

The Australian Taxation Office's Use of Settlements

Australian Taxation Office

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Canberra ACT
13 December 2017

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Australian Taxation Office titled *The Australian Taxation Office's Use of Settlements*. The audit was conducted 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 to the Parliament.

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

Yours sincerely

A handwritten signature in black ink, which appears to read 'Grant Hehir', is positioned above the printed name.

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

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Summary and recommendations

Background

1. Tax disputes arise when a taxpayer disagrees with an Australian Taxation Office (ATO) decision in relation to a tax liability or entitlement. Where disputes occur, the ATO's intention is to resolve them in the most cost-effective, timely and efficient manner with the aim of treating taxpayers fairly and respectfully. If the ATO is not able to resolve a dispute with a taxpayer, the disputed matters will proceed to litigation through courts and tribunals. Settlements are one of the dispute resolution strategies used by the ATO.

2. A settlement is an agreement between the ATO and the taxpayer to resolve matters in dispute where one or both parties make concessions on what they consider to be the legally correct position. The ATO has a Code of Settlement that sets out its policy in relation to the settlement of tax and superannuation disputes, including disputes involving debt.¹ Three key factors under the Code of Settlement must be considered by the ATO when deciding whether to settle a dispute: the relative strength of the ATO's and taxpayer's position; the costs versus the benefits of continuing the dispute; and the impact on future compliance for the taxpayer and the broader community. The Code of Settlement is supplemented by other ATO guidance, including various business line specific settlement policies and procedures.

3. In 2016–17, the ATO concluded 648 settlements, of which 89 per cent occurred in the pre-litigation stage. The settlement variance, which is the difference between the ATO's pre-settlement and settled positions, is the amount of tax revenue potentially forgone by the ATO. Settlement cases for 2016–17 had a pre-settlement amount of \$4.6 billion, settled amount of \$2.7 billion, and variance of 41 per cent. The number of settlements and proportion of variance differ across various taxpayer market segments.²

4. In February 2017, the ATO implemented an external independent assurance process that focuses on reviewing settlements concluded in large businesses and multinational enterprises. The ATO has engaged three retired Federal Court judges to provide independent assurance by assessing whether settlements examined have provided a 'fair and reasonable' outcome for the Australian community.

Audit objective and criteria

5. The objective of the audit was to assess the effectiveness of the Australian Taxation Office's use of settlements to resolve taxpayer disputes. The high-level criteria were:

- Does the ATO enter into, negotiate and follow up on settlements in accordance with its policies and procedures, including the Code of Settlement?
- Does the ATO have adequate internal guidance and public reporting for settlements?

1 The ATO reviewed and refreshed the Code of Settlement into a more streamlined and principles-based policy statement in October 2014.

2 In 2016–17: micro enterprises accounted for the highest number of settlements (326 settlements); not-for-profit organisations accounted for the highest proportion of variance (85 per cent); and large businesses accounted for 36 settlements with a variance of 49 per cent.

Conclusion

6. The ATO effectively uses settlements to resolve disputes with taxpayers. The ATO has made many improvements to its approach to settlements in recent years, including refreshing the Code of Settlement and introducing the Independent Assurance of Settlement process that has found settlements with large businesses and multinational enterprises to have been fair and reasonable.

7. The ATO's settlement practices are effective, in that settlements have been entered into, negotiated and followed up largely in line with its settlement policies and procedures, including the principles outlined in the Code of Settlement.

8. The ATO has comprehensive policies and procedures to provide guidance to officers with settlement responsibilities, although there is scope for improved conformance with requirements to retain adequate settlement case records in its case management system. Effective mechanisms are in place for the ATO to identify issues, share lessons learnt and make improvements to settlement policies and procedures. The ATO has provided higher levels of public reporting about settlement activities than comparable national revenue authorities.

Supporting findings

Settlement practices

9. The ATO has entered into settlements in line with its policies and procedures. Approvals were obtained in all cases examined by the ANAO prior to commencing settlement negotiations, and the rationale for the settlement decision was outlined in a settlement submission template or other supporting documentation in the vast majority of cases examined (98 per cent). The decisions to settle aligned with the principles outlined in the Code of Settlement. Systematic recording and monitoring of cases where settlement was considered but did not proceed could support the ATO in refining its settlement case selection processes over time.

10. The ATO's management of settlement negotiations is largely in accordance with its pre-settlement assurance mechanisms.³ The ANAO's sampling results indicate that advice obtained from relevant technical experts and stakeholders was commensurate with the complexity of the settlement cases. Settlement submissions were appropriately prepared, and final settlement decisions were approved in all 60 cases examined. While there was a degree of non-conformance in all business lines, Public Groups and International business line (that deals with large businesses and multinational taxpayers) had the highest level of conformance with pre-settlement assurance mechanisms of all business lines.⁴ The level of pre-settlement assurance mechanisms varies between business lines and there is not a clear rationale for many of the differences, including for the use of panels and approval arrangements.

3 Pre-settlement assurance mechanisms include: referral of the settlement proposal to a settlement panel; consultation with relevant internal and external stakeholders; completion of a settlement submission, its approval by an authorised decision-maker and counter-signoff by another senior executive; and assistance to the case team by settlement coordinators.

4 Public Groups and International also had the most extensive assurance mechanisms of all business lines. The other ATO business lines that undertake settlements are Private Groups and High Wealth Individuals, Small Business, Individuals, Indirect Tax, Superannuation, and Review and Dispute Resolution.

11. The ATO has cited variances from settlements as an indicator of settlement outcomes, and these have been relatively moderate for large business taxpayers in recent years. To gain a further perspective on the negotiation of settlement outcomes, the ATO could conduct analysis to compare the positions in initial settlement submissions with the final settlement positions agreed in settlement deeds.

12. The ATO has established a number of mechanisms to follow up on the settlement amounts payable to the ATO and to ensure that taxpayers abide by their future compliance obligations in the settlement deed. The process to follow up on the financial terms of settlement is effective, as evidenced by all required settlement payments having been made in the sampled cases. The ATO does not have a systematic approach to monitoring and analysing the extent of adherence to future compliance obligations.

Settlement policies, procedures and public reporting

13. The Code of Settlement and supplementary policies and procedures, to a large extent, provide sufficient guidance for officers administering settlements. Extensive information on settlement policies and procedures is available on the ATO intranet, which the ATO is currently reviewing and updating to make more streamlined and integrated. In reviewing settlement policies and procedures, the ATO could provide additional guidance on: principles for determining the terms and amount of settlement; conflicts of interest; widely-based settlements; and verifying that client account records reflect terms of settlements.

14. There is scope for the ATO to improve its conformance with settlement policies and procedures. Areas with the lowest levels of conformance with requirements for recording in the ATO's case management system (Siebel) were: case officers completing tasks within required timeframes; attaching appropriate evidence of approvals and the rationale for settlements; accurately recording settlement amounts; and adequately explaining differences between amounts in settlement submissions and settlement deeds.

15. The ATO's introduction of the Independent Assurance of Settlements external review, the Settlement Coordinator Network, external stakeholder consultation, and quality assurance and management reporting processes are effective mechanisms to identify issues, share lessons learnt and make improvements to settlement policies and procedures. There would be merit in the ATO focusing on improving its compliance with settlement policies and procedures.

16. The ATO provides sufficient transparency around settlements in its public reporting, having regard to restrictions on disclosing information on particular settlements. The settlement information reported publicly by the ATO includes data on: the stage at which settlements occurred; and market segment and client group breakdowns of the number of settlement cases finalised, pre-settlement and settled ATO positions, and settlement variance. The ATO also provides a statement in its annual reports about the Independent Assurance of Settlements process and the level of confidence indicated by the review findings. When compared to other national revenue authorities, the ATO provided the highest level of public reporting around settlement activities.

Recommendations

Recommendation no. 1
Paragraph 2.26 The Australian Taxation Office reviews key pre-settlement assurance mechanisms (such as panel usage, authority to settle, dual signoff, and the use of settlement submission template) across business lines and implements changes to ensure all business lines have appropriately tailored pre-settlement mechanisms.

Australian Taxation Office response: *Agreed.*

Recommendation no. 2
Paragraph 2.59 The Australian Taxation Office implements processes that provide assurance that settlement terms involving future compliance obligations are being met.

