considers that the function could be improved to better target the provision of services in relation to compliance risks and educational needs of agents, as well as to enhance the ATO's strategic learnings from RM activity.

26. One of the six recommendations of this report is intended to improve the performance of the RM function.

Tax agent compliance matters

(a) Tax agents presenting serious risks

27. ATO research shows that a small proportion of tax agents present a serious risk to the integrity of the tax system and to the welfare of their clients.¹² The ATO has taken action against a number of these persons, ameliorating some serious risks. The ANAO noted several major and complex investigations relevant to this matter were underway at the time of the audit.

28. The ANAO considers that the ATO could take a more corporate, or whole-of-ATO, and strategic approach to the detection and management of the serious integrity risks presented by these persons. The ATO has a range of whole-of-ATO methodologies which have been used elsewhere in the ATO in relation to persons presenting serious compliance risks.¹³ The adaptation of these to the detection and management of the serious integrity risks presented by the small proportion of tax agents, who present a serious risk to the integrity of the tax system and to the welfare of their clients, could be useful.

29. Tax agents' involvement in preparing tax returns necessarily means that they have access to their client's personal information and accounts. Their access to the Tax Agent Portal gives tax agents ready access to clients' funds paid to the ATO and in certain circumstances, ATO refunds due to clients.

¹² Tax agents as a category may present two types of compliance risks. One relates to their personal responsibilities under tax law; the other to their professional role as a tax agent. Personal responsibilities of tax agents include their compliance with lodgement and tax debt payment obligations, all other tax law obligations as individuals, as well as in relation to any roles they may have in respect of companies, trusts, partnerships or superannuation funds. The professional responsibilities of tax agents introduce a wider range of compliance risks associated with the tax returns of their clients, the security of their clients' tax files and their access to the ATO's tax agent portal.

¹³ An overview of these methodologies may be found in Chapter 3 of ANAO Report No. 33 2005–2006 *Administration of Petroleum and Tobacco Excise Collections: Follow-up Audit*. Tabled in Parliament on 2 March 2006.

Recent incidents of fraud show that tax agents who are most likely to engage in the more serious forms of non-compliance activity can use the Tax Agent Portal to defraud the Commonwealth.¹⁴ These considerations highlight the importance of rapid detection and prevention of the more serious forms of tax agent integrity risk. ATO research suggests that it is necessary for the ATO to adopt a whole-of-ATO view in relation to the activities of tax agents who are most likely to engage in the more serious forms of non-compliance activity. In some cases, a multi agency view may be required to deal with the range and severity of the integrity risks.

30. The ANAO has made one recommendation to address the need for the ATO to adopt a more corporate, strategic approach to the serious integrity risks presented by a small proportion of tax agents.

(b) Additional risks related to some tax agent practices and structures

31. The ANAO noted that business structures being used by some tax agents may breach some sections of the ITAA. In some cases this may be a technical breach in that the tax agent has arranged their affairs unwittingly in breach of some provisions.

32. A breach of sections 251L, 251N and/or 251O, which relate to tax agents charging fees for their services, preparing returns and advertising their services, respectively, may arise if a tax agent traded through an entity other than the entity registered with the State-based TAB. For example, a tax agent may be registered as a natural person but is trading through a private company.

33. In addition, there may be breaches of s.251N(1) of the ITAA arising from the use of service trust arrangements in tax agent practices. Service trust arrangements in the tax profession typically involve a tax agent using the services of a person engaged through a service trust to prepare and lodge income tax returns.¹⁵ The Australian Government Solicitor has advised the ATO that s.251N(1) of the ITAA prohibits a registered tax agent from conducting a business of preparing income tax returns, or dealing with other income tax matters, otherwise than through:¹⁶

¹⁴ See page 34 of ANAO Report No. 4, 2006–2007 *Tax Agent and Business Portals Australian Taxation Office*. Tabled in Parliament 12 September 2006.

¹⁵ The ANAO notes that tax agents may set up service trusts for a range of reasons including asset protection, tax planning and superannuation. They may be used to provide a range of support services, including the provision of administrative staff, to the firm's principals.

¹⁶ Correspondence to the ATO from the Australian Government Solicitor dated 15 March 2005.

- an employee;
- another registered tax agent; or
- in the case of a partnership agent, a member of that partnership.

34. The ANAO notes that under current legislation, a registered tax agent could structure internal arrangements so that staff, who prepare tax returns and use the Tax Agent Portal, are not physically collocated in Australia with the tax agent. There have been media reports about specific instances of tax agent practices that may engage staff resident in overseas locations.¹⁷ There is a potential risk therefore that fraudulent access gained from abroad by means of the less secure PIN/Password entry to the Tax Agent Portal may result in activity that is beyond the ATO's capacity for timely and remedial action.

35. One of the six recommendations of this report is intended to address these additional risks associated with the structures and practices of some tax agents.

(c) Unregistered tax return preparers

36. The ANAO was informed of serious concerns in the tax practitioner professions about the number of unregistered tax return preparers still operating in the community. The ANAO found that the ATO has a series of initiatives underway to improve the efficiency and effectiveness of its activities directed at unregistered tax return preparers. These include encouraging the industry to inform the ATO of persons who may be unregistered tax return preparers and the use of profiles to identify tax returns that have been prepared by unregistered tax return preparers. The ANAO considered that the ATO could improve the use of profiles and other analytic techniques to better identify unregistered tax return preparers at the earliest opportunity.

37. One of the six recommendations of this report is intended to improve activity in this area.

ATO's knowledge of the tax agent population

38. The ANAO found that because of the quality of relevant tax agent information available to the ATO, it is unable to evaluate the full extent of the compliance risks reviewed in the preceding paragraphs. The ATO has not been able to provide an accurate measure of the number of tax agents who, as natural persons, practice full time and employ more than one staff member.

¹⁷ 'Accounting work outsourced to India', *The Australian Financial Review*, p. 63, Friday 12 May 2006. 'Tax work going offshore' *The Australian*, pps 27 and 28 Tuesday 3 October 2006.

The ATO cannot compile accurate and reliable measures of the numbers of tax agents or tax agent practices with key characteristics such as size and type of practice, or number of employees. More than 25 000 tax agent files are maintained as paper files in each State. There is no central or national registry for these files. The files for each tax agent registered in a State are maintained by the TAB secretariate for that State.

39. The ATO maintains a simple IT database, the Tax Agent Registration System, which has limited functionality. Data matching or analysis for compliance purposes, is not as efficient or accurate as it could be had the tax agent files been computerised.

40. The ANAO understands that the ATO has plans to computerise tax agent files as part of the implementation of the new Tax Practitioners' Legislative Framework.

Summary of ATO Response

41. The Tax Office welcomes the ANAO follow up report into its management of its relationship with Tax Practitioners, and the conclusion that there has been significant improvement in the relationship between the Tax Office and tax practitioners since the previous audit.

42. It is important to note that the original report's findings primarily related to registered tax agents. We regard this as our most significant intermediary relationship in our tax system. However, as the ANAO's original report noted the landscape for the tax industry continues to evolve and we are continuing to develop our relationship with other key groups such as bookkeepers, legal professionals and software developers.

43. The Tax Office accepts the six recommendations as contained in the current section 19 report, and has already made progress towards their implementation. There are, however, two areas that require clarification:

44. Firstly, our response to the content and recommendations relating to the Tax Agent Boards has been considered in the context of the statutory independence of those Boards. We will need to work with the Tax Agent Board Chairs (part time members and generally from the legal profession) to give effect to relevant recommendations.

45. Secondly, and as the ANAO's report notes, the Government last year announced the intention of implementing a new legislative regime for tax practitioners that would fundamentally reshape the administrative processes

underpinning the current regulatory framework. In accepting the recommendations of the report, the Tax Office will need to reconsider the appropriateness and priority of planned implementation activities in the context of implementing a new administrative regime. In this context any investment in current, but potentially outdated, business systems and processes is unlikely to proceed.

46. The ATO's full response is at Appendix 1.

Recommendations

Recommendation No. 1

Para 2.13

The ANAO recommends that the ATO provide members of the Tax Agent Boards (TABs) with guidance material that clearly sets out:

- a) the roles and functions of the TABs, the ATO and other relevant Commonwealth authorities;
- b) the principles and legislative elements of the Commonwealth's accountability framework; and
- c) the principles and legislative elements of the Commonwealth's framework for administrative law, including the doctrine and practice of procedural fairness.

ATO Response: Agreed.

Recommendation No. 2

Para 2.17

The ANAO recommends that the ATO establish a professional development program for the secretaries of the Tax Agent Boards (TABs) which would include elements of the following:

- a) the role and functions of the TABs and the ATO, including details of the roles, functions, business systems and procedures and contact officers of all ATO business lines, ATO payment procedures and ATO complaint handling procedures;
- b) secretariate functions, such as the conduct of meetings, minutes, agenda, and follow up;
- c) taxation law; and
- d) administrative law, including the roles of the Attorney-General, the AGS, the Ombudsman, the Administrative Appeals Tribunal, the Federal Court and the High Court; as well as the role of freedom of information legislation within government.

ATO Response: Agreed.

**Recommendation
No. 3**

Para 3.36

The ANAO recommends that the ATO adopt a more strategic and corporate whole-of-ATO approach, to the detection, investigation and management of the more serious tax agent integrity risks.

ATO Response: Agreed.

**Recommendation
No. 4.**

Para 3.38

The ANAO recommends that, to ensure tax agents are correctly registered and operating their business in accordance with the *Income Tax Assessment Act 1936*, the ATO:

- a) using a risk management approach, identify through the TABs, those tax agents who are trading through an entity other than the entity registered with Tax Agent Boards (possibly at the time of re-registration);
- b) assess, on a risk management basis, any consequences for the integrity of the tax system that may result from the incorrect registration of tax agents; and
- c) publish guidelines for the tax practitioner community setting out legislative and ATO administrative requirements about the use of trusts in tax agents' practices.

ATO Response: Agreed.

**Recommendation
No. 5**

Para 3.40

The ANAO recommends that to address industry concerns regarding the level of unregistered persons providing tax agent services, the ATO consider ways of improving the capability and performance of the Tax Agent Integrity Unit.

ATO Response: Agreed.

**Recommendation
No. 6**

Para 4.24

The ANAO recommends that to enhance strategic learnings and enable better targeting of services in relation to compliance risks and the educational needs of tax agents, the ATO ensures Relationship Management teams:

- a) prior to their visits to tax agents, are adequately briefed about the concerns of the ATO's business lines, including matters that tax agents may have raised with business lines; and
- b) disseminate in a timely manner to relevant business lines ATO-related concerns raised by tax agents during site visits.

ATO Response: Agreed.

Audit Findings and Conclusions

1. Background and Context

This Chapter provides an overview of the role tax practitioners play in the tax system and the relationship between the Australian Taxation Office (ATO) and tax practitioners. It discusses the findings of the previous Australian National Audit Office (ANAO) audit, outlines the audit objectives and methodology, and it also lists recent developments in the legislative framework that govern tax practitioners and the ATO's management of its relationship with tax practitioners.

The Australian taxation system and the role of tax practitioners

1.1 The role of the Australian Taxation Office (ATO) is to manage and shape the taxation, excise and superannuation systems that fund services for Australians, giving effect to social and economic policy. Through these systems the ATO is the Australian Government's principal revenue management agency. To manage the revenue system effectively, the ATO relies on the contribution of a range of intermediaries, including employers who collect tax from their employees, tax agents, advisers, professional membership organisations, and software producers.

1.2 Tax practitioners function as intermediaries between taxpayers and the ATO and have become an integral part of the tax system in helping many taxpayers deal with their taxation responsibilities.¹⁸ The ATO recognises that intermediaries, such as tax agents, have a symbiotic relationship with administration of the tax system. In a speech delivered in April 2006, the Commissioner of Taxation stated that tax professionals play an essential role in maintaining the integrity and efficiency of the tax system, providing a key compliance leverage point to influence taxpayer behaviour.¹⁹

Tax practitioners

1.3 In this audit we use the term 'tax practitioner' to mean tax agents and the wider group of professionals working on taxation matters for clients. The main focus of this follow-up audit, however, is on the ATO's management of its relationship with tax agents. Tax agents are the core element of the tax

¹⁸ Tax practitioners play important roles as intermediaries between the Australian Taxation Office (ATO) and taxpayers because they variously interpret the law, advise and 'educate' taxpayers in tax law matters, and submit information to the ATO on behalf of their clients.

¹⁹ Commissioner of Taxation, *A new relationship with the tax profession*, April 2006 at <<http://www.ato.gov.au/corporate/content.asp?doc=/content/71870.htm>>.

practitioner grouping and their role is fundamental to the efficient and effective operation of the tax system.

Characteristics of tax agents

1.4 With self-assessment as the legislated guiding principle of tax administration²⁰ and the changes in taxpayers' reporting obligations flowing from tax reforms, tax agents have assumed an increased importance in the operation of the tax system. Recent Australian Bureau of Statistics research²¹ indicates that there are some 39 000 businesses providing accounting services in Australia. This would include a range of professional services including bookkeeping services. Tax agents lodge about 74 per cent of the approximately 10 million individual tax returns and over 95 per cent of the approximately two million business tax returns.²²

1.5 As at 30 January 2006, 26 169 tax agents were registered.²³ Of these:

- 21 654 are considered active²⁴ including company, partnership and individual registrations;
- almost half the registered agents have less than 100 clients
- individual taxpayers form the majority of each agent's client base; – logically, given overall number of taxpayer types;
- 75 per cent of registered tax agents are located around cities;
- of the 14 829 active individual tax agent registrations, 74 per cent are between the ages of 45 and 54; and
- 17 per cent are expected to retire within two or three years.²⁵

²⁰ Self assessment, introduced in the mid 1980s, requires taxpayers to interpret the tax law correctly and to determine their taxable income. Previously, taxpayers submitted required documentation with their returns and the ATO calculated tax payable.

²¹ ABSBR, Counts of Businesses – Industry (ANZSIC Class 7842 – Accounting Services) by Main State by Employment Size Ranges, June 2004.

²² Commissioner of Taxation, *A new relationship with the tax profession*, April 2006 at <<http://www.ato.gov.au/corporate/content.asp?doc=/content/71870.htm>>.

²³ *ibid.*

²⁴ The ATO defines 'active' as having a client base of one or more clients, although a registered individual tax agent may lodge returns under a partnership registration number.

²⁵ TNS Social Research *Understanding tax practitioners Vol 1: Research with tax agents* June 2005, (ATO report). Note: the ATO advises that registration trends are not evidencing this statistic.