Australian Taxation Office response: *Agreed.*

Recommendation no. 3
Paragraph 3.27 The Australian Taxation Office enforces the retention of adequate settlement case records and evidence in Siebel.

Australian Taxation Office response: *Agreed.*

Summary of entity responses

17. The Australian Taxation Office's summary responses to the report are provided below, with the full responses at Appendix 1.

The ATO welcomes this review and considers the report supportive of our overall approach in effectively managing the administration and use of settlements with all taxpayer markets.

In finding the ATO's approach in using settlement generally effective, the review identified a number of opportunities for improvement on some pre and post settlement mechanisms. The review also recognises a number of recent improvements that have been made regarding settlements and the potential of these to further enhance our compliance approach. As a result of these recent improvements the ATO is also well positioned to implement the findings of this report.

The ATO agrees with the three recommendations contained in the report.

Key learnings for all Australian Government entities

18. Below is a summary of key learnings and areas for improvement identified in this audit report that may be considered by other Commonwealth entities.

Quality assurance and continual improvement

- Processes that can support assurance and continual improvement include:
 - external review by independent experts, who can also contribute to the design of the review processes;
 - consultation with external stakeholders (including the community, industry and professionals) to gain external perspectives on initiatives, discuss and develop strategies, and help identify areas for improvement;
 - an internal network of practitioners or coordinators across functional units to share information, learn from others, promulgate better practices and identify potential improvements at an enterprise level. This group can also provide assurance of the integrity of policies, practices and procedures; and
 - internal assurance processes such as enterprise-wide assurance mechanisms (that address customer service, accountability, accuracy and performance) and additional local assurance mechanisms aimed at reviewing higher risk cases.

Record keeping

- Entities should retain adequate documentation and records to support the rationale for decisions made and actions undertaken. Keeping sufficient evidence of the decision-making processes and business activities is fundamental to accountability and transparency.

Fit-for-purpose policies and procedures

- Conformance with enterprise policies and procedures by entity staff is important for ensuring the accuracy of outcomes and consistency of decision-making. Any variations in processes and procedures among different business areas should be appropriately tailored to risk and supported by clear rationale.

Audit findings

1. Background

Dispute resolution and settlement

1.1 Tax disputes arise when a taxpayer disagrees with an Australian Taxation Office (ATO) decision in relation to a tax liability or entitlement. Tax disputes can occur prior to the issue of assessments by the Commissioner of Taxation; for example, following a taxpayer's consideration of an ATO audit position paper. For tax disputes that occur after the Commissioner of Taxation has issued an assessment or amended assessment, the taxpayer can disagree with the assessment by lodging an objection to have the ATO decision reviewed.

1.2 Where disputes occur, the ATO's intention is to resolve them early in the most cost-effective manner that is appropriate to the circumstances, with the aim of treating taxpayers fairly and respectfully.⁵ The ATO uses settlements as a way to resolve disputes with taxpayers where it is appropriate and reasonable to do so. The ATO also uses other types of dispute resolution strategies, including Alternative Dispute Resolution⁶, independent reviews⁷ and litigation.

1.3 Where the early resolution of disputes using other dispute resolution techniques is not possible, litigation can be undertaken through the courts and tribunals to provide final, fair and independent resolution of disputes.⁸ Litigation is a small but important component of the ATO dispute resolution strategies as it acknowledges taxpayers' rights in seeking an external review of ATO decisions under the relevant tax laws. A key objective for the ATO when conducting litigation is to achieve law clarification for the community and the Government.

1.4 The appropriate use of settlements is part of the ATO's commitment to earlier and more effective dispute resolution. A settlement is an agreement between the ATO and the taxpayer to resolve matters in dispute where one or both parties make concessions on what they consider to be the legally correct position. If the ATO or the taxpayer decides that the other party has the preferred position and agrees to adopt the position, it is not a settlement. In the context of settlements, a dispute can be in relation to: a tax or superannuation liability or entitlement; a tax or superannuation debt; and a decision under a tax or superannuation law.

5 Australian Taxation Office, *Commissioner of Taxation Annual Report 2016–17* [Internet], ATO, Canberra, 2017, available from <<https://www.ato.gov.au/About-ATO/Annual-report-2016-17/>> [accessed 8 November 2017].

6 Alternative Dispute Resolution includes processes, other than judicial or tribunal determination, in which an impartial third party provides assistance to resolve or narrow disputed issues. Examples of Alternative Dispute Resolution processes used by the ATO include in-house facilitation, mediation, conciliation and early neutral evaluation. The ATO in-house facilitation service is primarily used to help resolve less complex disputes involving individuals or small businesses.

7 The independent review service is available to large business taxpayers, with a turnover greater than \$250 million, who disagree with some or all of the ATO Statement of Audit Position. The independent review is conducted by a technical officer outside the audit area to bring a 'fresh set of eyes' to the review. An informal review of the ATO audit decision is also available to small business and individual taxpayers, prior to the lodgement of an objection, with the aim of negotiating an agreed outcome.

8 Litigation of tax disputes is conducted in the Administrative Appeals Tribunal or the Federal Court in the first instance, with appeals to the Full Federal Court and by special leave to the High Court.

1.5 The ATO has a public Code of Settlement that sets out the ATO's policy in relation to the settlement of tax and superannuation disputes, including disputes involving debt.⁹ The Code of Settlement is supplemented by other ATO guidance, including a practical guide which provides further details to ATO officers and taxpayers in considering settlement and practical examples to illustrate the application of the principles in the Code of Settlement.¹⁰ In addition, there are various internal business line specific policies and procedures to provide guidance to ATO officers on settlements.

1.6 The Code of Settlement sets out the three key factors that must be considered by the ATO in deciding whether to settle a dispute with a taxpayer:

- the relative strength of the ATO's and taxpayer's position;
- the costs versus the benefits of continuing the dispute; and
- the impact on future compliance for the taxpayer and the broader community.

1.7 The ATO will generally not consider settlement where: there is a contentious point of law that requires clarification; it is in the public interest to litigate; or the taxpayer behaviour is such that the ATO needs to send a strong message to the community.¹¹

1.8 Either the ATO or the taxpayer can initiate settlement negotiations or make a settlement offer. A settlement can occur at any stage of a dispute, including pre-audit, before or after the issue of a position paper in an audit or during the course of an objection or litigation. A settlement can only be approved by an ATO officer who is duly delegated or authorised to conclude settlements.¹² A settlement must be finalised by the ATO and taxpayer signing a written agreement or deed that sets out the terms of their agreement.

1.9 A responsibility of the Commissioner of Taxation is to administer tax law through assessing and collecting taxes and determining entitlements. In exercising that duty, the Commissioner of Taxation has an obligation to administer the taxation system in an efficient and effective way, balancing competing considerations and applying discretion and good sense. The 'good management rule', which has been endorsed by the courts, recognises that it is open to the Commissioner of Taxation to make sensible decisions having regard to the best use of the limited resources available. This is reinforced by the *Public Governance, Performance and Accountability Act 2013* that imposes an obligation on the Commissioner of Taxation to manage the affairs of the ATO in a way that promotes the efficient, effective and ethical use of Commonwealth resources.

9 Australian Taxation Office, *Code of Settlement* [Internet], 18 August 2015, available from <<https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/in-detail/avoiding-and-resolving-disputes/settlement/code-of-settlement/>> [accessed 5 September 2017].

10 Australian Taxation Office, *Practical guide to the ATO Code of Settlement* [Internet], 13 February 2017, available from <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Settlement/A-practical-guide-to-the-ATO-code-of-settlement/>> [accessed 5 September 2017].

11 Australian Taxation Office, *Code of Settlement* [Internet], 18 August 2015, available from <<https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/in-detail/avoiding-and-resolving-disputes/settlement/code-of-settlement/>> [accessed 5 September 2017].

12 All Senior Executive Service officers have been delegated the power to conclude settlements on behalf of the Commissioner of Taxation. The *Instrument of the Commissioner's Delegations and Authorisations* also allows Executive Level officers to conclude settlements for settlement amounts in specific markets where appropriate.

Settling disputed matters is consistent with good management of the tax system, overall fairness and best use of resources. Settlements usually involve the need to balance competing considerations and require the application of discretion in achieving a sensible settlement decision.

1.10 The settlement process is, therefore, an important element of the ATO's administration of the tax system. The ATO's settlement activities are of interest to the public, whereby there has been ongoing community and Parliamentary interest in the equity and transparency of the ATO's settlement decisions.¹³ Providing the community with credible assurance that the ATO only settles the right cases for the right reasons is important for community confidence in the ATO and for protecting Government revenue.

Extent and nature of settlements

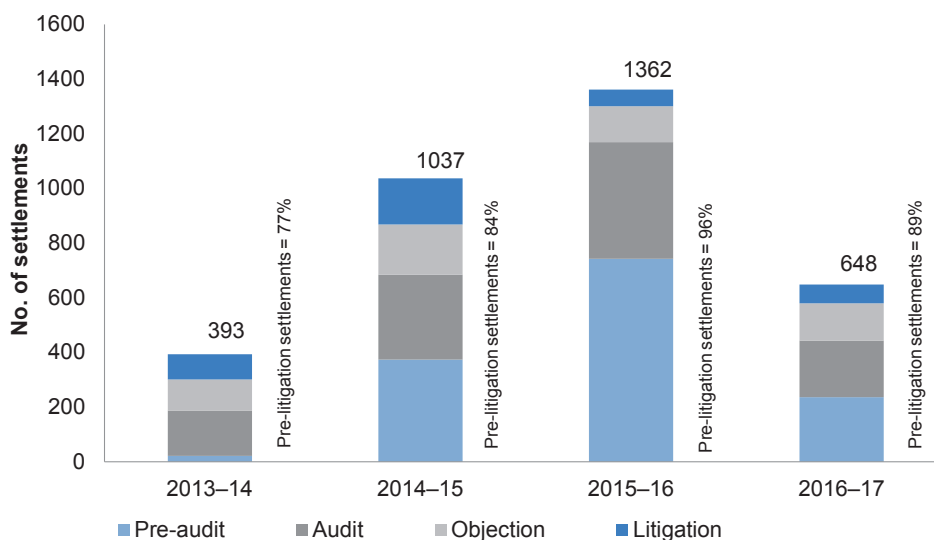
1.11 Figure 1.1 illustrates the number of disputed cases settled by the ATO in the last four years. The increased number of settlements in 2014–15 and 2015–16 was attributed to settlements finalised as part of Project DO IT (Declare Overseas Income Today).¹⁴ There were 335 and 676 Project DO IT cases within the settlements finalised in 2014–15 and 2015–16 respectively. Under Project DO IT, many taxpayers sought to finalise their offshore tax issues by entering into a settlement deed with the ATO. All Project DO IT settlement cases had been finalised as at early 2016–17.

1.12 Consistent with the ATO's focus on earlier dispute resolution, Figure 1.1 also illustrates the increasing proportion of settlements that occurred at the earlier stages of review and dispute resolution processes (pre-audit, audit and objection).

1.13 The amount for which a taxpayer is liable to pay under a settlement is generally lower than the original pre-settlement amount determined by the ATO.¹⁵ The variance between the ATO's pre-settlement and settled positions is the amount of tax revenue potentially forgone by the ATO. Figure 1.2 shows the ATO's pre-settlement position, settled position and the variance that arose from the ATO's settlement process in the last four years. Over that period, the ATO settled cases with an average annual pre-settlement amount totalling \$5.0 billion, post-settlement amount totalling \$2.7 billion and variance of 47 per cent.

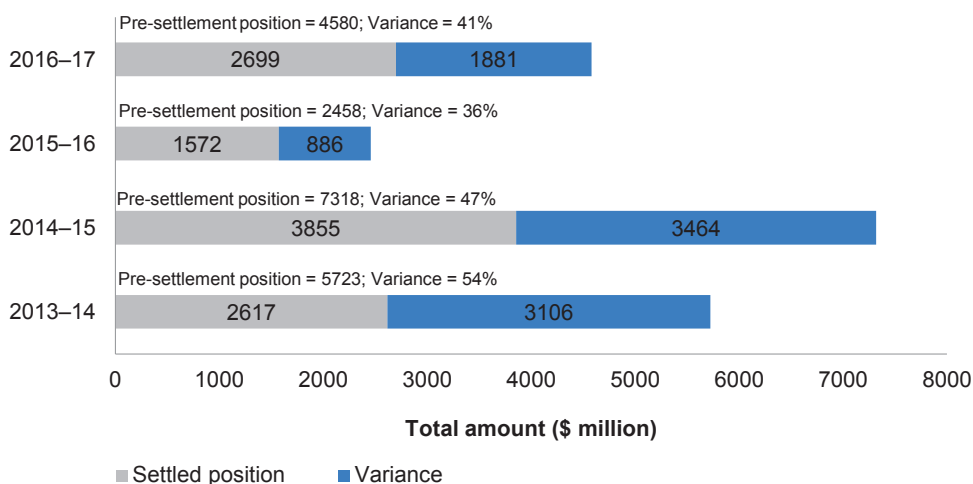
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- 13 The House of Representatives Standing Committee on Tax and Revenue held an inquiry into tax disputes in 2014. The Senate Economics References Committee commenced an inquiry into corporate tax avoidance in 2014, which is ongoing and the Committee is to release its next report by 30 May 2018. Both inquiries discussed ATO settlement practices. The Inspector-General of Taxation has also conducted several reviews that concerned settlements: aspects of the ATO's settlement of active compliance activities (October 2009); ATO's use of early and Alternative Dispute Resolution (May 2012); ATO's administration of penalties (February 2014); and the management of tax disputes (January 2015).
- 14 Project DO IT was an ATO initiative announced in March 2014 that was designed to encourage taxpayers with unreported offshore income and assets to make voluntary disclosures and re-engage with the Australian tax system. Under Project DO IT, eligible taxpayers who came forward would generally only be assessed for limited penalties and interest, and would not be investigated on the basis of their disclosures.
- 15 The pre-settlement position is the amount in dispute that will be assessed or imposed on the taxpayer if settlement is not reached. As settlement can be reached at the audit or pre-audit stage prior to the ATO issuing an amended assessment, the pre-settlement position may involve amounts that are uncertain and may not reflect the actual taxpayer's liabilities.

Figure 1.1: Total number of settlements and stages at which settlements occurred, 2013–14 to 2016–17



Source: ANAO analysis of ATO data.

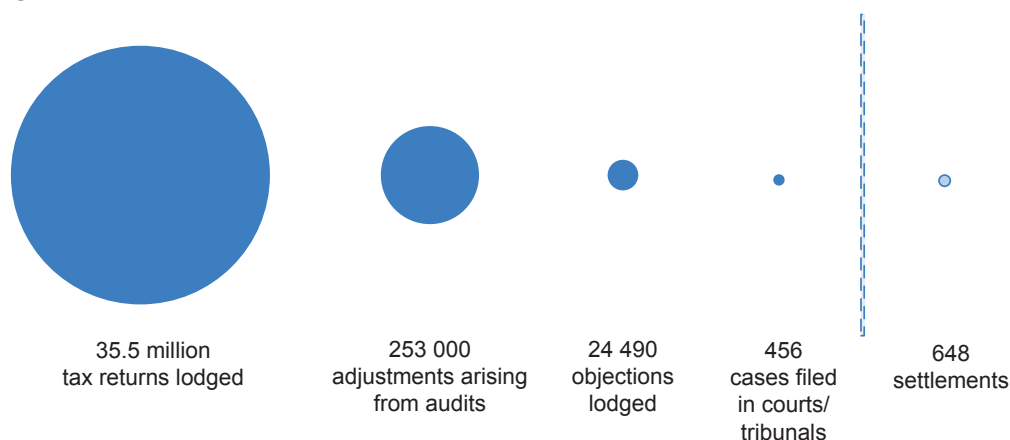
Figure 1.2: Pre-settlement position, settled position and variance, 2013–14 to 2016–17



Source: ANAO analysis of ATO data.