Relationship between the ATO and tax practitioners

1.6 The relationship between the ATO and tax practitioners is multi-dimensional, dynamic and evolving. ATO interactions with tax practitioners serve a number of different functions including client support, service support, regulatory support and active compliance. The ATO and tax practitioners often have different and sometimes conflicting interests. These factors ensure the relationship will be complex and at times fractious, despite each party's recognition that the relationship is one of mutual dependency.

1.7 Following introduction of Australia's New Tax System (ANTS) in July 2000, compliance requirements for small businesses and workloads in the tax profession changed significantly. This adversely affected the relationship between the ATO and tax practitioners, particularly tax agents. At the time of the previous audit in 2002, both the ATO and tax practitioners perceived a significant degree of dissatisfaction with their relationship, which appeared to be deepening rather than lessening.

1.8 In March 2002, the Commissioner of Taxation announced the Listening to the Community initiative. This involved the ATO working with the general community, including small business, industry and tax agents to identify ways to make it easier and cheaper for people to comply with their tax obligations. The project helped the ATO identify what tax agents wanted from their dealings with the ATO and has resulted in numerous initiatives including the Tax Agent Portal and Relationship Manager function, to improve the relationship between the ATO and tax practitioners. Most recently, the Commissioner of Taxation has formally acknowledged a strengthened commitment to providing support and services for agents to make it as easy as possible for them to meet their clients' tax obligations.²⁶

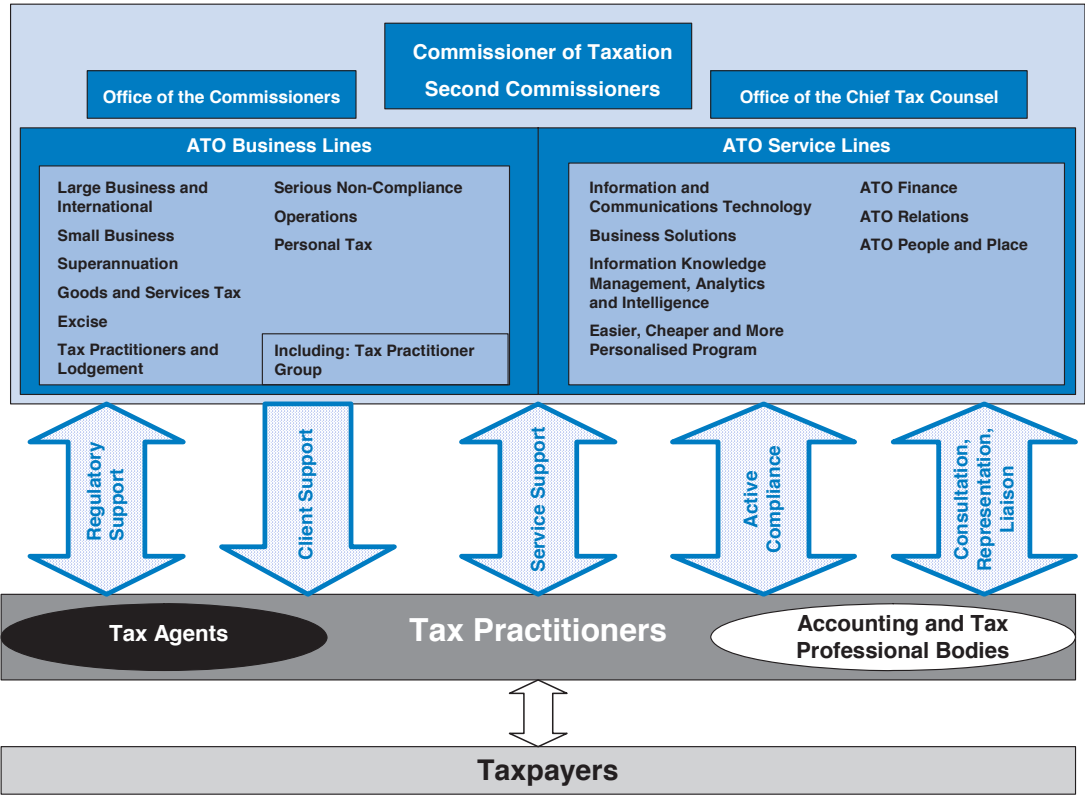
ATO management responsibility

1.9 Within the ATO, activity related to tax practitioners occurs in all of the ATO's organisational divisions. These are the ATO's 16 business and service lines.

²⁶ Commissioner of Taxation, *Support and services for tax agents*, February 2006, at <<http://www.ato.gov.au/print.asp?doc=/content/68913.htm>>.

Figure 1.1

Aspects of the relationship between the ATO and tax practitioners



Source: ANAO depiction of ATO information (ATO structure as at the time of conducting the audit)

1.10 At the time the audit started, the Tax Practitioner Group (TPG) was part of the Personal Tax business line. TPG had an allocation of 253 staff for 2005–06 and total funding of some \$22 million. From 1 July 2006, the TPG became part of a newly created business line, the Tax Practitioner and Lodgement Strategy (TPaLS) business line. TPaLS assumed corporate responsibility across the whole of the ATO for managing the relationship with tax practitioners. The role of the business line includes developing and delivering education, communication and technology products to tax agents, investigating tax agent compliance and integrity issues, providing secretarial support to the Tax Agent Boards (TABs), analysing and understanding the tax profession, and managing external liaison arrangements with tax, accounting and legal professional bodies. TPaLS has an allocation of 821 staff for 2006–07

and total funding of some \$60 million.²⁷ Of this, 312 staff and approximately \$24 million are dedicated to the tax practitioner function. A diagram showing the structure and lines of reporting within the business line can be found at Appendix 2.

Tax practitioner regulation

1.11 Various regulatory arrangements apply to the professional groupings comprising tax practitioners.²⁸ Tax agents are regulated under provisions contained in the *Income Tax Assessment Act 1936* (the ITAA).²⁹ The regulatory regime involves an initial registration and triennial re-registration process and is designed to ensure that individuals who charge a fee for providing tax services are 'fit and proper' to provide such services.³⁰ Tax Agent Boards are responsible for administering registration of tax agents in each state and territory. Each TAB has an appointed secretary, who is responsible for providing administrative support to the Board. The secretary and secretariate staff of each TAB are officers of the ATO, but undertake work at the direction of the Board.

1.12 Appendix 3 contains further details on the regulation of tax agents.

1.13 Although the ATO does not administer tax agent registration, it has responsibility to identify and take appropriate action against unregistered tax return preparers.

1.14 On 1 July 2000, s.251L of the ITAA was amended to allow some specified non-tax-agent individuals to charge for preparing, lodging and providing advice on Business Activity Statement (BAS) preparation. Paragraph 251L(6)(b) included a requirement that bookkeepers providing BAS services for a fee had to be 'working under the direction' of a registered tax agent. It is the ATO's responsibility to monitor compliance with this requirement.

²⁷ This amount does not include \$8.569 million allocated for the new Tax Practitioner Legislative Framework.

²⁸ For example, the providers of financial services, such as financial product advice, are regulated under the *Corporations Act 2001*, tax professional associations apply professional standards to their membership and some types of tax practitioners, such as solicitors and accountants, must adhere to practice standards attached to their profession.

²⁹ Part VIIA of the ITAA and Part 9 of the Income Tax Regulations.

³⁰ The 'fit and proper' test includes components of general character, appropriate qualifications including knowledge of Australian tax law and relevant accounting principles, and relevant practical experience.

ANAO Report No.19 of 2002–03

1.15 During 2002–03 the ANAO completed an audit of the ATO's management of its relationship with tax practitioners. The ANAO found that the relationship between the ATO and tax agents and the tax and accounting professional bodies could best be described as strained and tense. The audit acknowledged that managing the relationship well was an ongoing and challenging task and that the ATO had recognised the need to better manage and enhance the relationship. The ANAO concluded that the ATO needed to implement new initiatives to restore sound relationships with tax practitioners and ensure the effective operation of the tax system.

1.16 The 2002–03 report contained 10 recommendations directed at improving the ATO's management of its relationship with tax practitioners. The recommendations focused on three main areas:

- *improved governance* – including better internal oversight and coordination mechanisms, improved strategic planning and more robust performance assessment and reporting;
- *enhanced services for agents* – involving improved strategic planning for service provision, better management of technology support programs, improved telephone services, and enhanced planning and review of service support functions; and
- *improved stakeholder liaison* – relating to assessing the benefits and performance of stakeholder consultative committees.

The audit

1.17 The objectives of this follow-up audit were to:

- examine the ATO's implementation of the ten recommendations in *The Australian Taxation Office's Management of its Relationship with Tax Practitioners* (Audit Report No.19, 2002–03), having regard to any changed circumstances, or new administrative issues, affecting implementation of those recommendations; and
- identify scope for improvement in the ATO's management of its relationship with tax practitioners.

1.18 Follow-up audits are recognised as an important element of the accountability processes of Commonwealth administration. Parliament looks to the Auditor-General to report, from time to time, on the extent to which

Commonwealth agencies have implemented recommendations of previous audit reports. Follow-up audits keep Parliament informed of progressive improvements and current challenges in areas of Commonwealth administration that have previously been subject to scrutiny through performance audits.

Audit methodology

1.19 The ANAO wrote to the ATO at the commencement of the audit, seeking information on implementation status of the recommendations from the previous audit. Following receipt of the ATO's response, the ANAO interviewed key ATO personnel, members of the TABs and representatives from the major tax and accounting professional associations. The ANAO also reviewed relevant systems, files and documents.

1.20 This audit was undertaken in conformance with ANAO auditing standards and cost \$280 000.

Recent developments

New legislative framework for tax practitioners

1.21 In the May 2006 Budget, the government announced it would provide \$57.5 million over four years, commencing in 2006–07, for implementing a new Tax Practitioners Legislative Framework.³¹ The new framework is designed to ensure nationally consistent, high quality and accessible tax practitioner services to the community. The new regime will:

- establish a national Tax Practitioner Board, to replace existing state TABs;
- create a code of practice to govern provision of tax practitioner services;
- allow a more flexible approach to regulating tax practitioners through a wider range of disciplinary sanctions; and
- provide for a safe harbour from tax shortfall penalties for false and misleading statements for taxpayers where they engage a registered tax agent to prepare their return and take reasonable care to provide that person with all the information necessary to complete it.

³¹ The Hon. Peter Dutton MP, Minister for Revenue and Assistant Treasurer, *New Tax Practitioners Regime*, May 2006 at <<http://assistant.treasurer.gov.au/pcd/content/pressreleases/2006/016.asp>>.

1.22 The new framework will also introduce registration for BAS service providers and enable registration for certain types of tax specialists.

1.23 Over time the proposal is expected to provide benefits to the ATO's core activities in terms of more accurate returns from taxpayers, a reduction in general enquiries, a greater take up of electronic reporting options and scope to reduce audit activity.³²

1.24 The need for a new legislative framework was first identified in a report published by the Commonwealth of Australia in 1994 titled 'Tax Services for the Public: The Report of the National Review of Standards for the Tax Profession'. This report recommended a number of improvements to the regulation of tax agents including streamlined registration processes in some circumstances, establishment of a national TAB and clearer definition of the standards of conduct required of tax agents.

Emerging importance of BAS service providers and bookkeepers

1.25 The relationship between taxpayers, bookkeepers and tax agents is becoming increasingly important. Tax agents and small businesses are increasingly utilising the services of bookkeepers to meet compliance obligations and reduce the costs associated with compliance. Industry research indicates that 66 per cent of tax agents are having contact with bookkeepers employed by their clients, 24 per cent are employing bookkeepers within their practices, and only 17 per cent are not having contact with bookkeepers.³³

1.26 The increasing use of bookkeepers' services has raised issues about standards, accreditation, supervision, registration and regulation in recent years.³⁴ ATO research indicates that bookkeeper compliance with s.251L of the ITAA could be as low as 5–10 per cent amongst those bookkeepers who are BAS service providers, i.e. bookkeepers who charge a fee for providing a BAS service.³⁵ With the impending introduction of legislation regulating BAS service providers, there is recognition of the need for careful management of

³² Budget Paper No. 2 Budget Measures 2006–07, *Tax Practitioner Legislative Framework – Implementation*, May 2006, at <http://www.budget.gov.au/2006-07/bp2/html/bp2_expense-17.htm>.

³³ TNS Social Research *Understanding Tax Practitioners Vol 1: Research with tax agents* and *Understanding the bookkeeping profession Vol 1: Research with bookkeepers* June 2005, (ATO report).

³⁴ TNS Social Research, *Understanding the bookkeeping profession Vol 2: Research with bookkeepers*, June 2005, (ATO report). This research targeted BAS service providers, i.e. bookkeepers who charge a fee for providing a BAS service.

³⁵ *ibid.*

the relationship between the ATO and BAS service providers, and tax agents and BAS service providers and bookkeepers more generally.

ATO interaction with bookkeepers

1.27 The ATO has been working actively with representatives of the bookkeeper industry since 2003,³⁶ to increase understanding and knowledge of the industry. Tailored information and education products are being developed to increase and improve interactions between the ATO and bookkeepers. Additionally, the ATO is conducting performance monitoring of the industry to identify compliance trends and is developing s.251L compliance strategies.

Change program

1.28 The ATO is currently undertaking a major program of work, called the *Easier, cheaper and more personalised program*.³⁷ Multiple computer systems across the organisation will be replaced with a single integrated ATO-wide system for administering taxes, superannuation, and excise. The new system will include whole-of-ATO functionality for client relationship management, case management, core processing, document and content management, and analytics. The new system is being released in stages. Release 1 occurred in the ATO's call centres in September 2005. The ATO intends implementing the case management functionality during the financial year 2006–07. The ATO has advised that the core processing functionality is part of Release 3, which is scheduled for progressive implementation between December 2007 and June 2008.

Acknowledgements

1.29 The ANAO would like to thank ATO management and staff for their assistance in conducting the audit, in particular, for their time, effort and expertise contributed during the audit. The ANAO would also like to express appreciation to members of the TABs, the major tax and accounting professional associations and tax agents interviewed for their contributions to the audit.

³⁶ In 2003 the ATO sponsored a Bookkeepers' Symposium attended by bookkeepers, tax agents and representatives from professional associations and bookkeeper associations and franchises.

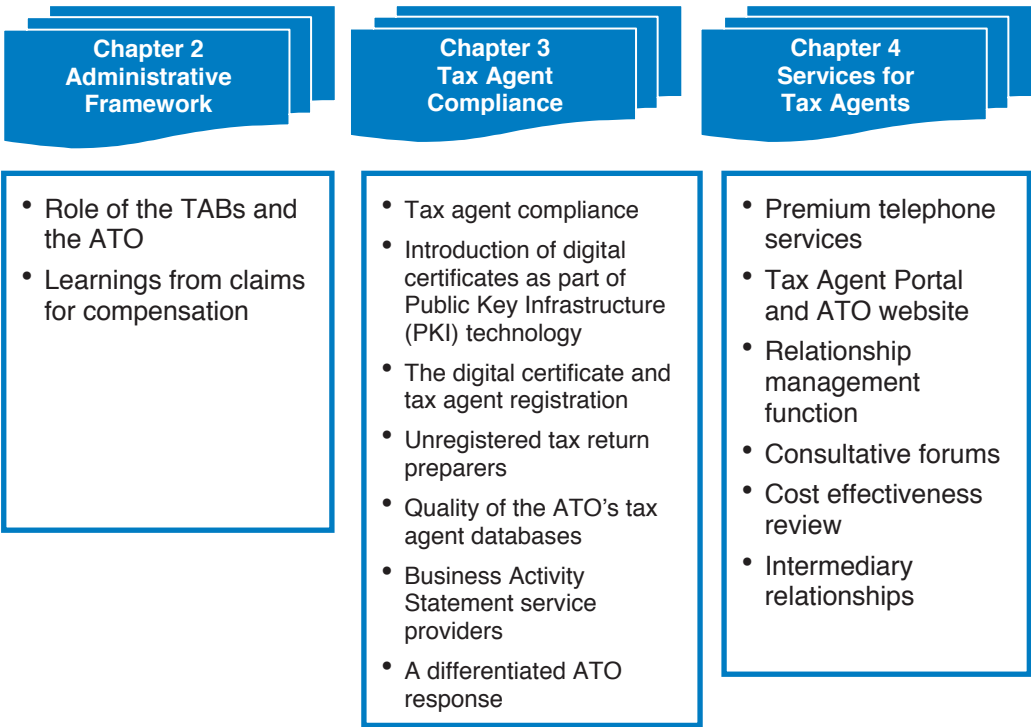
³⁷ For more information see *Revitalising the tax administration system: the Australian experience* at <<http://www.ato.gov.au/content/downloads/oecd.pdf>>.

Structure of the Report

1.30 The chapters of this report have been broadly structured around the themes and recommendations identified in Audit Report No.19 of 2002–03. The ATO’s progress towards achieving the full implementation of the ten recommendations contained in Audit Report No.19 of 2002–03 is reported in each of the following chapters. A summary assessment can be found in Appendix 4.

Figure 1.2

Structure of the Report



2. Administrative Framework

This Chapter discusses the administrative framework of the tax agent function. Issues include the role of Tax Agent Boards and the role, functions and structure of the former Tax Practitioner Group and learning from issues arising from cases in which the Commonwealth has paid compensation in connection with the Compensation for Detriment caused by Defective Administration in relation to the administration of the tax agent function.

This Chapter relates to recommendations numbers 1, 2, 3, 4 and 5 and the discussion in Chapter 5 of ANAO Report No.19 of 2002–03. A summary assessment is contained in Appendix 4.

Introduction

2.1 ANAO Report No.19 of 2002–03 found that the ATO had a good management framework for the administration of the tax practitioner function, with well-developed corporate planning and review processes. Five of the Report's recommendations were directed at strengthening the management framework. The ATO has made substantial progress with implementation. In particular, the ATO has substantially implemented the two recommendations directly relevant to the ATO's strategic management of the function (recommendations No. 1 and 2); it has fully implemented the recommendation that strengthens the corporate planning and reporting framework (Recommendation No. 4); and has substantially implemented the recommendation which would enable it to better understand, in an aggregate sense, the tax agent population (Recommendation No. 5). Further details may be found at Appendix 4.

2.2 Progress with the implementation of the recommendation relating to the clarification of the roles and responsibilities of tax agents (Recommendation No. 3) has been delayed pending the government's new legislative initiative for tax practitioners.

2.3 The Tax Agent Boards (TABs) are unincorporated bodies established in accordance with the *Income Tax Assessment Act 1936*. There is one TAB in each state. The TABs are part of the executive branch of government and are accountable both directly and through the Commissioner of Taxation to the Treasury portfolio ministers. Parliament has invested the TABs with independent decision-making powers and functions in relation to particular

matters concerning tax agents.³⁸ The ATO provides a secretariate function to support the operation of the TABs.

2.4 The Tax Practitioner and Lodgement Strategy (TPaLS) business line has corporate responsibility for managing the relationship with tax practitioners. TPaLS also provides a range of specific tax agent support, compliance and co-ordination services.

2.5 Within TPaLS, the Tax Agent Integrity Unit (TAIU) undertakes a range of compliance activities as part of its responsibilities to investigate the integrity of registered tax agents and to identify situations where unregistered tax agents prepare tax returns. The TAIU receives referrals or complaints from ATO business lines, the TABs, registered tax agents and the general public. The TAIU supports the TABs by undertaking investigations at their request. TAIU investigations may result in referral of cases to the TABs, the ATO Serious Non-Compliance, GST Complex Audit, other business lines or ATO prosecutors.

2.6 The ATO has also undertaken to establish a dedicated ATO phone line for tax agents to report instances of problematic tax agent behaviour, including unregistered tax return preparers. The ATO has advised that this facility is in the process of being co-designed with the industry. Amongst other things, tax agents will be invited to use this line to report concerns about behaviours (taxpayer or tax agent) that are considered to be unethical, contrary to the law, or that impact adversely on community confidence in the tax system. The TAIU will have responsibility to follow-up relevant telephone calls; others will be acted on by other areas of the ATO, as appropriate.

ANAO's findings from the current audit

The roles of Tax Agent Boards and the ATO

2.7 In 2002, in response to an ATO request, the Australian Government Solicitor (AGS) advised that TABs, as entities within the Treasury portfolio, and as a consequence of constitutional arrangements, are necessarily accountable to the minister with constitutional power for administering the

³⁸ AGS advice to the ATO dated 31 August 2006.

Income Tax Assessment Act 1936 (ITAA) under the Governor-General's Administrative Arrangements Order. This minister is the Treasurer.³⁹

2.8 The AGS has advised that the TABs are part of the executive branch of government and as such are administrative, not judicial, entities.

2.9 The ATO is responsible for providing an efficient and effective secretariate service to the TABs. The ATO is also responsible for providing accurate, complete, and appropriate information to the TABs. In addition, the TABs and the ATO both have corporate governance responsibilities.

2.10 Notwithstanding the above, the ANAO noted some confusion in the tax industry and within the ATO about the respective roles of the TABs and the ATO. In conjunction with the TABs, the ATO has prepared guidance based on the AGS advice which clarifies the roles of each. More recently the ATO has sought further clarification from the AGS on some matters of principle regarding the roles and relationship between the TABs and the ATO.

2.11 Similarly, the AGS had previously advised the ATO that the Commissioner of Taxation is responsible and accountable for administrative files maintained by the TABs.⁴⁰ These files contain the records of all decisions, transactions and correspondence of the TABs in relation to any matter with which they have dealt arising from their responsibilities under Part VIIA of the ITAA 1936. The files also contain any information such as reports, file notes and correspondence relating to these activities. The ANAO again noted some confusion regarding ownership of these files. AGS advice is that these files do not 'belong' to the individual TABs. The Commissioner may delegate custody of, access to, and administration of these files generally to ATO staff consistent with relevant legislation, as happens generally with the Commissioner's administrative and decision making powers.

2.12 The ANAO considers that the turnover of TAB members in the various States and territories necessitates a need for new appointees to be familiarised by the ATO about the nature of the TABs role and their responsibilities as members. The ANAO recommends that the ATO prepare a standard package of material which can be distributed to TAB members when required.

³⁹ *ibid.* The TABs accountability to Parliament largely derives from the combined effect of the Constitution (sections 53, 56, 61, 64, 81 and 83) the *Financial Management and Accountability Act 1997*, the *Income Tax Assessment Acts*, the *Tax Administration Act 1953*, the annual appropriations acts and the Administrative Arrangements Orders.

⁴⁰ AGS letter to the ATO dated 22 August 2002.

Recommendation No.1

2.13 The ANAO recommends that the ATO provide members of the Tax Agent Boards (TABs) with guidance material that clearly sets out:

- (a) the roles and functions of the TABs, the ATO and other relevant Commonwealth authorities;
- (b) the principles and legislative elements of the Commonwealth's accountability framework; and
- (c) the principles and legislative elements of the Commonwealth's framework for administrative law, including the doctrine and practice of procedural fairness.

ATO Response

2.14 Agreed. The Tax Agent Boards are independent statutory bodies. We will work with the Tax Agent Board Chairs (part time members and generally from the legal profession) to co-design and develop any relevant guidance material.

2.15 The ATO appoints all staff employed within the TAB secretariates, including the TAB Secretaries. They are invariably ATO officers who are promoted or transferred to the positions. Whilst the classification of staff may be relatively junior, in ATO terms, the TAB Secretary occupies a pivotal position in tax agent administration. Staff are selected against generic criteria relevant to their appointment to the TAB secretariate, but there are also specific requirements.

2.16 The ANAO considers there is a need for specialised professional training and development of TAB secretariate staff. The ANAO recommends that an appropriate professional training and development program for TAB secretariate staff be established.

Recommendation No.2

2.17 The ANAO recommends that the ATO establish a professional development program for the secretaries of the Tax Agent Boards (TABs), which would include elements of the following:

- (a) the role and functions of the TABs and the ATO, including details of the roles, functions, business systems and procedures and contact officers of all ATO business lines, ATO payment procedures and ATO complaint handling procedures;
- (b) secretariate functions, such as the conduct of meetings, minutes, agenda, and follow up;
- (c) taxation law; and
- (d) administrative law, including the roles of the Attorney-General, the AGS, the Ombudsman, the Administrative Appeals Tribunal, the Federal Court and the High Court; as well as the role of freedom of information legislation within government.

ATO Response

2.18 Agreed. Board secretaries already have elements of many of the listed skills, especially those in b). A national procedural manual is in place. Further, development needs are considered at least annually as part of the Tax Office officer performance review processes. A professional program is being developed which will build on the current skilling program and assist in these ongoing assessments. This new formal program is to take into consideration the level of the officer and skills required to support the new national board as announced by the government in its proposed tax practitioner legislative framework. The Tax Office does not believe secretaries need all of the listed skills, as applicable experts can be drawn upon to assist as needs arise; nor do they need to have all the listed skills to any great extent eg extensive knowledge of taxation law; the role of the High Court vis a vis the Federal Court.

2.19 The files for each tax agent registered in a state are maintained by the TAB secretariate for that state. There is no central or national registry for these files.

2.20 Whilst the ATO maintains a simple IT database, the Tax Agent Registration System, it has limited functionality. For example, the ATO cannot compile accurate and reliable measures of the numbers of tax agents or tax

agent practices with key characteristics such as size and type of practice, or number of employees.

2.21 Tax agent data matching or analysis for compliance purposes, is not as efficient or accurate as it could be had the tax agent files been computerised. More than 25 000 tax agent files are manually maintained as paper files in each State. In the absence of the requisite computer records and systems it was not practicable, for example, for the ANAO to establish if a TAB has registered trusts or individual trustees in breach of s.251 of ITAA.⁴¹ Had such data been computerised, the ATO would be able to compile more accurate and comprehensive statistical data about tax agents. Furthermore, the ATO is unable to provide individual TABs with information about prior decisions of other State TABs relevant to a matter before that particular TAB. Such information could help the TABs achieve consistency in treating like cases in like ways, thereby improving the equity of TAB decision-making.

2.22 The ANAO noted that since 2004 the ATO has initiated a range of measures to improve the management of tax agent files. Amongst other things, these initiatives aim to achieve the adoption of ATO-wide business processes, information management and project management to improve the ATO's administrative support of the TABs. The ATO commenced these measures in anticipation of the new legislative initiative which had been under government consideration. The Government announced details of the new initiative in the 2006–2007 Budget. Funds the Government has allocated to the ATO in relation to the new legislative initiative include an amount for the computerisation of TAB files.

Learning from claims for compensation

2.23 The Compensation for Detriment caused by Defective Administration (CDDA) Scheme is an administrative scheme, established in October 1995, to enable the Commonwealth to compensate individuals who have been adversely affected by the defective actions or inaction of Commonwealth agencies, but who have no other avenues to seek redress. The Commonwealth defines defective administration as:⁴²

- a specific and unreasonable lapse in complying with existing administrative procedures; or

⁴¹ Issues related to trusts are discussed more fully in Chapter 4.

⁴² Further details may be found on the Department of Finance and Administration website at <http://www.finance.gov.au/finframework/attachment_B_to_finance_circul.html>.

- an unreasonable failure to institute appropriate administrative procedures; or
- an unreasonable failure to give to (or for) a claimant, the proper advice that was within the official's power and knowledge to give (or reasonably capable of being obtained by the official to give); or
- giving advice to (or for) a claimant that was, in all the circumstances, incorrect or ambiguous.

2.24 Historically, there have been several CDDA matters, some of which resulted in claims under the scheme, in relation to administration of the tax agent function, for example:

- one CDDA case indicates that a TAB (the membership of which has subsequently retired from the TAB) maintained an attitude to the accountability of Commonwealth entities that was at variance to the understanding established by the 2002 AGS advice;
- another case shows the Administrative Appeals Tribunal found that a TAB had conducted its activity at the time without due regard to established standards of procedural fairness;⁴³
- the ATO may need to consider the possible impact of the advice it provides a TAB about the viability of a tax agent's practice. This issue has been a feature of some successful CDDA claims; and
- other cases reviewed by the ANAO indicated that in the past the ATO's administration of services to support the TABs had at times been wanting.

2.25 The ANAO considers that the ATO and the TABs could continue to learn from the CDDA cases, making any necessary administrative reforms to help in preventing further defective administration and to improve administration generally. There may also be scope for more effective ways for lessons learnt from CDDA cases to be transferred from the areas in the ATO that investigate and make findings about CDDA matters to the areas in which the defective administration has occurred.