1.14 While the total amount of variance from settlements each year is considerable, that variance is small as a proportion of the total tax revenue collected by the ATO (one per cent or less over the four-year period). Additionally, the vast majority of ATO decisions are not disputed by taxpayers, and settlements made up a relatively small component of the ATO's dispute decisions. The proportion of tax disputes and settlements for 2016–17 is illustrated in Figure 1.3.

Figure 1.3: Tax disputes and settlements, 2016–17



Note: The proportions of the circles are not scaled but rather presented to indicate the relative magnitudes.

Source: ANAO presentation of ATO data.

1.15 Notwithstanding the small proportion of settlements concluded and tax revenue forgone by the ATO as a result, it is important that the ATO makes settlement decisions in accordance with the Code of Settlement and can provide assurance to the public about the integrity of its settlement practices. The Honourable Garry Downes AM (Justice Downes), in his preliminary report on the independent review of settlements for the ATO (refer paragraph 1.22), commented that one particular large settlement ‘might be equated, in the mind of the public, with the same amount of tax revenue that is raised from 10 000 or more ordinary taxpayers’.

Australian Taxation Office settlement processes

1.16 The ATO’s organisational structure includes business lines that are responsible for managing certain tax matters and compliance activities for different market segments. Within the ATO’s Client Engagement Group¹⁶, business lines that undertake settlements are: Private Groups and High Wealth Individuals; Public Groups and International; Small Business; Individuals; Indirect Tax; and Superannuation.¹⁷

1.17 The ATO moved the objections function out of the Client Engagement Group business lines into the Review and Dispute Resolution business line (within the Law Design and Practice Group) from mid-2013 to mid-2015, with the majority of objections work moving across in July 2015. The aim was to enable disputed ATO decisions to be reviewed independently of the client engagement audit teams. Review and Dispute Resolution is also the corporate custodian for settlements and has responsibility for the policies, procedures and assurance process for settlements.

1.18 In addition to the ATO’s overarching settlement policy, each business line has individualised settlement policies and procedures. There are various steps and procedures within the process by which settlements are reached to resolve disputed tax cases, with some variations among business

¹⁶ The Client Engagement Group aims to make compliance easier and non-compliance more difficult.

¹⁷ Appendix 2 outlines the responsibilities, types of disputes, and market segments associated with settlements for each business line, and for Review and Dispute Resolution as discussed below.

lines.¹⁸ Depending on the particular circumstances of the case, the settlement process can be complex and lengthy. Figure 1.4 provides an overview of the ATO's settlement process.

Recent changes to the ATO's settlement approaches

1.19 The ATO's settlement approaches have changed markedly in recent years. The ATO has a renewed focus on early dispute resolution through ongoing engagement with taxpayers, with an intention to more actively identify settlement opportunities. It has also taken steps to improve its settlement process.

1.20 In October 2014, following consultation with industry groups, the ATO reviewed and refreshed the Code of Settlement into a more streamlined, principles-based and externally-focused policy statement.¹⁹ The Code of Settlement was shortened from 54 pages to two and was released together with a supporting *Practical Guide to the ATO Code of Settlement* and four model settlement deed templates.²⁰ The ATO also updated its internal guidance materials for staff. Other key changes included enhancement of the ATO's public reporting of settlement data, and the use of Siebel (the ATO's enterprise case management system) for the recording of settlement information.

1.21 Subsequent to the introduction of settlement data recording in Siebel, the ATO established a number of integrity checks and corporate requirements as quality assurance mechanisms for settlement data. However, in July 2015, as part of an initiative to 'improve staff experience and reduce ATO red tape', the ATO removed the requirements for integrity checklists, National Program Manager reports, and business line settlement coordinators and their supporting forum (that is, the Settlement Improvement and Assurance Forum). While these corporate obligations were removed, business lines were allowed to retain the processes that they considered were working well. An ATO internal audit in June 2016 identified some issues with the assurance of settlement data. As a result, some elements of the quality controls that were removed as part of the red tape reduction agenda, such as the integrity checklists and settlement coordinator role, were reintroduced in early 2017.

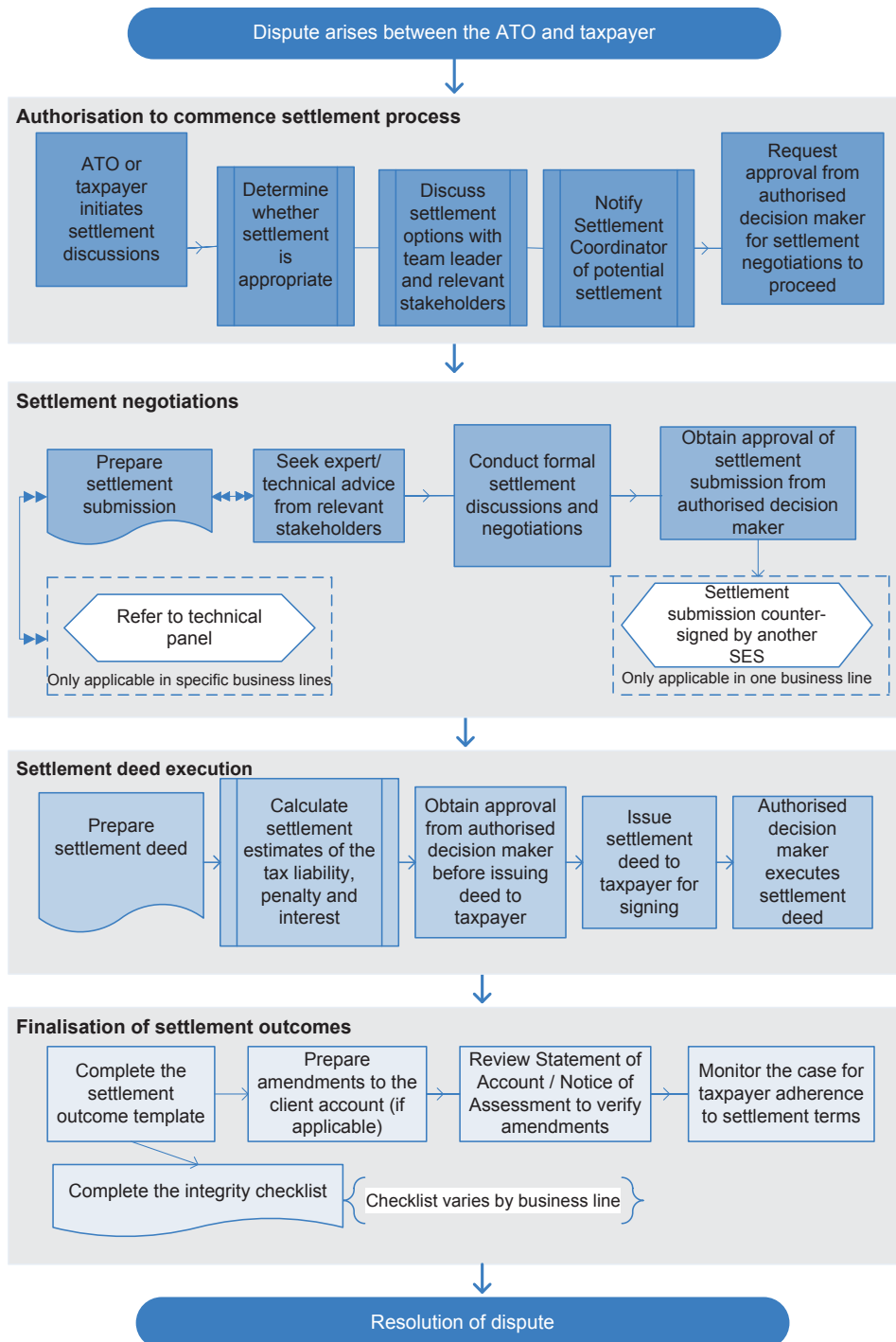
1.22 In July 2015, the ATO engaged former Federal Court Judge and President of the Administrative Appeals Tribunal, Justice Downes, to assist in the design and trial of an external and independent review of settlements. The ATO implemented the Independent Assurance of Settlements external review as an ongoing business-as-usual process in February 2017. The intent of this review is to provide the community with an appropriate level of assurance that settlements undertaken are a fair and reasonable outcome for the Australian community.

18 Variations between business lines' settlement policies and procedures include approval authorisations and assurance mechanisms (see paragraph 2.16).