2.26 Similarly, in order to minimise future defective administration claims, the ANAO considers the ATO could have a greater role in ensuring that TABs

⁴³ Re Martin and the Tax Agents' Board of New South Wales 1996, *Australian Tax Cases*, 2043 at 2050 (paragraph 53) per M. D. Allen, Senior Member. Administrative Appeals Tribunal, Sydney, 10 May 1996.

have an ongoing knowledge of, and regard for, procedural fairness and precedents established by other TABs.

2.27 The ANAO notes that the ATO has applied some lessons learned from the CDDA cases, such as the initiative where the chairmen of all TABs were briefed in March 2006 about principles arising from relevant CDDA cases.

3. Tax Agent Compliance

This Chapter reviews issues in relation to the ATO detection of, and action taken against, incidents of tax agents' non-compliance with tax legislation. These issues relate to compliance matters discussed in ANAO Report No. 19 of 2002–03 in connection with Recommendation No. 5 and the broader discussion in Chapter 5 of that report. A summary assessment is contained in Appendix 4.

Introduction

3.1 As at 30 January 2006, there were 26 169 tax agent registrations; 21 654 are considered active, including individual, company and partnership registrations. The majority of tax agents have multiple registrations.⁴⁴

3.2 ANAO Report No. 19 of 2002–03 discussed the compliance role of the Tax Practitioner Group and Alliances Branch, which at that time had responsibility on behalf of the ATO for the ATO's relationship with tax practitioners, particularly tax agents. That role is now with the Tax Practitioner and Lodgement Strategy (TPaLS) Business Line. The Report noted that some ATO compliance work is integral to the ATO's regulatory relationship with tax agents, whilst other work is relevant to the ATO's broader compliance responsibilities.

ANAO's findings from the current audit

Tax agent compliance

3.3 Tax agents may present two types of compliance risk. One relates to their personal responsibilities under tax law. The other to their professional role as a tax agent. Personal responsibilities of tax agents include their compliance with lodgement and tax debt payment obligations, and other tax law obligations as individuals, as well as in relation to any roles they may have in respect of companies, trusts, partnerships or superannuation funds. The professional responsibilities of tax agents introduce a wider range of compliance risks associated with the tax returns of their clients, the security of their clients' tax files and their access to the ATO's Tax Agent Portal.

3.4 In the following paragraphs, 'tax agent integrity risks' refers to compliance risks associated with both roles.

⁴⁴ *A new relationship with the tax profession*, a speech by the Commissioner of Taxation, Michael D'Ascenzo, to the 21st National Convention of the Taxation Institute of Australia, Thursday 16 April 2006.

3.5 The ATO carries out a wide range of tax agent compliance activity in order to manage tax agent integrity risks. Some is carried out in the Tax Agent Integrity Unit (TAIU). However, most tax agent compliance activity occurs in the ATO's business lines as a part of business lines' compliance activities.

3.6 ATO research shows that there is a small number of tax agents who are highly likely to engage in the more serious forms of non-compliance activity. This activity includes deliberate systemic tax evasion, abuse and manipulation of the tax system with fraudulent intent, or fraudulent abuse and/or manipulation of client affairs for the personal gain of the tax agent. It also includes unsatisfactory compliance behaviour arising from shortcomings in internal systems, personal competency, untrained staff or unwillingness to comply fully with the law. It has included the gaining of personal financial benefit through fraudulent transactions on the ATO's Tax Agent Portal, which have, in some instances, been enacted against other tax agents. It also includes tax evasion and fraud across multiple risk areas, which is most likely to affect all business lines. ATO research reveals that the tax agents most likely to engage in the more serious forms of non-compliance activity will structure their activities in order to avoid detection from the ATO's standard profiling systems.

3.7 ATO evidence indicates that most agents comply with tax law in respect of their personal obligations under tax law. Similarly, the ATO has estimated that most of the tax agents who present compliance risks do so on an intermittent basis. It is understood that many of these problems arise incidentally or, in a small proportion of instances, opportunistically, rather than from deliberate systemic intent to breach tax law.

3.8 The ATO has taken action against tax agents who engage in major non-compliance activity, ameliorating some serious risks. The ANAO noted several major and complex investigations relevant to this matter were underway at the time of the audit.

3.9 The ATO has variously estimated the numbers of tax agents who are most likely to engage in the more serious forms of non-compliance activity at between 400 and 700.⁴⁵ As noted in paragraphs 2.19 to 2.22 the ANAO found

⁴⁵ The ATO's Compliance Program 2004–05 stated "We expect to contact at least 700 tax agents this year, where our analysis identifies a potentially high risk". The ATO's Compliance program for 2005–06 gives the lower estimate of 500. The Inspector-General of Taxation has told Parliament that he thinks that the number is 600. See Hansard at <www.aph.gov.au/hansard/joint/commtee/J9518.pdf>. Friday 28 July 2006, p. PA 14.

that because of the quality of relevant tax agent information available, the ATO is unable to evaluate the full extent of these serious compliance risks.

3.10 Tax agents are an integral part of the tax system and are essential to the system's integrity. The ATO and their clients place tax agents in a position of trust. As a result of their involvement in preparing tax returns they have access to their client's personal information and accounts. Their recently-acquired access to the Tax Agent Portal gives tax agents ready access to clients' funds paid to the ATO and in certain circumstances, ATO refunds due to clients. Recent incidents of fraud show that tax agents who are most likely to engage in the more serious forms of non-compliance activity can use the Tax Agent Portal to defraud the Commonwealth.⁴⁶ These considerations highlight the importance of rapid detection and prevention of the more serious forms of tax agent non-compliance.

3.11 The ANAO considers that the ATO could take a more corporate, or whole-of-ATO, and strategic approach to the detection and management of the serious integrity risks presented by these persons. Tax agent integrity risks do not always align with business line compliance risks, and may therefore not be appropriately actioned. For a small number of tax agents, the tax agent integrity risks could be quite serious and occur across multiple risk areas managed by several business lines. A whole-of-ATO view would be necessary to reveal the extent of these combined risks.

3.12 If possible, the whole-of-ATO view would include review of the compliance behaviour of the tax agent as a natural person and in other roles, such as company director, shareholder, trustee, and beneficiary of distributions and in relation to any roles they may have in respect of companies, trusts, partnerships or superannuation funds. Similarly, a whole-of-ATO view would be most effective if it incorporated information from Australian Securities and Investment Commission, AUSTRAC or the Annual Investment Income Returns associated with the tax agent, or associated entities.

3.13 The ANAO notes that the detection and management of the serious integrity risks presented by these persons could be assisted by the adaptation

⁴⁶ See page 34 of ANAO Report No. 4, 2006–2007 *Tax Agent and Business Portals Australian Taxation Office*. Tabled in Parliament 12 September 2006.

of the whole-of-ATO methodologies which the ATO has used in other instances in relation to persons presenting serious compliance risks.⁴⁷

Introduction of digital certificates as part of Public Key Infrastructure (PKI) technology

3.14 In introducing the Tax Agent Portal, the ATO aimed to achieve a balance between ease of uptake of the Portal and IT security considerations, by providing access through PIN/Password authentication. The ATO recognised this type of authentication as an interim measure with the intent of moving tax agents to digital certificates as part of the more secure PKI or equivalent technology in the future.

3.15 In 2005 several incidents of serious fraud in connection with the PIN/Password authentication procedure highlighted the need to improve security around access to the Tax Agent Portal. In response, the ATO developed a strategy to require tax agents to adopt digital certificate methodology instead of the less secure PIN/Password authentication.⁴⁸ The ATO took a staged approach with the aim of having all small and medium sized tax agent practices using the digital certificate authentication by 31 December 2005 and large tax agent practices by 31 March 2006. As at 8 October 2006, approximately 76 per cent of the target audience is using digital certificates to access the Tax Agent Portal.⁴⁹

3.16 Several issues emerged during implementation of the digital certificate methodology.⁵⁰ These issues have delayed adoption by all tax agents of digital certificate authentication by the proposed dates. In the interim, the ATO has asked tax agents to continue to replace the less secure PIN/Password authentication procedure with the more secure digital certificate methodology and, to access the Tax Agent Portal by the more secure means. The ANAO

⁴⁷ An overview of these methodologies may be found in Chapter 3 of ANAO Report No. 33 2005–2006 *Administration of Petroleum and Tobacco Excise Collections: Follow-up Audit*. Tabled in Parliament on 2 March 2006.

⁴⁸ Public Key Infrastructure uses digital certificate authentication with a level of security assured by the Defence Signals Directorate of the Department of Defence.

⁴⁹ The ATO has advised that the target audience for the Tax Agent Portal includes approximately 2 500 tax agents, mainly in the micro-segment, who have not accessed the portal in the last 12 months. Many of these tax agents would have viewed the portal out of curiosity but do not use it. Nevertheless, the ATO considers that these tax agents still need to be included in the Tax Agent Portal project as technically they can access the portal. If these agents are not counted in the target population, 88 per cent of the target audience would be using digital certificates to access the Tax Agent Portal as at 8 October 2006.

⁵⁰ These include: difficulties with the digital certificate installation process; loss of mobile access to the Tax Agent Portal; the delay between applying for, and receipt of, a digital certificate; and tax agents operating through an entity other than the entity registered with the relevant TAB.

noted that the ATO is working towards resolving these technical and business issues.

3.17 The ANAO notes that the ATO has been successful getting 76 per cent of tax agents to adopt digital certificate access. However, while PIN/Password access is still available, the ATO cannot assure the integrity of its systems.

The digital certificate and tax agent registration

3.18 The ANAO found that introduction of the digital certificate highlighted some inconsistent practices about tax agent registration. In applying for a digital certificate, tax agents were required to quote the ABN for the entity registered with the Tax Agent Board (TAB) under s.251JA of the *Income Tax Assessment Act 1936* (ITAA). The ANAO noted that a number of tax agents quoted an ABN which was different to the ABN associated with their tax agent registration.

3.19 The ATO has established that some tax agents trade through an entity other than the entity registered with TABs. For example, a tax agent may be registered as a natural person but trading through a private company. The ANAO noted that tax agents operating in this manner may be in breach of some sections of the ITAA. In particular, sections 251L, 251N and 251O, which relate to tax agents charging fees for their services, preparing returns and advertising their services respectively.⁵¹

3.20 These issues emerged in late 2005. The ATO has taken steps to support digital certificate access to the Tax Agent Portal for affected tax agents. Nevertheless, the broader issue of whether tax agents are registered correctly was still being resolved at the conclusion of this audit in 2006.

Service trusts and s.251N(1) of the ITAA

3.21 In addition, there may be breaches of s.251N(1) of the ITAA arising from use of service trust arrangements in tax agent practices. Service trust arrangements in the tax profession typically involve a tax agent using the services of a person engaged through a service trust to prepare and lodge income tax returns. The ANAO has been advised that s.251N(1) of the ITAA prohibits a registered tax agent from conducting a business of preparing

⁵¹ For example, s.251L of the ITAA states that, subject to this section, a person who is not a registered tax agent must not knowingly or recklessly demand or receive any fee for preparing or lodging on behalf of a taxpayer a return, notice, statement, application or other document about the taxpayer's liabilities under a taxation law.

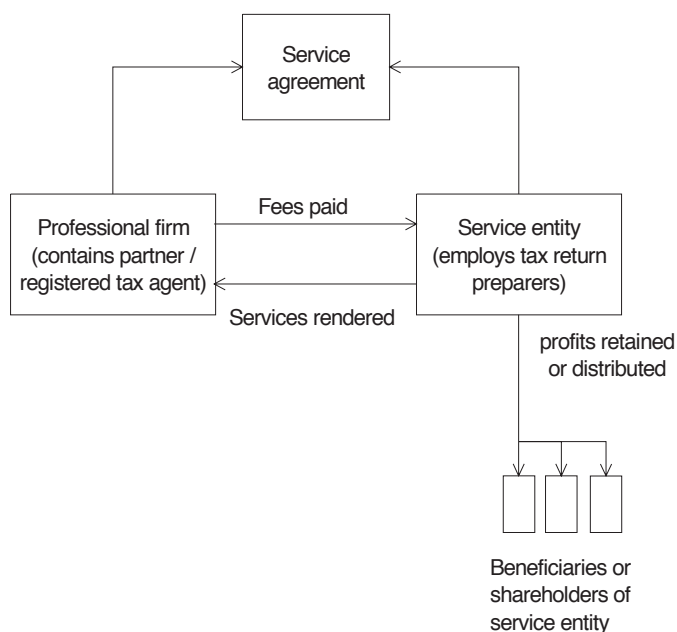
income tax returns, or dealing with other income tax matters, otherwise than through:⁵²

- an employee;
- another registered tax agent; or
- in the case of a partnership agent, a member of that partnership.

3.22 In 2005 the ATO sought advice from the AGS about a number of issues relating to preparing tax returns on behalf of registered tax agents by individuals who are not employed directly by those agents but, rather, are ‘provided to’ the agents by service trusts. Figure 3.1 provides an overview of this type of service trust agreement.⁵³

Figure 3.1

Employment arrangements of interest in relation to s.251N(1) ITAA



Source: ANAO analysis of ATO reports

⁵² Australian Government Solicitor, *Registered tax agents – whether employees of service trusts can prepare tax returns*, 15 March 2005.

⁵³ *ibid.*

3.23 The AGS advice stated that an ‘employee’ in the context described has been held to mean ‘common law’ employee, that is, a person engaged under a contract of service rather than a contract for services. This means that s.251N(1) of the ITAA requires the existence of a common law employment relationship between the agent and the individuals engaged by the agent to prepare income tax matters on the agent’s behalf. Issues arise if an agent uses the services of a person engaged through a service trust, where the person is employed by the service trust. The AGS advice did state, however, that determining the nature of the employment relationship between the tax agent and the relevant parties would require careful consideration of the facts attending the work arrangements in each particular case.⁵⁴

3.24 The ANAO also notes that under current legislation, a registered tax agent could restructure internal arrangements so that staff who prepare tax returns and use the Tax Agent Portal are not physically collocated with the tax agent. There have been media reports about tax agent practices that may engage staff resident in overseas locations.⁵⁵ There is a risk to the integrity of ATO’s systems therefore through fraudulent access gained from abroad by means of the less secure PIN/Password entry to the Tax Agent Portal that may result in activity that is beyond the ATO’s capacity for remedial action, including legal recourse.

3.25 The ANAO notes an additional concern may arise from tax agents continuing to operate with internal arrangements that may breach the ITAA. The concern is that the Commonwealth may have exercised ‘implicit consent’ in some instances. Implicit consent may be arguable if an agent has disclosed fully all relevant practice arrangement information to the ATO and the relevant TAB, yet has been registered and allowed to operate in a manner outside the provisions of the ITAA. The ANAO notes that having regard to the assessment of the risks arising from tax agents continuing to operate with internal arrangements that may breach the ITAA, there may be merit in the ATO undertaking a review of the registrations of tax agents who engage staff provided by service trusts to prepare income tax returns. An indicator that these risks may be present is if the ABN of a trading entity used by the tax agent as part of their practice is different from the ABN of the entity registered

⁵⁴ The AGS noted that there could be particular features of the arrangements under which the income tax return preparers work that could support a conclusion that they are employed by the registered tax agent rather than the service trust.

⁵⁵ ‘Accounting work outsourced to India’, *The Australian Financial Review*, p. 63, Friday 12 May 2006. ‘Tax work going offshore’ *The Australian*, pps 27 and 28 Tuesday 3 October 2006.

as the tax agent. In view of this, the ANAO considers that it would be advantageous for the ATO to review, on a risk management basis, tax agents' registrations where this situation applies.

3.26 The ANAO also considers there is scope for closer coordination between the Tax Practitioner and Lodgement Strategy (TPaLS) and the Large Business and International (LB&I) business lines on tax agent matters particularly in relation to the four large financial services firms. These firms carry out tax agent activity and provide a range of other financial advisory services. The entities play a key role in the Australian economy. In this context, LB&I is understandably focussed on issues relating to the broader concerns of tax administration. However, there are other tax agent compliance matters that require TPaLS attention from time to time. Compliance and Relationship Management could be enhanced by a more coordinated approach between TPaLS and LB&I.

Unregistered tax return preparers

3.27 The ATO has responsibility to identify and take suitable action against unregistered tax return preparers. Much of the ATO's work in this area is performed by the TAIU. TABs may bring to the ATO's attention information about alleged unregistered tax return preparers. Similarly, the ATO has indicators to identify tax returns prepared by unregistered tax return preparers and is considering other attributes to identify unregistered tax return preparers. The ATO also publishes from time to time the results of successful prosecutions of unregistered tax return preparers.

3.28 The ANAO notes that these initiatives, if fully implemented, should improve the efficiency and effectiveness of ATO activities directed at unregistered tax return preparers. Nevertheless, the ANAO considers that there is scope for further improvement, particularly in the use of profiles and other measures to identify unregistered tax return preparers and the tax returns prepared with their assistance.

3.29 The ANAO was informed of concerns in the tax practitioner profession regarding the number of unregistered tax return preparers still operating in the community. The profession acknowledged ATO efforts to stamp out this activity. This included the Commissioner's most recent initiative to establish a dedicated telephone line, as discussed in paragraph 2.6. The ANAO considers that the ATO could be more proactive in further reducing the incidence of unregistered tax return preparers. The ANAO considers that concerns

expressed by the tax practitioner professions, that the ATO's effectiveness in this area may need improvement, warrant additional attention.

Quality of the ATO's tax agent databases

3.30 As noted in Chapter 2 the ANAO found shortcomings in the quality of the tax agent information maintained by the ATO. In these circumstances, it was not practicable for the ATO to establish if the TABs have registered trusts or individual trustees in breach of s.251 of the ITAA.

Business Activity Statement service providers

3.31 The ANAO noted ATO research that found 90 to 95 per cent⁵⁶ of BAS service providers (i.e. bookkeepers) do not comply with s.251L of the ITAA.⁵⁷ The ATO is in the early stages of conducting an educational and awareness raising campaign to address this issue. ANAO considers that improvements in bookkeeper compliance would be best measured by an increase in the proportion of BAS service providers who comply with s.251L of the ITAA. The ANAO suggests that the ATO periodically report progress of bookkeeper compliance initiatives against the proportionate closure of this compliance gap achieved as a result of those initiatives.

A differentiated ATO response

3.32 During 2005 the ATO examined a specific strategy designed to reinforce and reward tax payers and their tax agents who had a history of high levels of compliance with their tax obligations. The taxpayers would be advised that, as a result of this history, on issue of the Notice of Assessment, the ATO would close their tax file and conduct no further inquiries into their tax affairs. Tax agents with a large proportion of their clients in this category would have the benefit of knowing there would be no further ATO scrutiny of these clients. The ATO called this project the Early Closure Project.

3.33 The initiative gave rise to concern amongst tax practitioners. Many considered it may result in a differentiation amongst tax agents in a way that could be divisive in the profession. The Commissioner of Taxation has

⁵⁶ TNS Social Research, *Understanding the bookkeeping profession Vol 2: Research with bookkeepers*, June 2005, (ATO report). This research targeted BAS service providers, i.e. bookkeepers who charge a fee for providing a BAS service.

⁵⁷ This requires BAS service providers (who are bookkeepers) to carry out BAS services under the supervision of a tax agent.

indicated that initial market research findings about the project have not been overly positive.⁵⁸

3.34 Tax agents generally acknowledge the merits of the ATO's graduated response to compliance risks guided by the Compliance Model. The ANAO noted there is some support for the ATO adopting a complementary graduated response that recognises compliance behaviour. There is support for the Commissioner's recent announcement that he is keen to co-design further work on differentiation amongst tax agents who exhibit characteristics outside of the normal mode. He has also indicated that the prospective Tax Practitioner Legislative Framework may provide a more appropriate context for an ATO approach that differentiated positively as well as negatively amongst tax agents in relation to their outlier attributes.⁵⁹

3.35 The ANAO considers that the less-than-optimum quality of the relevant databases would impede any widespread ATO strategy of positive differentiation. The ANAO considers that the quality of the relevant databases containing data about the compliance characteristics of tax agents and tax payers would require considerable improvement before they could be used to support a widespread ATO strategy of positive differentiation.

Recommendation No.3

3.36 The ANAO recommends that the ATO adopt a more strategic and corporate whole-of-ATO approach, to the detection, investigation and management of the more serious tax agent integrity risks.

ATO Response

3.37 Agreed. To a certain extent, such approaches are already in place, eg the Tax Office's egregious tax practitioner forum currently monitors and manages the most serious tax agent integrity risks across the Tax Office. Further, our planning activities for 2007–08 currently include a more expansive "Whole of Tax Office" approach to managing the integrity of tax practitioners - to ensure a more capable and well regulated profession which includes tax agents, bookkeepers, and other intermediaries.

⁵⁸ Minutes of the National Tax Liaison Group for meeting 15 March 2006, p. 7. Available on the ATO website at <<http://ato.gov.au/print.asp?doc=/content/72305.htm>>.

⁵⁹ *ibid.*

Recommendation No.4

3.38 The ANAO recommends that, to ensure tax agents are correctly registered and operating their business in accordance with the *Income Tax Assessment Act 1936*, the ATO:

- (a) using a risk management approach and possibly at the time of re-registration, identify through the TABs, those tax agents who are trading through an entity other than the entity registered with Tax Agent Boards (possibly at the time of re-registration);
- (b) assess, on a risk management basis, any consequences for the integrity of the tax system that may result from the incorrect registration of tax agents; and
- (c) publish guidelines for the tax practitioner community setting out legislative and ATO administrative requirements about the activity of trusts in tax agents' practices.

ATO Response

3.39 Agreed. Again, this recommendation must be viewed in the context of the statutory independence of the Tax Agent Boards (TABs), and that it is the TABs (rather than the Tax Office) that make decisions on who is to be registered as a tax agent. The Tax Office will continue to use a risk management approach, including consideration of the consequences for tax system integrity, in its role in considering tax agent practice structures. The Minister for Revenue and Assistant Treasurer, The Hon. Peter Dutton, in his May 2006 press release on the "New Tax Practitioners Regime" recognised that the current regulatory regime is out of step with the tax system, noting that the original legislation was introduced in 1943. The Tax Office will need to reconsider the appropriateness and priority of planned implementation activities in the context of implementing a new administrative regime.

Recommendation No.5

3.40 The ANAO recommends that to address industry concerns regarding the level of unregistered persons providing tax agent services, the ATO consider ways of improving the capability and performance of the Tax Agent Integrity Unit.

ATO Response

3.41 Agreed. In its report, the ANAO recognises the ever improving activity of the Tax Office in detecting and taking action against unregistered preparers. The Tax Office expects continuing performance improvements for the Tax Office's Tax Agent Integrity Unit. Improvements have been identified in a recently completed Tax Office initiated review of the unit. Recommendations are being considered for implementation. One improvement will be a broader range of tools to improve our coverage of the unregistered preparers market. The ANAO also notes the February 2007 implementation of a dedicated tax agent community information phone service. Through this service, industry concerns with specific unregistered preparers can be quickly escalated for Tax Office action. The Tax Office examines all reports of activity by unregistered tax return preparers and proceeds with investigation where the reports have sufficient merit. Investigation and evidence gathering are complex processes and generally of significant duration. It is difficult to manage perceptions of Tax Office effectiveness during these processes when there is no authority to prevent continued unlawful activity after complaints are made and whilst investigations are proceeding. In any event, to ensure industry awareness of Tax Office activities with unregistered preparers as well as the risks associated with this behaviour, the Tax Office will expand its communications on unregistered preparers to the industry and the community.

4. Services for Tax Agents

This Chapter refers to Recommendations No. 6, 7, 8, 9 and 10 of ANAO Report No.19 of 2002–03. These recommendations concern the consultative relationship between the ATO, tax agents and the tax, accounting and legal professional bodies and the services the ATO provides to help tax practitioners effectively fulfil their role in the tax system. A summary assessment is contained in Appendix 4.

Introduction

4.1 At the time of the previous audit, both the ATO and tax practitioners perceived a significant degree of dissatisfaction with their relationship, which appeared to be deepening rather than lessening. This situation was partly due to the pressures placed on practitioners and the ATO's operational systems by tax reforms such as Australia's New Tax System (ANTS). It was also because of inadequacies in the specific tax agent support services provided by the group within the ATO that had corporate responsibility across the ATO for managing the relationship with tax practitioners.

4.2 ANAO Report No. 19 of 2002–03 noted that the ATO provides tax agents with a range of goods and services and maintains a variety of consultative forums with tax agents and relevant professional associations. The report found scope for improvement in the ATO's provision of goods and services, particularly in relation to information technology based services and telephone services

4.3 Report No. 19 contained five recommendations directed at improving the quality and timeliness of the goods and services the ATO provides and strengthening the consultative arrangements. Included in these recommendations was the recommendation that the ATO periodically evaluate the cost-effectiveness of both the outputs it provides to tax agents and the consultative arrangements.

4.4 The ANAO concluded that the relationship between the ATO and tax agents has improved significantly as a result of improvements in specific services and functions. Through a series of targeted initiatives, the ATO has demonstrated its commitment to working with tax practitioners to build a more efficient taxation system.

4.5 The ATO has fully implemented three of the relevant recommendations (recommendations No. 7, 9 and 10), substantially implemented

Recommendation No. 6 and has partially implemented Recommendation No. 8. Further details may be found at Appendix 4.

4.6 In reviewing the ATO's new service delivery initiatives directed at tax agents, the ANAO examined:

- Premium telephone services;
- Tax Agent Portal and ATO website;
- Relationship Manager function; and
- Consultative forums.

Premium telephone services

4.7 The ATO has implemented a premium phone service for tax agents,⁶⁰ which provides one consolidated tax agent phone line (13 72 86) and fast key codes that allow for direct connection to an agent's area of interest. The December 2005 Quarterly Tracking survey⁶¹ conducted by the ATO found a 90 per cent overall level of satisfaction with telephone services, a significant improvement on satisfaction levels of several years ago.

Tax Agent Portal and ATO website

4.8 In response to feedback received from tax agents who were consulted during the Listening to the Community initiative, the ATO introduced the Tax Agent Portal in October 2002. The Tax Agent Portal is a secure website that allows tax agents to access a range of information, services and functions online. This tool has enabled a greater degree of efficiency and sophistication in the relationship between the ATO and tax agents and has been a significant factor in the improvement of relations between the parties. The November 2005 Tax Agent Portal Evaluation Survey showed that 98 per cent of sampled agents rated the Tax Agent Portal as being either very useful or useful.

4.9 The operation of the ATO's tax agent and business portals was the subject of a recent ANAO performance audit. The report of this audit is *Tax Agent and Business Portals Australian Taxation Office Audit Report No. 4 2006–2007*. This report was tabled in the Parliament on 12 September 2006.

⁶⁰ Tax agent call service lines have a premium standard of service compared to taxpayer phone service lines.

⁶¹ Tax agents' perceptions of ATO services are monitored through an ongoing tax agent research program, in particular quarterly tracking surveys, undertaken by an external research organisation.

4.10 The Tax Professional segment of the ATO website⁶² provides a collection of current information relevant to tax practitioners and their practices. This information includes an induction package for new agents, administrative essentials and the compliance tool kit.

4.11 The ANAO also notes that the websites of other Commonwealth entities with functions comparable to the TABs present considerably more information than the TAB's website.⁶³ The ANAO notes that there is room for improvement in the content and presentation of website information and increasing the user friendliness. The ANAO has been advised that the TAB's website is being redesigned, as part of a broader TAB-focused administrative improvement project. The ANAO considers redevelopment of the website to be a matter of priority for the ATO.

Relationship Manager function

4.12 The Relationship Manager (RM) program was introduced in July 2003 in response to tax agent feedback gleaned from the Listening to the Community initiative. Agents expressed a desire to develop a more personalised relationship with the ATO. The RM program involves both field and inbound telephony contact points. RM field officers visit agents who have more than 100 clients to help optimise technology for the agent's practice, to advise on electronic lodgement service issues, to resolve general issues and to deliver ATO product and service updates. The RM group has developed close relationships with other areas of the ATO such as Operations, Small Business and GST and helps these lines deliver agent-related initiatives including specific messages, demonstrations of products and /or trialling of services.

4.13 The strategic focus of the RM program has continued to evolve and activities are now focused on the specific needs and attributes of tax agents requiring assistance, as identified by the National Tax Agents Profile Tool (NTAPT).⁶⁴ The Assistance Plus summary screen, available through the NTAPT, allows the ATO to screen tax agents against key assistance indicators⁶⁵

⁶² <<http://www.ato.gov.au/taxprofessionals>>

⁶³ The TABs' website may be found at <www.tabd.gov.au>. The Migration Agents Registration Authority has functions that are in many ways similar to the TABs. The website of the Migration Agents Registration Authority may be found at <<http://www.themara.com.au/Online/default.asp>>

⁶⁴ The NTAPT is a business intelligence tool that provides a consolidated view of a tax agent's interactions with the ATO.