19 The ATO developed its settlement guidelines in 1991 and revised the policy into a formal Code of Settlement Practice in September 1999. Further changes were made in response to the Inspector-General of Taxation report in 2009 on the review of the ATO's settlement practice. Inspector-General of Taxation, *Review into aspects of the Tax Office's settlement of active compliance activities* [Internet], October 2009, available from <<http://igt.gov.au/publications/reports-of-reviews/settlement-of-active-compliance-activities-2/>> [accessed 12 September 2017].

20 The model settlement deeds are available from <<https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/in-detail/avoiding-and-resolving-disputes/settlement/model-settlement-deeds/>> [accessed 14 September 2017].

Figure 1.4: Overview of the ATO's settlement process



Source: ANAO analysis of ATO settlement process.

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The Australian Taxation Office's Use of Settlements

Audit approach

Audit objective, criteria and scope

1.23 The objective of the audit was to assess the effectiveness of the Australian Taxation Office's use of settlements to resolve taxpayer disputes.

1.24 To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- Does the ATO enter into, negotiate and follow up on settlements in accordance with its policies and procedures, including the Code of Settlement?
- Does the ATO have adequate internal guidance and public reporting for settlements?

1.25 The scope of the audit covered the ATO's use of settlements to resolve taxation, superannuation and debt disputes. The audit focused on the ATO's settlement approach after the revised Code of Settlement was introduced in October 2014.

1.26 The audit did not examine other types of ATO dispute resolution approaches, such as Alternative Dispute Resolution, in-house facilitation, independent reviews, objections or litigations. The audit also did not examine the ATO's management of other types of disputes, such as complaints, compensation, access to information or disputes relating to a breach of contract between the ATO and suppliers.

Audit methodology

1.27 The audit methodology included:

- examining the Code of Settlement and other ATO documentation in relation to the settlement process, including specific business line policies and procedures;
- analysing the ATO's reporting on settlements;
- interviewing relevant ATO staff regarding settlement work practices;
- consulting with various stakeholders, including the Inspector-General of Taxation and industry bodies, to gain insights into the ATO's approach to settlements; and
- sampling of concluded settlement cases across the client engagement business lines to test compliance with settlement policies and procedures.

1.28 The ANAO's sampling methodology involved the examination of a random sample, stratified by business lines, of all settlements that had been finalised between 1 July 2016 and 31 May 2017.²¹ The audit examined a minimum of 10 per cent of the total number of settlement cases in each business line. The sample for each business line included the top five settlements by value of settlement variance. In business lines where the top five cases represented less than 10 per cent of the total number of settlements, the ANAO also selected a random sample of the residual settlements in the business line. Table 1.1 outlines the number of settlement cases examined by the ANAO in sampling each business line. The ANAO tested the sample of settlement cases against a selection of controls and conformance with key settlement process requirements.

21 For timely completion of the audit fieldwork, the ANAO had to draw the stratified random sample prior to the end of the 2016–17 year. Therefore, the sample only consisted of finalised settlements as at 31 May 2017.

Table 1.1: Number of settlement cases in ANAO's sampling

Business line	Total settlement cases (1 July 2016-31 May 2017)	Number of cases sampled	Number of cases sampled as a percentage of total settlement cases
Private Groups and High Wealth Individuals	240	24	10%
Public Groups and International	13	5	38%
Small Business and Individuals ^a	8	5	63%
Indirect Tax	47	5	11%
Superannuation	85	9	11%
Review and Dispute Resolution	126	13	10%
Total	519	61	12%

Note a: Small Business and Individuals are two separate business lines within the ATO. However, settlements within these two business lines are conducted by a team known as the LINCS (Law interpretation, Instalments, New Measures, Case Leadership, and Strategy and Engagement) group. For the purpose of the ANAO audit, the Small Business and Individuals business lines are examined as one single area with respect to settlement responsibilities.

Source: ANAO analysis of ATO data.

1.29 The audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of approximately \$305 000.

1.30 The team members for this audit were Esther Barnes, Haydn Thurlow, Kelly Williamson, Fiona Sheppard, Linda Kendell and Andrew Morris.

2. The Australian Taxation Office's settlement practices

Areas examined

This chapter examined the ATO's settlement practices, in particular whether it has entered into, negotiated and followed up on settlements in accordance with its policies and procedures, including the Code of Settlement.

Conclusion

The ATO's settlement practices are effective, in that settlements have been entered into, negotiated and followed up largely in line with its settlement policies and procedures, including the principles outlined in the Code of Settlement.

Areas for improvement

The ANAO made two recommendations aimed at: ensuring that pre-settlement assurance mechanisms are appropriately tailored in all business lines (paragraph 2.26); and improving the effectiveness of monitoring taxpayer adherence to settlement terms involving future compliance obligations (paragraph 2.59). The ANAO also suggested that the ATO systematically monitors cases where settlement was considered but did not occur (paragraph 2.13).

Does the Australian Taxation Office enter into settlements in appropriate circumstances?

The ATO has entered into settlements in line with its policies and procedures. Approvals were obtained in all cases examined by the ANAO prior to commencing settlement negotiations, and the rationale for the settlement decision was outlined in a settlement submission template or other supporting documentation in the vast majority of cases examined (98 per cent). The decisions to settle aligned with the principles outlined in the Code of Settlement. Systematic recording and monitoring of cases where settlement was considered but did not proceed could support the ATO in refining its settlement case selection processes over time.

2.1 Where settlement is a potential option for resolving a dispute, the ATO or the taxpayer can initiate settlement discussions or make a settlement offer. When settlement is considered, the responsible ATO case officer is required to seek approval from the relevant authorised decision-maker prior to commencing formal negotiations with the taxpayer. This approval has to be recorded in Siebel and is the official activity to indicate that the settlement process and negotiations can proceed. The authorised decision-maker is to be involved in the settlement discussions and negotiations as required.

2.2 The Code of Settlement and its supplementary guidance material provide guidelines on how settlement considerations, negotiations and decisions are made (Chapter 3 discusses the adequacy of the guidance material). In determining whether settlement is appropriate, case officers must consider all three factors set out in the Code of Settlement:

- the relative strength of the parties' position;
- the costs versus the benefits of continuing the dispute; and

- the impact on future compliance for the taxpayer and the broader community.

2.3 The relative strength of the parties' position is based on the evidence available, the application of the law to the facts, the quantum of the tax in dispute and the possible litigation outcome. The costs and benefits consideration includes the ATO legal costs, the cost and risk in collecting the tax liability, the financial position of the taxpayer and the effective and efficient use of resources. The future compliance consideration includes whether taxpayer compliance can be achieved for current and future years in a cost-effective way. All the considerations for settlement must be assessed as a whole before a decision is made on whether or not to settle a dispute.

2.4 It would generally be considered inappropriate to settle where there is a contentious point of law that requires clarification. In this circumstance, the ATO may fund litigation for the taxpayer under its test case litigation program. Settlement would also not be considered if it is in the public interest to litigate or there is a need to send a strong message to the community about the taxpayer's persistent non-compliant behaviour.

2.5 To assess whether the ATO enters into settlements in appropriate circumstances, the ANAO examined the settlement cases in the selected sample against the key requirement of obtaining approval to commence settlement negotiations. Of the 60 settlement cases²² examined, 57 cases (95 per cent) had approval recorded in Siebel for settlement negotiations to proceed. For the three cases that did not have the official commencement approval in Siebel, there was evidence of involvement of Senior Executive Service (SES) and Executive Level officers in the settlement decision-making.²³

2.6 Of the cases with approval in Siebel for settlement negotiations to commence, 52 cases (91 per cent) had been approved by an officer with the appropriate authorisation. For two of the five cases where the Siebel approval activity was not completed by an appropriate level officer, the ATO advised that the 'approving' officers had been authorised by a SES officer, in the form of an email or orally, to carry out the Siebel approval activity and commence settlement negotiations. While the ATO provided evidentiary record of the email for one of the two cases, the email was not attached to the case in Siebel. The ATO did not have evidence of the conversation between the SES and the case officer for the other case. For the remaining three cases with the incorrect level of authorisation to commence settlement negotiations, there was no evidence to support the delegation of approval responsibilities to the lower level officers. For all the settlement cases sampled, the final decision to settle was approved by relevant officers with the appropriate authorisation.

2.7 The ANAO also examined the settlement submissions and supporting documentation completed for the case samples reviewed to determine whether the three factors outlined in the Code of Settlement were taken into consideration when deciding whether it is appropriate to settle. Case officers undertaking settlement are required to complete a settlement submission template to document and support the rationale and decision-making behind the settlement. The

22 The ANAO reviewed a total of 61 cases in the sample selected, as outlined in Table 1.1, of which one was a Project DO IT settlement case in the Private Groups and High Wealth Individuals business line. There were different settlement procedures for Project DO IT cases, so this case was excluded from the sampling results. Nevertheless, this case did conform to all key settlement process requirements.

23 For these three cases, there were shortcomings in adhering to the requirements of retaining adequate settlement case records in Siebel (refer Chapter 3 for further discussion).

settlement submission template records the settlement rationale and negotiations as it progresses through to resolution.

2.8 The ANAO's sampling results show that in the vast majority (98 per cent) of cases examined, the rationale for the settlement decision was outlined in a settlement submission template or other supporting documentation. The rationale for the settlement was reached having regard to the principles in the Code of Settlement. There were 51 cases (85 per cent) that had a settlement submission template completed to document the decision-making behind the settlement. In eight of the other nine cases, the rationale for settlement was found in other evidentiary documents such as emails.

2.9 In most of the cases (76 per cent) examined, the three factors set out in the Code of Settlement were adequately considered in determining whether a settlement was appropriate. In the other cases examined, the settlement submissions only outlined the one or two factors that formed the basis for the settlement decision. As such, there was insufficient written evidence in the settlement submissions to demonstrate the assessment of all three factors under the Code of Settlement. While the decision to enter into a settlement may be based upon one or two primary factors, the Code of Settlement states that all of the three factors must be considered before making a settlement decision. There were eight cases in the sample examined where not all the three factors were relevant to the case²⁴ but it had not been made clear in the settlement submissions or supporting documentation.

Potential cases that did not proceed to settlement

2.10 There were disputed cases where settlement was considered²⁵ but the decision made was not to proceed to settlement as it was inappropriate to settle under the Code of Settlement.

2.11 Potential settlements that did not proceed were not always documented. Some cases that did not proceed were recorded in Siebel or business line case reporting. The Public Groups and International business line generates a monthly pipeline report with details of settlements in progress and finalised settlements, including cases for which negotiations have ceased. No other business line generates a similar report, although the Indirect Tax business line maintains a spreadsheet that identifies all settlements in progress or finalised but does not record ceased settlement negotiations.

2.12 The ATO advised that there is currently no consistent or automated way to identify cases that had been considered for settlement but did not proceed to settlement. The ATO can identify some of these cases via manual reporting processes or review of settlement technical panel notes but this would not provide coverage of all cases considered for settlement but not proceeding.

2.13 The quality assurance mechanisms for settlements are focused on those cases where settlement occurs and is finalised. There is a lack of systematic monitoring of cases where

24 Examples of circumstances where not all factors were relevant include: the disputed matter was in relation to a past tax treatment for a one-off business transaction where future compliance was irrelevant; and the dispute was in relation to valuation matters that were unsuitable to resolve through litigation and had no flow-on compliance effect.

25 Being considered for settlement involves either an approval for settlement negotiations to proceed or deliberation and negotiations by having regard to the principles in the Code of Settlement.

settlement was considered but did not occur. To improve the transparency of settlement decision-making and support the ATO in refining its settlement case selection processes over time, the ANAO suggests that the ATO systematically records and monitors cases where settlement was considered but did not occur.

Does the Australian Taxation Office negotiate settlements in accordance with its pre-settlement assurance mechanisms?

The ATO's management of settlement negotiations is largely in accordance with its pre-settlement assurance mechanisms. The ANAO's sampling results indicate that advice obtained from relevant technical experts and stakeholders was commensurate with the complexity of the settlement cases. Settlement submissions were appropriately prepared, and final settlement decisions were approved in all 60 cases examined. While there was a degree of non-conformance in all business lines, Public Groups and International business line (that deals with large businesses and multinational taxpayers) had the highest level of conformance with pre-settlement assurance mechanisms of all business lines. The level of pre-settlement assurance mechanisms varies between business lines and there is not a clear rationale for many of the differences, including for the use of panels and approval arrangements.

The ATO has cited variances from settlements as an indicator of settlement outcomes, and these have been relatively moderate for large business taxpayers in recent years. To gain a further perspective on the negotiation of settlement outcomes, the ATO could conduct analysis to compare the positions in initial settlement submissions with the final settlement positions agreed in settlement deeds.

Settlement negotiations

2.14 Once approval has been obtained to commence settlement negotiations, the case officer will formally conduct discussions and negotiations with the taxpayer to reach a settlement outcome that is acceptable to both parties. The case officer must apply the principles and settlement considerations outlined in the Code of Settlement when conducting settlement negotiations. Figure 1.4 in Chapter 1 illustrates the key steps involved in the negotiation phase of the settlement process.

2.15 Prior to a settlement outcome being reached, the ATO has a number of assurance mechanisms in place to ensure the integrity of the settlement process and consistency of decision-making for taxpayers in similar circumstances. The ATO's pre-settlement assurance mechanisms include:

- referral of the settlement proposal to a dedicated business line settlement panel for recommendations on settlement parameters and appropriateness²⁶;

26 A settlement panel usually comprises senior technical officers and at least one SES officer. The role of the settlement panel is to provide advice to the decision-maker. The decision to settle and the settlement parameters remain with the authorised decision-maker. If the decision-maker proceeds to settle outside the parameters provided by the panel, a document must be attached to the relevant Siebel case outlining the reasons for the decision to settle outside those parameters.

- consultation and advice from relevant internal and external stakeholders (for example, Tax Counsel, technical experts, SES officers, Debt business line, Review and Dispute Resolution business line, external counsel, and Australian Government Solicitor);
- completion of a settlement submission template to document the disputed issues, settlement negotiations and rationale for the final decision to settle;
- approval of settlement submission by an authorised decision-maker;
- counter-signoff of settlement submission by an Assistant Commissioner or Deputy Commissioner with a working knowledge of and interest in the settlement issues;
- assistance provided to the settlement case team by the business line settlement coordinators²⁷; and
- settlement training for case officers, decision-makers and settlement coordinators.

2.16 Pre-settlement assurance mechanisms vary among the business lines, as outlined in Table 2.1. Factors contributing to the variations in the pre-settlement assurance mechanisms include:

- differences in the characteristics of the taxpayer and market segments;
- varying degrees of complexity of the issues involved, particularly about the application of tax law; and
- the stage (pre-audit, audit, objection or litigation) where the settlements are typically negotiated.

27 The ATO corporate red tape reduction initiative in 2015 resulted in the optional use of the settlement coordinator role in the client engagement business lines. All business lines, except Review and Dispute Resolution, chose to maintain the function of the settlement coordinator. However, Review and Dispute Resolution reinstated the settlement coordinator function in early 2017.

Table 2.1: Pre-settlement assurance mechanisms by business line

Mechanism/ business line	Private Groups and High Wealth Individuals	Public Groups and International	Small Business and Individuals	Indirect Tax	Superannuation	Review and Dispute Resolution
Panel referral	✓	None	✓ (Ad hoc basis for complex cases)	✓	✓ (Ad hoc basis for complex cases)	None
Settlement submission template ^a	New version	New version	Traditional version	Traditional version	Traditional version	New version
Settlement authorisation ^b	SES: Unlimited EL2: <\$10m EL1: <\$1m	SES	SES: Unlimited EL2: <\$10m EL1: <\$1m	SES or EL2	SES or EL2	SES: Unlimited EL2: <\$10m EL1: <\$1m
Counter- signoff	None	✓	None	None	None	None

Note a: Following feedback from the Independent Assurance of Settlements pilot (see paragraph 2.19), the ATO redesigned the traditional settlement submission template to improve the recording of settlement negotiations in real time. The new template is required to be completed for new settlement cases in Private Groups and High Wealth Individuals, Public Groups and International, and Review and Dispute Resolution post 1 July 2016, which can potentially be selected for the external Independent Assurance of Settlements review. Other business lines are encouraged to use the new template but they have the option of continuing with the traditional template.