⁶⁵ The four focus areas in which assistance may be required are legal, technological, administrative and personal (personal refers to how an agent manages the lodgement of their own tax returns and any resulting debt obligations).

and compare them with other agents in the same tier.⁶⁶ If an agent differs significantly from the tier average for their peers, the agent will flag against an indicator. The number of flags raised is used to calculate the visit priority (high, medium, low) for that particular agent.

4.14 The ANAO considers the NTAPT and the Assistance Plus summary screen to be important initiatives in providing a more tailored and effective service to tax agents. A significant number of agents have expressed their appreciation and overall satisfaction with the RM visits and the RM program in general. Some agents have expressed dissatisfaction with the RM program and asked for ATO clarification on the role of a RM.

4.15 The ANAO understands that many agents favour a previous ATO program, the Tax Agent Liaison Centre (TALC). Amongst other things, TALC provided agents with a contact person in a local ATO office who would become the agent's advocate in dealing with ATO issues. The ATO phased out TALC in 1999. The ANAO considers that a return to a facility such as TALC is neither desirable nor feasible. The ATO's operational structure has changed significantly and the new technology now provides a more cost-effective means of interaction. Furthermore, the numbers and levels of ATO staff that would be needed to provide the level of service that some agents now speak of in relation to TALC, might not be the most cost-effective use of ATO resources. The ANAO considers that with tax agents becoming more self-reliant, through direct access systems such as the Tax Agent Portal, there would be a declining need for TALC type facilities. The ANAO notes, by comparison, that agencies in the financial services sector that once may have provided this type of service to some of their clients, in a similar style to TALC, no longer provide their services in this way.

4.16 The ANAO has been advised that the RM program is being restructured to provide agents with a more personalised service. The ANAO supports those initiatives which will assist the ATO to provide a more personalised service, which was the hallmark of TALC.

4.17 In offering a more personalised service to agents, it is important that the RM group is able to deliver:

- tailored visits to agents, having regard to the compliance issues associated with a tax agent's practice;

⁶⁶ A tier refers to a group of agents with similar tax practices, i.e. number and type of clients.

- periodic contact with agents to remind them of the availability of field visits from their RM team;
- a visit to each newly registered agent to introduce them to the ATO and the agent's dedicated RM team;
- targeted agent-related initiatives at the request of other areas of the ATO; and
- communication campaigns to agents, using communication channels, such as telephony, email, website notices and newsletters, as systemic issues are identified through the NTAPT or other ATO business lines.

4.18 The ANAO considers there is scope for achieving efficiencies in delivering this service to tax agents. Furthermore, the ANAO notes that resources may need to be redeployed to assist the RM area. The ANAO notes that the revised conduct of the RM function could lead to improvements in compliance behaviour and decreased usage of other ATO services, such as telephone contact.

4.19 In order to reposition the RM program as a more personalised service to tax agents, it is important that the program name properly communicates its purpose. The ANAO notes the importance of communicating fully the revised program to each agent, and how the program can help them in their dealings with the ATO.

Information flows

4.20 The ATO has established the RM function to support tax agents and to facilitate information flows between the ATO and tax agents. From a corporate perspective, RMs are expected to report to the ATO business lines, agents' whole-of-ATO concerns and to convey to tax agents the whole-of-ATO view of the business lines' concerns and priorities about tax agent activity. The ANAO considers that this aspect of the function could be improved. Amongst other things, improvements are needed to better target provision of services in relation to the compliance risk and educational needs of agents, as well as to enhance the ATO's strategic learnings from RM activity.

4.21 The ANAO understands that RMs currently identify tax agents' concerns through field visit reports and disseminate this information to the relevant business lines. The ANAO considers there is scope for more informed gathering and disseminating of information about matters of concern to tax agents. These tax agent concerns need to be brought to the attention of the

relevant business line, with RMs acting as a liaison point between the business line and the tax agent to ensure workable solutions are developed within a suitable time frame. This capacity would be an extension of the work of the current RM inbound telephony unit. Issues of a more systemic nature need to be resolved in a similar manner, resulting in short and long-term improvements to the operation of the tax administration system.

4.22 The ANAO considers that the efficiency and effectiveness of the RM role could be further improved by RMs obtaining a more accurate and timely account of ATO business lines' concerns, including all matters tax agents may have raised with the business lines. The ANAO found that the RM area does gather some information from other business lines but this is done on an ad hoc basis and is based on informal networks between particular staff. The ANAO found there is scope to improve the reliability and timeliness with which the Tax Practitioner and Lodgement Strategy (TPaLS) business line can access all relevant matters that tax agents have raised with business lines. The NTAPT provides information on each agent's two most frequent call centre queries but is by no means a comprehensive store of all the agent's interactions with the ATO. The ANAO understands that information on many of the interactions that tax agents have with the ATO is stored in a data warehouse and can be made available to particular areas of the ATO upon request.

4.23 It is important for RM staff, where necessary, to understand more fully the extent and main priorities of each agent's interactions with the ATO, especially those enquiries made on behalf of their clients. This information could be used to better target RM visits, thereby reducing the need for compliance action in other business lines.

Recommendation No.6

4.24 The ANAO recommends that to enhance strategic learnings and enable better targeting of services in relation to compliance risks and the educational needs of tax agents, the ATO ensures Relationship Management teams:

- (a) prior to their visits to tax agents, are adequately briefed about the concerns of the ATO's business lines, including matters that tax agents may have raised with business lines; and
- (b) disseminate in a timely manner to relevant business lines ATO-related concerns raised by tax agents during site visits.

ATO Response

4.25 Agreed. The relationship manager field program commenced in 2003 with a general educational approach. Visits to tax practices are currently prioritised based on analysis of key performance and practice indicators. This allows the field officer to present relevant topics and training, in a personalised format. The introduction of the Client Reference Manager (CRM) system extends the information available on interactions between the Tax Office and a practice. This information is also analysed prior to attending a tax practice. The extent of the information that can be economically collated and considered before a visit is dependent on our systems' capability. The Change Program will deliver additional capability benefits in this respect. In addition, a project is currently underway to improve our ability to profile a tax practice. This will include profiles that are mutually beneficial to practitioners and the Tax Office. Feedback provided by agents in the field is currently recorded and collated into a monthly report which is distributed to the relevant business lines. A project is underway looking at improving services to tax practitioners, including the relationship managers. This project will include improving the tracking of action and response to intelligence provided from tax practitioners.

Consultative forums

4.26 The ATO's consultative forums with professional associations and tax practitioners, such as the National Tax Liaison Group (NTLG)⁶⁷ and the ATO Tax Practitioner Forum (ATPF),⁶⁸ provide avenues for the ATO to gather information on issues of concern to the tax agent community. Issues raised in these and other forums are submitted to the TPALS business line, which forwards them to the relevant ATO business line for clarification and resolution. The ATO is represented on the forums at senior levels, including at the Second Commissioner and Deputy Commissioner level. Nevertheless, the ANAO considers that the overall effectiveness of the forums could be further

⁶⁷ The NTLG is the peak forum for ATO consultation on complex technical and policy issues between the professional associations and the Tax Office, and its sub-committees. The Commissioner of Taxation chairs the NTLG and forum membership is comprised of representatives of the major tax, law and accounting professional bodies and senior members of the ATO.

⁶⁸ The role of the ATPF is to identify, discuss and jointly resolve significant tax administration issues of a day-to-day nature and to identify, discuss and commission work in relation to initiatives that would assist tax administration overall. The ATPF is chaired by the Deputy Commissioner of Small Business and co-chaired by the Deputy Commissioner of Personal Tax. The forum membership comprises representatives of the major tax, law and accounting professional associations, nine tax practitioner representatives and senior members of the ATO.

improved by the establishment of routine processes to inform the ATO of committee issues and information of a more strategic nature.

4.27 In this regard, the ANAO supports the ATO's introduction of a committee-based Community of Practice. The ANAO understands that this Community of Practice consists of the Secretariates that provide support to the Chairs of the tax practitioner-based consultative committees. The Community of Practice will consider information gained from their respective committees and identifies strategic learnings. These strategic learnings would be raised with the ATO executive and could lead to short- and long-term changes in governance arrangements, tax administration and the legislative system.

4.28 The ANAO considers this Community of Practice to be an important initiative in developing comprehensive information flows from the consultative committees back into the ATO.

Cost effectiveness review

Education, communication and technology products

4.29 The TPALS business line produces a range of education, communication and technology goods and services for tax agents. An overview of these is in Appendix 5. Audit Report No.19 of 2002–03 contained a recommendation that the ATO assess the cost-effectiveness of tax-agent related education, communication and technology support programs (Recommendation No. 10). Whilst the ATO currently assesses levels of agent satisfaction with its major goods and services such as the Tax Agent Portal and the Relationship Management function via the Quarterly Tracking Survey, it has not yet conducted an analysis of the cost-effectiveness of these goods and services.

4.30 The ANAO notes that cost-effectiveness analysis may require the priority ranking of projects or programs on the basis of single comparative measures such as 'cost per unit of effectiveness', or 'units of effectiveness per dollar'.⁶⁹ If a cost-effectiveness analysis is to yield useful results, it is important that the measure of effectiveness used adequately captures the predominant outcome of all the alternatives being considered. In the context of the ATO's relationship with tax practitioners, in which activities are undertaken to

⁶⁹ Cost-effectiveness analysis is different to cost-benefit analysis in that benefits need not be specified in monetary terms and therefore, is particularly useful in areas where it is often easier to specify benefits than it is to value them. Cost-effectiveness analysis tends to focus on a single measure of effectiveness or category of benefit, to the exclusion of all others. *Department of Finance, Introduction to Cost Benefit Analysis and Alternative Evaluation Methodologies, January 2006.*

achieve several important, quite distinct, outcomes, such as improvements in tax agent competency, self-reliance and compliance, the ANAO acknowledges that there might not be a satisfactory single comparative measure of effectiveness.

4.31 As an alternative it may be possible for the ATO to periodically assess the general “value for money” achieved from the range of education, communication and technology goods and services that the ATO makes available to tax agents. The ATO has a range of relevant information available to do this. The ATO currently assesses agents’ satisfaction levels with various education, communication and technology support goods and services through the Quarterly Tracking Surveys. The ANAO notes that the ATO also has available the requisite information about the costs of the outputs it produces. Accordingly, the ATO could calculate the cost (financial, human, physical) of the various goods and services the TPALS business line provides.

4.32 The ATO could use this information, in conjunction with other data about tax agents’ self reliance and compliance with tax laws to obtain an indication of the value of the range of education, communication and technology outputs for tax agents in relation to the key outcomes that the ATO has set for TPALS.

Consultative committees

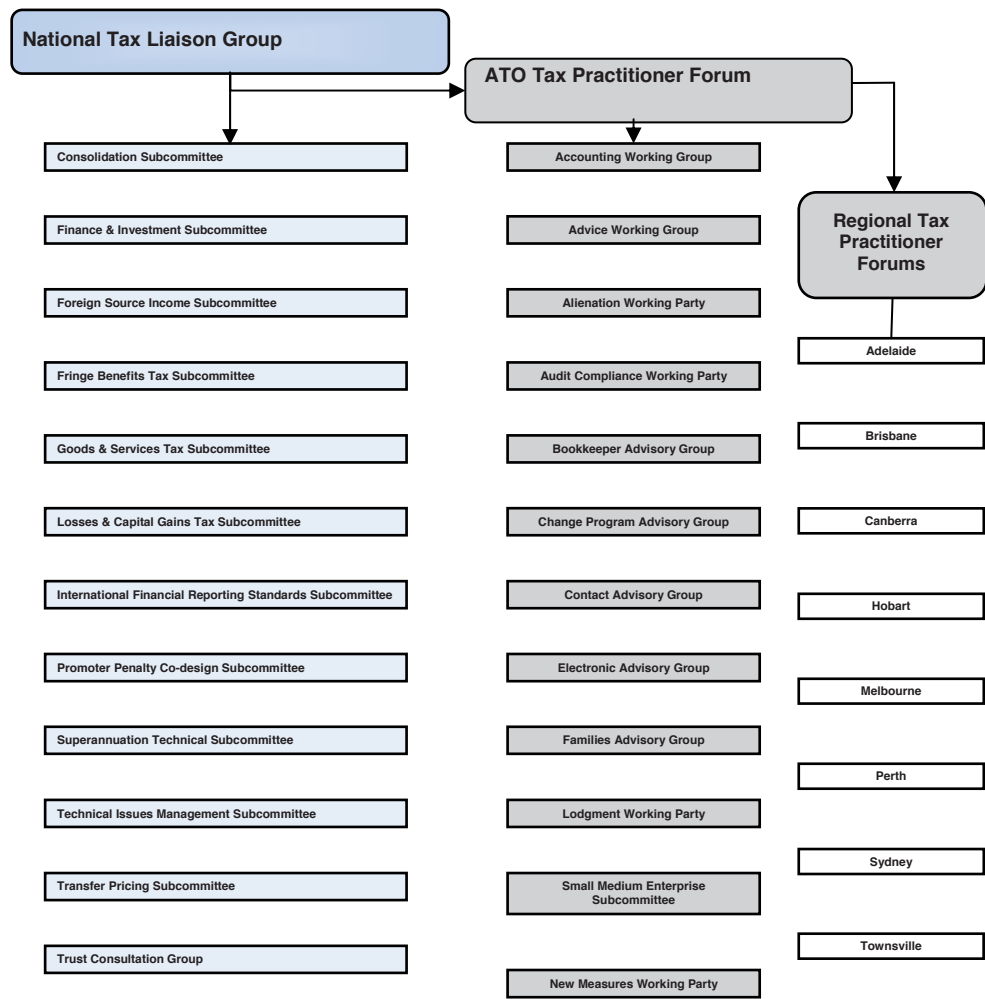
4.33 Audit Report No.19 of 2002–03 also contained a recommendation that the ATO assess the cost-effectiveness and performance of the consultative committees. The ATO has commenced assessing the performance of the consultative committees but has not yet evaluated their cost-effectiveness. The ANAO recognises that strict application of cost-effectiveness analysis may not be the most appropriate way to determine the costs, and overall effectiveness, of the ATO’s consultative committees with tax practitioners. These forums provide a range of valuable services that are qualitative in nature. Furthermore, they are intended to achieve a range of qualitative goals, not readily reducible to a single outcome amenable to quantitative measure.