Note b: The authorisation amount refers to the maximum amount of tax (including interest and penalties) that can be reduced. Business lines have different instruments of authorisation that set out the authorisation levels for concluding settlements in the business line.

Source: ANAO analysis of ATO information.

2.17 When a dispute is at the audit stage, considerations have to be made around whether the facts are sufficiently understood for the settlement to progress. The use of a settlement technical panel when a dispute is at the audit stage would help with these considerations. When the dispute is at the objection stage, there would already have been a significant analysis of technical positions at earlier stages to help inform settlement considerations. This is one of the rationales for the non-usage of a settlement panel in Review and Dispute Resolution, which manages settlement activities at the objection and litigation stages.

2.18 The ANAO analysed and compared the various pre-settlement assurance mechanisms used in each business line to assess their adequacy in ensuring effectiveness in the ATO settlement negotiation process. Another key mechanism that can help demonstrate the effectiveness of the ATO's management of settlement negotiations is the Independent Assurance of Settlements external review process recently implemented by the ATO.

2.19 The Independent Assurance of Settlements was initially piloted in 2015–16 and adopted by the ATO on an ongoing basis from February 2017. The criteria being assessed by the independent assurers are whether settlements from large market and multinational enterprises are a 'fair and

reasonable' outcome for the Australian community (refer Chapter 3). As at October 2017, nine settlement cases had undergone the independent assurance process and all were found to be fair and reasonable outcomes for the community. The findings from the independent assurance of these cases indicate that the ATO manages the settlement negotiation process effectively and settles large market cases on an appropriate basis.

Panel referral, settlement submissions and settlement approval

2.20 The ANAO's sampling of settlement cases across business lines found that:

- The ATO obtained advice from relevant technical experts and stakeholders, internally and externally, during the settlement negotiation process. There was evidence of deliberations and extensive discussions for complex settlement cases, on the parameters of settlement. The ANAO's sampling results indicate that the level and type of advice sought was commensurate with the complexity of the settlement cases. However, the ANAO identified one complex²⁸ case in each of the Small Business and Individuals, and the Indirect Tax business line samples that were not referred to a settlement panel. The ATO business line specific guidelines provide that cases in those two business lines should be referred to a settlement panel for complex cases.
- As discussed in paragraph 2.8, of the nine cases that did not have a settlement submission template completed to document the settlement issues and negotiations for approval, eight cases were supported by other documentation. The settlement submission template completion rate was lower in business lines without referrals to a settlement panel. The sampled cases that did not complete a settlement submission template were from the Review and Dispute Resolution, Small Business and Individuals, and Indirect Tax business lines. Four of the cases were undertaken by Review and Dispute Resolution where settlement panel usage is not in place; two cases were from Small Business and Individuals, and Indirect Tax where panel referral did not occur as it should have for complex cases (as outlined above).²⁹
- The Public Groups and International (PGI) business line had the highest level of conformance with the key procedures in the settlement negotiation phase of all business lines. The findings indicate that the pre-settlement mechanisms in the PGI business line provide adequate assurance on the integrity of settlement decision-making. Settlements in PGI typically involve tax disputes with large businesses and multinationals encompassing highly complex and unique tax issues. The quantum of tax in dispute is usually a significant amount. The ANAO found evidence of broad consultation with relevant technical experts and extensive SES officers' involvement in all cases sampled. PGI is the only business line that requires an SES officer to counter-sign every settlement. PGI is also the only business line that undertakes annual quality assurance

28 The ANAO consulted with the relevant case team regarding their interpretation and assessment of the level of complexity of these two settlement cases. The case teams for both settlements held the opinion that the cases were of high complexity.

29 For business lines that use panel referral, the case team is required to prepare and refer to the panel prior to attending the panel meeting, a settlement submission template containing details of the case, issues relating to the settlement, the settlement considerations throughout the process and the final decision.

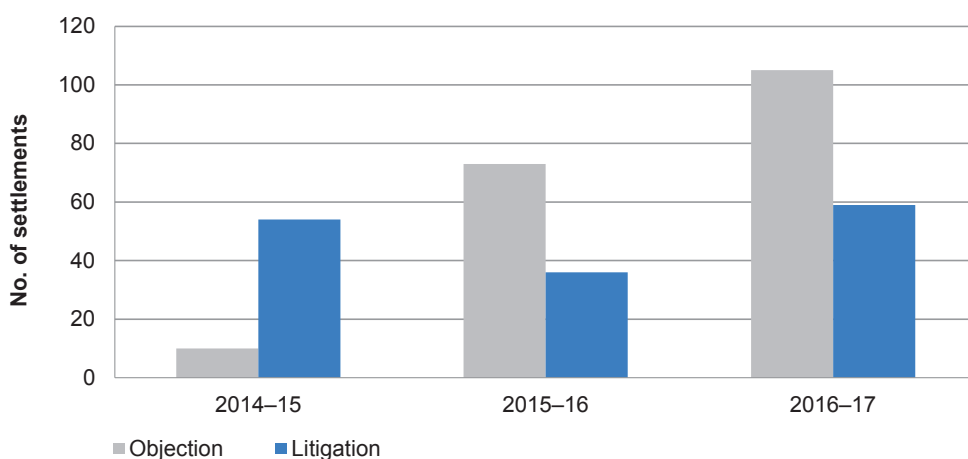
reviews on its completed settlements, which includes assuring the fairness and reasonableness of the settlement decision outcome (refer paragraph 3.46).

- The final settlement decisions for all the 60 cases examined were approved by the relevant delegates with the appropriate authorisation.

2.21 The results from the ANAO sampling of settlement cases indicate that the level of compliance with key procedures in the settlement negotiation process is lower in business lines with fewer pre-settlement assurance mechanisms. A lack of adequate pre-settlement mechanisms in a business line would indicate a lower level of assurance for the ATO with respect to the effectiveness of the settlement negotiation and decision-making process.

2.22 In particular, the level of assurance in the Review and Dispute Resolution (RDR) business line is lower with respect to the effective management of the settlement negotiation process. In RDR, there was no use of panels, no settlement coordinator function (until early 2017), no counter-signoff and lower conformance with completion of the settlement submission template. There is no clear rationale for some of the variations in RDR's pre-settlement assurance mechanisms. RDR is involved in settlements for all market segments as taxpayers in each market segment are entitled to use the ATO objection process. Further, the settlement cases undertaken by RDR can be of high complexity and involve large settlement amounts. Of all settlement cases completed between 1 July 2016 and 31 May 2017, the five largest cases (by pre-settlement amount and settlement variance) were undertaken by RDR. RDR was the business line with the second highest proportion of settlements conducted in 2015–16 and 2016–17 (see Figure 2.2). The pre-settlement process in RDR, such as the non-usage of a panel, was partly due to historical rationale—prior to the shift of the objection function into RDR in July 2015, RDR had not conducted many settlements; and a significant proportion of RDR settlements concluded were at the litigation stage where settlement negotiations moved relatively fast. Figure 2.1 illustrates the proportion of settlements finalised by RDR at the objection and litigation stages in the last three years.

Figure 2.1: Proportion of settlements undertaken by Review and Dispute Resolution at objection and litigation, 2014–15 to 2016–17



Source: ANAO analysis of ATO data.

2.23 The ATO developed the settlement submission template to help improve the transparency of ATO settlement decision-making. All settlement cases should, therefore, have a completed template. The ANAO interviewed settlement coordinators about their views on the settlement submission template used in their respective business lines. Many settlement coordinators commented that case officers are able to customise the settlement submission based on each case, as not all sections in the template are relevant to every case. However, some coordinators advised that the template is too onerous for cases of low complexity. In addition, there were comments that some of the elements of the redesigned Independent Assurance of Settlements submission template would be useful across all the business lines. The ATO advised that the Settlement Coordinator Network has been considering developing an electronic version of the settlement submission template to make it more adaptable and easy for case officers to use. The ATO had acknowledged that settlement submission templates were completed retrospectively in some instances for settlements that occurred very quickly. In line with Justice Downes' suggestions following the Independent Assurance of Settlements pilot, there is merit in the ATO contemporaneously recording the settlement deliberations and changes in position to better reflect the rationale behind the settlement decision-making process.