4.34 A range of consultative forums and working parties provide an avenue for discussion, collaboration and consultation between tax practitioners and professional associations and the ATO. These forums and working parties function as a means for sharing views on tax administration and industry issues, as well as providing the ATO with a vehicle for discussing its strategies

and activities. Figure 4.1 presents an overview of the ATO’s current consultative arrangements.

Figure 4.1

ATO / Tax Practitioner Consultative Forums



Source: ATO

4.35 Consultative committees such as the NTLG and ATPF involve a substantial financial and time commitment from their members: ATO senior executive; representatives from major tax, law and accounting professional associations; and tax practitioners. For assurance on the relevance and cost-effectiveness of the members’ investment in these committees, it is necessary to periodically assess the value for money achieved as a result of involvement in these consultative arrangements. Similarly it is necessary for the ATO to

evaluate from time to time the value obtained from the use of the scarce resources invested in the consultative arrangements, so that improvements can be made. It is important that the ATO, professional associations and tax practitioners work together to identify the purpose of the consultative committees, the benefits that flow from membership and the broad measures of value for money.

4.36 The ANAO recognises that it may be difficult to determine a common value for money measure that would enable a meaningful evaluation of the cost-effectiveness of committee involvement for the ATO and the professional associations and tax practitioners. It may be necessary for the ATO to work with professional associations and tax practitioners to develop a common measure of the value of their involvement in the consultative committees and then for the ATO to separately identify other benefits that flow to the ATO from the consultative committees. This should facilitate analysis of the value for money achieved by professional associations and tax practitioners as well as for the ATO. The ANAO would expect that this would enable the broad evaluation of the cost-effectiveness of the consultative committees, a consequential refocussing of effort on the activities of greatest value and the cessation of those of minimal value.

4.37 Whilst the overall objective of the consultative forums appears to be an improvement in tax administration, each committee and subcommittee requires its own Charter. These Charters would necessarily contain operationally verifiable objectives. It is important that the ATO conduct regular performance reviews of each committee against the Charter of that particular committee. This would provide the ATO with a way to resolve which committees should be continued or discontinued and highlight the need for changes to membership and function of particular committees.

Intermediary relationships

4.38 Tax practitioners are a significant intermediary in tax system administration. The relationship between the ATO and tax practitioners will necessarily suffer stresses and strains, as is inherent between groups with divergent goals and interests. It is important, however, that the relationship between the ATO and tax practitioners be cultivated and strengthened, in recognition of the significance of each party to the other.

4.39 Other intermediaries, such as BAS service providers, employers and software providers, also have important roles in tax system administration.

The ATO might consider viewing its relationship with tax practitioners as a model for its relationships with these other intermediaries in the tax system. Whilst each group of intermediaries will necessarily require a different approach, the principles of consultation, collaboration and co-design that have been used successfully with tax practitioners could be similarly applied to these other groups.



Ian McPhee
Auditor-General

Canberra ACT
14 March 2007

Appendices

Appendix 1: ATO Response

Contact officer: Murray Crowe
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Issue date: 12 February 2007

Mr David Crossley
Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Crossley

**Re: AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT ON
THE AUSTRALIAN TAXATION OFFICE'S MANAGEMENT OF ITS
RELATIONSHIP WITH TAX PRACTITIONERS.**

Thank you for your letter of 12 January 2007 and for the opportunity to provide comments on the proposed report on the follow up audit of the Australian Taxation Office's Management of its Relationship with Tax Practitioners.

We are pleased that the ANAO report has concluded that the relationship between the Tax Office and tax practitioners has improved significantly since the first audit. This finding reflects the considerable effort and investment the Tax Office has made to consult with tax agents and understand their issues and to provide in response a wide range of administrative and technological improvements to make their dealings with the tax system easier, cheaper and more personalised.

As acknowledged at paragraph 1.17⁷⁰ of the report, independent survey results indicate a dramatic improvement in the proportion of tax agents now satisfied with Tax Office services.

The ANAO report includes an assessment of progress by the Tax Office towards implementation of the recommendations contained in the original report of 2002/03 (Appendix 3).⁷¹ We welcome the finding that most recommendations have either been fully implemented or have been substantially completed. We have worked closely with the profession, at all

⁷⁰ The numbering in this report has changed from the draft provided to the ATO. The correct paragraph reference is now paragraph 17.

⁷¹ The numbering in this report has changed from the draft provided to the ATO. The correct Appendix reference is now Appendix 4.

levels, to ensure that we have been and continue to be focused on the fundamentals of the relationship. Strong co-design of outcomes has allowed us to deliver world first breakthroughs in tax practitioner access and service delivery. Now we are finding it increasingly important to look forward and we are sure the profession would agree with us that current processes and issues have overtaken any residual matters from the 2002-03 audit.

It is important to note that the original reports findings primarily related to registered tax agents. We regard this as our most significant intermediary relationship in our tax system. However as your original report noted the landscape for the tax industry continues to evolve and we are continuing to develop our relationship with other key groups such as bookkeepers, legal professionals and software developers.

Despite the dramatic improvements in our relationship in recent years our top priority is continuing to invest in improving tax agent services. We continue to listen closely to the tax agent profession through a vast array of tax practitioner forums and to co-design administrative solutions to any significant issues raised. As a result of our consultations, we have set priorities for further improvement in 2007 to the Tax Agent Portal, to the pilot of an expanded service model for tax practitioners, to a revitalisation of local tax practitioner forums as well as to a wide ranging review of the tax agent lodgment program and we are well progressed towards these goals.

The Tax Office accepts the six recommendations as contained in the current section 19 report, and has already made progress towards their implementation. There are, however, two areas that I would like to clarify.

Firstly, our response to the content and recommendations relating to the Tax Agent Boards has been considered in the context of the statutory independence of those Boards. We will need to work with the Tax Agent Board Chairs (part time members and generally from the legal profession) to give effect to relevant recommendations.

Secondly, and as your report notes, the Government last year announced the intention of implementing a new legislative regime for tax practitioners that would fundamentally reshape the administrative processes underpinning the current regulatory framework. In accepting the recommendations of the report, the Tax Office will need to reconsider the appropriateness and priority of planned implementation activities in the context of implementing a new administrative regime. In this context any investment in current, but potentially outdated, business systems and processes is unlikely to proceed.

I would like to acknowledge the co-operative and professional approach that Mr Richard Mackey and his team have taken throughout the course of this

follow up audit, and I look forward to continuing the good working relationship we have developed.

As requested:

- Appendix A: provides Tax Office comments on the ANAO audit report,
- Appendix B: provides Tax Office responses to each of the ANAO recommendations, and
- Appendix C: provides a short summary of Tax Office comments.

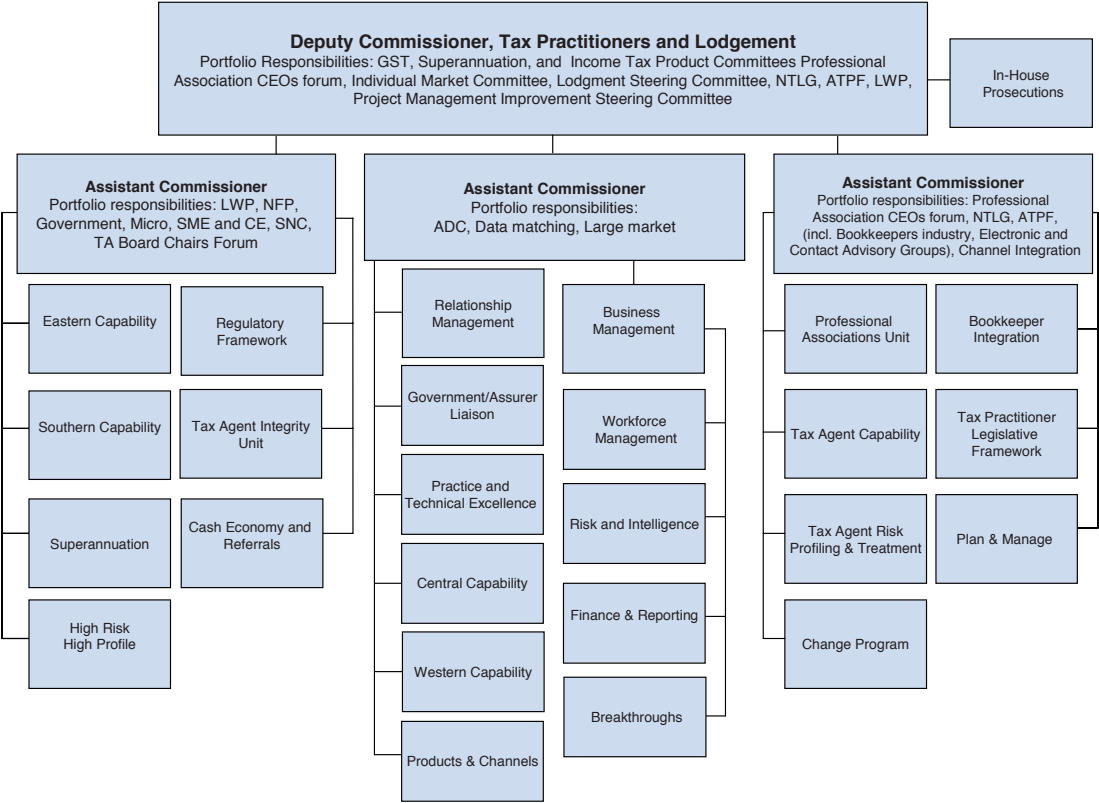
If you require further information or clarification on any matter please contact Murray Crowe, Assistant Commissioner, TPALS, on (02) 6216 1593.

Yours sincerely

Jennie Granger
Second Commissioner

Cc: Mr Richard Mackey (ANAO)

Appendix 2: Tax Practitioners and Lodgement Structure



Appendix 3: Regulation of Tax Agents

1. To register as a tax agent an applicant must prove that he / she is a fit and proper person to prepare income tax returns

Fit and proper

2. The ITAA does not define specifically what constitutes 'fit and proper' but does define several factors that generally would determine the person is not fit and proper.⁷² To meet the 'fit and proper person' criteria an applicant must:
 - hold the qualifications and experience prescribed in the *Regulations*;⁷³
 - be at least 18 years of age;
 - be of good fame, integrity and character;
 - not have been convicted of a serious taxation offence during the previous five years; and
 - not be under sentence of imprisonment, including being released on parole or a good behaviour security, for a serious taxation offence.

Qualifications and experience

3. The qualifications and experience requirement comprises a combination of relevant academic qualifications and relevant employment in the tax field.
4. Relevant academic qualifications can be the successful completion of a course of study in accounting or law at an Australian university or college of advanced education, or the successful completion of a diploma or certificate course of study at a college of technical and further education. Those applicants without formal qualifications must either be entitled to membership of certain professional associations or have completed courses of study in basic accounting principles and Australian income tax law.
5. Relevant employment varies in length depending on the qualifications (mentioned above) held by the applicant⁷⁴ and requires the applicant to:

⁷² Section 251BC.

⁷³ Regulation 156.

⁷⁴ The minimum period of relevant employment is 12 months in the preceding five years for those with university qualifications but rises to eight years in the previous ten for those with no formal qualifications.

- have been employed by a registered tax agent; and
 - have substantial involvement in income tax matters, including:
 - the preparation or examination of a broad range of income tax returns;
 - the preparation or examination of objections to assessments issued in respect of such returns; and
 - the provision of advice in relation to income tax returns, assessment and objections.
6. The ITAA and Regulations provides limited guidance on these requirements, but a substantial body of law cases and appeal decisions provides assistance. For example, such decisions have determined that the condition for *substantial involvement* in preparing a *broad range of returns* requires both these elements to be met. A tax agent cannot have substantial involvement in one return type only and still meet this requirement.
7. Such judicial interpretation affects the ability of new participants to enter the industry and can affect the re-registration of existing tax agents.

Additional responsibilities and obligations of tax agents

8. In addition to the formal requirements for registration, certain obligations and expectations arise from a person, partner or company being registered as a tax agent.⁷⁵ Although not specifically defined in legislation, these responsibilities and obligations arise as a consequence of the right of a registered tax agent to charge a fee for preparing income tax returns and undertaking other income tax-related activities for clients, and include:
- preparing returns honestly and competently, so that they are true and accurate;
 - keeping up-to-date with changes in taxation laws and practice;
 - acting professionally in dealing with clients, including the ATO; and
 - maintaining good fame and character.

⁷⁵ These responsibilities and obligations are detailed at the TAB website at <<http://www.tabd.gov.au>> under 'General responsibilities.'

9. There is a similar expectation that a tax agent will comply with his/her own obligations under the tax law; that is, tax agents will lodge their personal tax returns within the time allowed and meet their tax obligations as these fall due.
10. The TABs monitor compliance by tax agents with these responsibilities and obligations. Also courts and appeal tribunals have determined that failure to meet these obligations and expectations can demonstrate that the person is not fit and proper to be a tax agent and thus lead to suspension or deregistration.

All the regulations, responsibilities and obligations discussed above specifically refer only to the narrowly defined *registered tax agents* and not to the broader category of *tax practitioners*. Thus many tax practitioners providing professional taxation services to taxpayers, such as lawyers and accountants, while subject to regulation within their own professions, are not specifically regulated in regard to tax-related activities.

Appendix 4: ANAO assessment of ATO progress towards recommendations

Fully implemented	Substantially completed	Partially implemented	Limited progress	No progress
●	●	●	●	○

Rec no.	Recommendation	ATO response	ANAO assessment of progress	
			Status	Comments
1	The ANAO recommends that, to enhance its management of the tax agent relationship, the ATO specify more clearly the responsibilities and expectations of the Tax Practitioner Group and Alliances Branch and other ATO areas involved in managing the various aspects of the ATO relationship with tax agents.	Agreed.	●	<p>The Tax Practitioner Group's (TPG's) role as the custodian of the relationship between the ATO and tax agents is reflected in several places in the ATO Plan.</p> <p>At an operational level, the Tax Practitioner Relationship Forum consults, identifies, coordinates and provides advice on implementation of strategies that impact on tax practitioners.</p> <p>The ATO acknowledges that ongoing consultation with key executives is needed to ensure the role TPG and other areas play in managing the relationship with practitioners reflects the current corporate approach.</p>
2	<p>The ANAO recommends that, to enhance the development of a strategic framework for its relationship with tax agents and the wider group of tax practitioners, the ATO:</p> <ul style="list-style-type: none"> • further develop its strategies for its relationship with tax agents by developing an integrated, consistent and visible statement of its ATO-wide strategic framework, including the ways success in the management of the relationship can be assessed; and • ensure that its strategies relating to tax practitioners (other than tax agents) specify its objectives and clarify how these objectives will be pursued. 	Agreed.	●	<p>The <i>Strategic framework for the Tax Office's relationship with tax agents</i> has been finalized and is available at <www.ato.gov.au>. The framework outlines the ATO's and agents' expectations of the relationship and also sets out the principles ATO staff are to apply in developing strategies and products for agents.</p> <p>The ATO has advised that <i>The Strategic framework for the Tax Office's relationship with tax agents</i> acts as a reference point for ATO strategies for the broader group of tax practitioners.</p> <p>The role of bookkeepers in the tax system has increased significantly since ANTS was introduced. The ATO is currently</p>

Rec no.	Recommendation	ATO response	ANAO assessment of progress	
			Status	Comments
				developing strategies to support this group of intermediaries. The ANAO considers that more work is needed to develop strategies and specify objectives relating to tax practitioners, other than tax agents, and including bookkeepers, lawyers and FBT specialists etc.
3	The ANAO recommends that, to supplement its high-level statements on tax agent relationship management, the ATO develop a tax agent roles and responsibilities statement that makes the ATO's operational expectations and undertakings more apparent.	Agreed.	Pending government policy	<p>The ATO advised that it had conducted some preliminary work on a roles and responsibilities statement before the Department of Treasury raised some issues relating to possible confusion between the roles and responsibility statement and the Tax Laws Amendment (Tax Agents Regime) Bill, being developed by Treasury.</p> <p>Development of the roles and responsibilities statement has been delayed until after the Amendment Bill is introduced. In the May 2006 Budget, the government announced it would provide \$57.5 million over four years, commencing in 2006–07, to implement a new Tax Practitioners Legislative Framework. Legislation could be introduced in Parliament in late Spring 2006 or Autumn 2007.</p>

Rec. no.	Recommendation	ATO Response	ANAO assessment of progress	
			Status	Comments
4	<p>The ANAO recommends that, to improve its governance planning and reporting of tax agent relationship management, the ATO:</p> <ul style="list-style-type: none"> • clarify the scope and objectives for its 'Tax Practitioner Program' and identify how the program's activities contribute to those objectives; and • reflect those objectives and performance measures in its corporate planning and reporting framework. 	Agreed.	●	<p>The ANAO agrees that this recommendation has been fully implemented.</p> <p>N.B. The 'Tax Practitioner Program' refers to all of the ATO's activities directed at managing the relationship with tax practitioners.</p>
5	<p>The ANAO recommends that, for improved knowledge of tax agents and better management of the relationship, the ATO refine its work to:</p> <ul style="list-style-type: none"> • identify and analyse the characteristics of the tax agent population; and • consolidate its assessment of its performance in managing the relationship by drawing together qualitative and quantitative information, to prepare an overall assessment of the relationship; and communicate this and subsequent plans to internal and external stakeholders. 	Agreed.	●	<p>The Analysis and Understanding team was set up within the TPG to monitor and analyse industry trends on an ongoing basis using the information obtained from research initiatives such as the Understanding Tax Agents project; and the State of the Industry studies.</p> <p>The ANAO considers that, whilst the ATO has conducted numerous industry profiling initiatives, it has not adequately analysed the compliance characteristics of tax agents.</p> <p>The ATO has developed a Balanced Scorecard against which the success of managing the relationship can be assessed. The scorecard was developed through consultation with agents and other key stakeholders and the outcomes are reported to the ATPF and in the ATO Annual Report.</p>

Rec. no.	Recommendation	ATO Response	ANAO assessment of progress	
			Status	Comments
6	The ANAO recommends that, for appropriate assurance on the relevance and cost-effectiveness of the investment the ATO, tax agents and the tax, accounting and legal professional bodies make in their consultative relationship, the ATO periodically assess the costs and benefits of the consultative committees and their performance, at least in broad terms.	Agreed.	●	The ATO has completed a corporate review of forums, including consultative forums with tax practitioners, which has resulted in development of a draft Committee Management Practice Statement. A list of measures of overall effectiveness has been drafted jointly with representatives of the tax professional associations for further consultation prior to implementation. Implementation of the Practice Statement will require review, on an annual basis, of the cost effectiveness of the forums and will focus senior management attention to the role of various forums in providing tax practitioners with an appropriate voice on how the revenue system is administered. The ANAO considers that there is a need for routine processes to inform the ATO about strategic issues and to monitor progress in the resolution of them.
7	The ANAO recommends that, to enhance its management of tax agent technology matters, the ATO establish a technology support coordinator to: <ul style="list-style-type: none"> liaise across the ATO on matters that relate to the interaction of information technology and tax agents; and participate as an ongoing member of the Tax Practitioner Relationship Forum. 	Agreed.	●	The ANAO agrees that this recommendation has been fully implemented.

Rec. no.	Recommendation	ATO Response	ANAO assessment of progress	
			Status	Comments
8	<p>The ANAO recommends that, to clarify its strategic direction in providing services to tax agents, the ATO:</p> <ul style="list-style-type: none"> • clarify the extent to which it expects tax agents to be self-reliant in generating the knowledge they require to operate successfully; and • establish the most effective supplementary role it can perform through targeted education, communication and appropriate technology support services. 	Agreed.	●	<p>The ATO has developed a series of targeted initiatives, such as the Relationship Manager program and Tax Agent Portals, to support tax agents.</p> <p>The ANAO considers that the ATO has not explained, with sufficient clarity, the extent to which it expects agents to be self-reliant.</p>
9	<p>The ANAO recommends that, to improve the effectiveness of its provision of telephone support services to tax agents, on an ongoing basis, the ATO:</p> <ul style="list-style-type: none"> • assess tax agent-related telephone service performance against timeliness standards; • conduct national quality assurance reviews of tax agent calls to ATO telephone services and report results of such reviews to senior management; and • regularly report publicly on tax agent-relevant telephone support service performance levels, particularly on timeliness and quality. 	Agreed.	●	The ANAO agrees that this recommendation has been fully implemented.

Rec. no.	Recommendation	ATO Response	ANAO assessment of progress	
			Status	Comments
10	<p>The ANAO recommends that, to enhance its planning and review of tax agent-related service support functions, the ATO, consistent with its overall service support strategy for tax agents:</p> <ul style="list-style-type: none"> • establish, and act in accordance with, an overall plan for its tax agent-related education, communication and technology support programs and processes, including setting out clearly: <ul style="list-style-type: none"> — objectives to be pursued for meeting the needs of tax agents; — appropriate strategies for achieving objectives; and — realistic performance measures against which the outcomes of the programs and processes can be evaluated; and • assess the overall costs and implement an ongoing program of reviews of the effectiveness, including cost-effectiveness, of major education, communication and technology support programs and processes. 	Agreed.	<ul style="list-style-type: none"> ● 	<p>The ATO implemented a new communication strategy in July 2006.</p> <p>The ATO has used the annual communication survey to benchmark effectiveness against other products and determine levels of overall satisfaction.</p> <p>The ANAO notes that the implementation of this recommendation has become a component of the ATO's ongoing administration.</p>

Appendix 5: ATO Education Programs, Communication Products and Technology Support Programs

Education Programs

The Relationship Manager program

The Relationship Manager program was introduced in July 2003 and initially focussed on the promotion of technology for tax agents.

A tax agent can still request a visit for Optimising Technology for your Practice, however a much more tailored approach is used with Relationship Manager staff profiling tax agents prior to the visit to discover what topics are most likely of interest to the tax agent.

One of the focus areas of the program is the Tax Agent Portal, which was introduced in December 2002. Other technology promoted during tax agent visits includes the Electronic Lodgement Service and the ATO website.

The table below sets out the number of visits undertaken since the Relationship Manager program commenced.

	2003/2004	2004/2005	2005/2006	All visits YTD	Target 2005/2006
Number of visits	8,267	6,880	3,211	18,358	4,800
Satisfaction rating	*	*	98%		

*Data for these periods was not collected and collated in the same manner as from July 2005 and is not comparable. However, surveys have been conducted which touch on the satisfaction of tax agents and these surveys confirm a very high satisfaction rating in the program.

ATO speakers and specialist seminars

The ATO also develops and delivers tax educational workshops and presentations for tax practitioners. Popular topics for tax practitioners currently are review of self assessment and service arrangements.

For the financial year ending June 2006, 442 presentations were conducted for tax practitioners, with 106 presentations delivered so far this year to 27 October 2006.

Communication Products

Tax Seminars

Tax Seminars are designed to provide a forum for the ATO to deliver corporate messages to tax practitioners in support of compliance. They are traditionally held in June and November each year, and commenced in the 1999–2000 financial year.

The number of registrants has grown significantly over the years with approximately 17 000 registrations for the June 2005 seminar and 13 000 for the November 2004 seminar. The number of venues has grown from 160 in 2001 to 206 in June 2005.

A DVD/ video format delivered directly to agents was trialled for the December 2005 Tax Seminar. Feedback received from tax practitioners was mixed, although a large proportion of those who provided feedback indicated they prefer to attend the seminar at venues. Attending the seminar at a venue provides them with the opportunity to network with colleagues and ATO staff, as well as providing the means of ensuring time was allocated to this area of their professional development.

The Tax Seminar guide has also developed over time, in response to feedback from the industry, with the guide now more closely mirroring the Tax Seminar content.

Tax Professional segment on www.ato.gov.au

This segment of the ATO web site contains a collection of current information relevant to tax practitioners and their practices. During the financial year ending 30 June 2005 there were 975 330 hits on the web page, with 663 086 hits for the financial year to date ending February 2006.

Specific items of interest include:

- Induction Package for new agents

This package has been designed to introduce newly registered tax agents to the information and facilities they need to interact effectively with the ATO and to conduct their practices efficiently.

- Practical Tips for Tax Practitioners

Practical tips are a collection of immediate and short term hints that have been designed to provide tax practitioners with timely information regarding current procedural and administrative issues.

- Administrative essentials (was known as Tax Agent Portfolio in the original ANAO report)

This provides a summary of procedural and administrative information that helps tax agents interact with the ATO and act effectively on behalf of their clients.

- Web based training overviews and on-line demonstrations
- Compliance Tool kit

This is a practical guide to compliance activities being undertaken by the ATO. This product can be used by tax practitioners to develop a better understanding of the compliance approach of the ATO and assess the possible impacts of compliance activities on their practice and clients.

- New legislation pathway page

New legislation pathway allows tax professionals and taxpayers to track the progress of new legislation from announcement through to Royal Assent, and also covers information about the administrative treatment of retrospective legislation.

- Portal tips

Portal tips are a collection of immediate and short term hints that have been designed to provide tax practitioners with timely information regarding current tax agent portal issues.

eLink

An email bulletin that is issued weekly to help users of the ATO website, especially tax practitioners, keep up to date with the most recent updates to the site. There are approximately 22 000 subscribers to this service.

A survey conducted in December 2005 indicated this product is highly valued by subscribers.

ATO Broadcasts

The broadcast system is used to communicate differentiated, urgent and important information to registered tax agents via e-mail, facsimile or post. Broadcasts can be sent to all tax agents or messages can be targeted to specific groups.

During the year ended 30 June 2006 41 broadcasts were sent and 45 eLinks⁷⁶ issued; 16 broadcasts and 7 eLinks have been issued this year to 27 October 2006.

Senior Executive visits

The National Tax Agent Visits Program provides senior executives from the ATO and Treasury the opportunity to meet with tax agents at their practices. The visit program enables senior executive officers to gain feedback from tax agents on how they perceive their relationship with the ATO.

This one on one contact can also highlight problem areas, that when addressed has led to improvements in client experience and services. In the 2005–06 financial year the program has supported over 75 visits, with many more planned.

Key Dates

A quarterly printed and on-line product to inform tax agents of key lodgement and payment dates. In response to feedback in the 2005 Communication Survey with tax agents Key Dates is now a regular feature in the ATO's weekly eLink bulletin to subscribers, providing a weekly reminder of key dates in the tax cycle.

Lodgement Program Guide

A printed guide that supports and assists tax agents in complying with the annual lodgement program.

Phone services card

To support and assist tax agents contacting the ATO using the tax agent premium phone service numbers.

⁷⁶ eLink is an email bulletin for tax professionals.

The TAXAGENT newsletter

This is intended to be a quarterly newsletter to educate and inform tax agents about topical and current messages, in an easy to read printed publication. This product is also published to the Tax Professional site on www.ato.gov.au

It is designed to keep agents aware of current issues and changes in the administration of all areas of taxation and it directs agents to more detailed sources of information on topics relevant to their practices.

Technology Support Programs

Electronic Lodgement System (ELS)

ELS allows participating tax agents to lodge their clients' tax returns, schedules, activity statements and other taxation forms, with the ATO electronically. Tax agents can also receive client activity statements through ELS and request a range of business reports.

Data is transmitted via the internet or by Dial-IP, a private network provided by Telstra. All data is encrypted by Virtual Private Network Client and sent to the ATO through a secure tunnel; ELS provides an immediate acknowledgment of receipt of returns and of those not received. ELS operates 24 hours per day all year round and offers faster turnaround (95 per cent of individual assessments will be processed within 14 days). The ATO provides an ELS Guide for Tax Professionals, and a range of website and other educational products about ELS.

Tax Agent Portal

The Tax Agent Portal is a secure website that allows tax agents to access a range of information, services and functions online.

The site is designed to provide tax agents with convenient access to;

- a variety of reports
- submit a range of online forms
- update client registration details
- view information about their practice
- add or end an authorisation for a role or account
- performance data, for example, call waiting times
- view calculation details on general interest charge (GIC)

- request refunds and credit transfers on behalf of their clients
- view client information, including account and registration details
- send and receive messages from the Tax Office on selected topics
- prepare, lodge, view, revise and print activity statements for clients.

The messaging facility within the Tax Agent Portal provides tax agents with a secure channel for electronic communication with the ATO on specific topics. This secure channel allows tax agents to electronically send detailed information to the ATO without the security concerns that surround the use of email.

Tax Agent Portal messaging allows tax agents to:

- send messages on selected topics
- receive and reply to responses from the ATO, and
- view the history of a message.

The Tax Agent Portal includes four downloadable calculators/tools: Baby Bonus calculator, Family Tax Benefit calculator, AMP Demerger calculator, and Am I a Resident decision support tool. In addition, there are 40 website calculators available for on-line use on www.ato.gov.au

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