2.24 Consistency in settlement considerations and decision-making for similar taxation matters is important for taxpayer equity. Various business lines have different ways of ensuring consistency, including: search in Siebel and other ATO internal databases for precedential views; creation of settlement case summaries; maintenance of a settlement register outlining technical issues and decisions; consultation with relevant experts or senior officers; and assistance from settlement coordinators. Importantly, the use of a settlement panel for advice on settlement parameters and appropriateness helps the ATO to achieve consistency and quality of decision-making, particularly for settlement of similar matters. The settlement panel provides confidence and support on decisions and judgements made, and additional assurance for cases that are complex, difficult or sensitive in nature. In his second report issued in May 2016 on the Independent Assurance of Settlements pilot, Justice Downes suggested to the ATO that it develops guidelines as to when matters should be referred to panels or individuals within the ATO. The ATO responded that it would consult internally to establish a more consistent settlement panel usage approach and counter-signoff options. The ATO advised the ANAO that this is yet to be progressed.

2.25 As outlined in Table 2.1, the authorisation to conclude settlements is set at different levels for the various business lines. Justice Downes suggested in his second report on the Independent Assurance of Settlements pilot that the ATO should review its guidelines on who should be authorised to make decisions and link the level of decision-making to the settlement amount. The ATO responded that it would stocktake the current arrangements to build a more coherent approach across the ATO in relation to the authority to settle. The ATO advised the ANAO that, except for the updates on the Taxation Authorisation Guidelines in April 2017 and the settlement instruments of authorisation for some business lines, it is yet to undertake further work in this regard. The ANAO's review of the Taxation Authorisation Guidelines³⁰ (April 2017 version) found that the section on the authorisation to conclude settlements had not been updated with the

30 The Taxation Authorisation Guidelines is an internal document that informs ATO officers about the exercise of powers and functions under the relevant instrument of authorisation.

subsequent amendments made to the various business lines' instruments of authorisation for settlements.

Recommendation no. 1

2.26 The Australian Taxation Office reviews key pre-settlement assurance mechanisms (such as panel usage, authority to settle, dual signoff, and the use of settlement submission template) across business lines and implements changes to ensure all business lines have appropriately tailored pre-settlement mechanisms.

Australian Taxation Office response: *Agreed.*

2.27 The Settlement Coordinators Network will review key pre-settlement assurance mechanisms and proposes that this review be led by RDR in consultation and collaboration with the Client Engagement groups. The Settlement Coordinators Network and its representatives would seek to design and implement any changes that were required as a result within various business lines.

Training for ATO officers engaged in settlements

2.28 Numerous types of training are available to case officers, decision-makers and settlement coordinators who have settlement responsibilities, including through online courses, face-to-face classroom training and on-the-job training.

2.29 The ATO provides a range of self-paced online training modules that officers involved in settlements can download and complete via the Learning Hub. There is one settlement-specific online training module, and several other modules that are not settlement-specific but may be relevant to officers who undertake settlements. These other modules include training to develop skills in negotiation, influencing and dispute management. Officers are required to confirm their participation in the online modules once completed but the ATO advised that they do not always do so. Accordingly, the data available on participation in the online training modules does not accurately reflect the actual completion rates. The ANAO's review of the data on the total ATO-wide participation in online training modules for settlements and dispute management identified that the seven business lines that conduct settlements had an aggregated participation rate of 76 per cent, 46 per cent and 25 per cent for 2014–15, 2015–16 and 2016–17 respectively.

2.30 The ATO Learning & Development team conducted face-to-face training workshops designed specifically for settlement decision-makers in 2014–15, and training workshops specifically for case officers involved in settlements in 2015–16. These settlement courses are not mandatory for officers and are only held when there are expressions of interest. Neither training program was conducted by ATO Learning & Development in 2016–17 due to a lack of demand. The settlement course targeted at case officers was designed as a tutorial that is able to be delivered by team leaders in the respective business lines as required. The ATO was unable to provide data to demonstrate the total number of case officers who attended the tutorial delivered by team leaders as attendance details were not recorded by team leaders or shared with ATO Learning & Development. The ANAO's review of the available data on the total ATO-wide participation in settlements and dispute management training workshops identified an

aggregated participation rate of 55 per cent, 78 per cent and 44 per cent for 2014–15, 2015–16 and 2016–17 respectively in the seven business lines that conduct settlements.

2.31 Most case officers receive on-the-job training through guidance and mentoring provided by their team leaders or more experienced colleagues. In the ANAO's interviews with settlement coordinators in the various business lines, many commented on the value of on-the-job training. As settlements represent only a small portion of the work conducted by case officers, some business lines advised that the most effective training was provided on-the-job, as this training could be tailored to the circumstances of each settlement. On-the-job training also has the advantage of being delivered at the time the officer is engaging in a settlement. This was particularly relevant in business lines that undertake settlements infrequently.

2.32 Training for settlement decision-makers varies among business lines. Only one business line, Private Groups and High Wealth Individuals, has a mandatory training process for Executive Level 1 and Executive Level 2 decision-makers before they are able to approve and conclude settlements.

2.33 In the ANAO's interviews with settlement coordinators, various coordinators made suggestions for improvements to training on settlements. Some coordinators indicated that more formal training would be helpful, particularly if the training can be accessible on an as-needs basis.

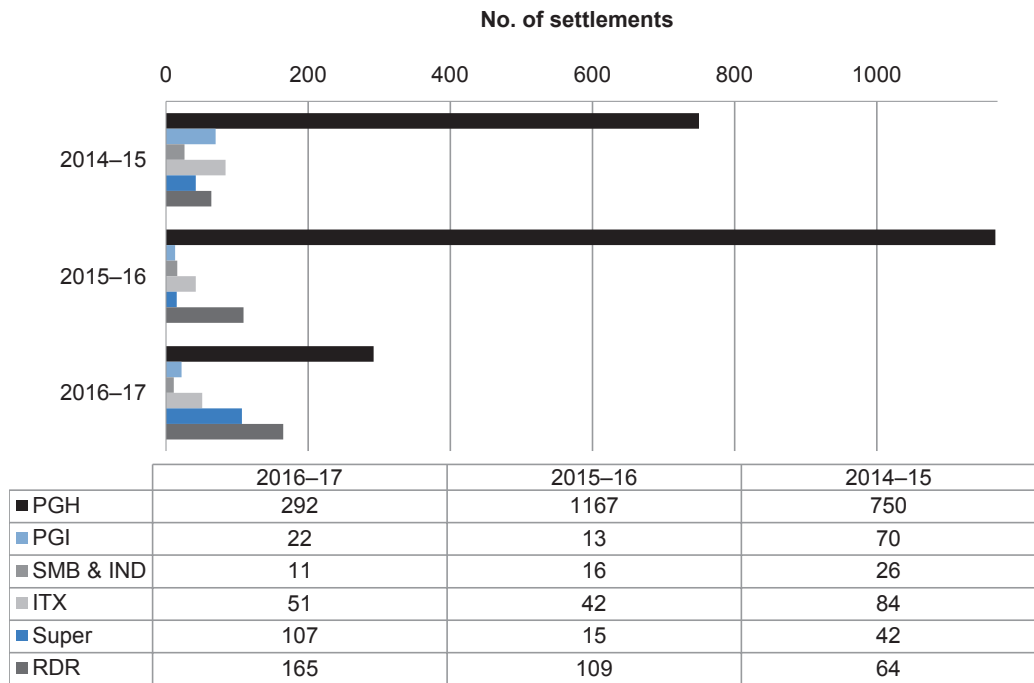
2.34 There would be merit in the ATO considering whether training on settlements adequately supports officers across business lines to effectively undertake settlements, and how it could be improved.

Extent and nature of settlements by business line

2.35 Chapter 1 outlined the extent and nature of settlements undertaken by the ATO in recent years. This section provides similar data by business line.

2.36 The number of settlements conducted by the ATO varies considerably across business lines. As illustrated in Figure 2.2, the Private Groups and High Wealth Individuals business line conducted the highest number of settlements each year from 2014–15 to 2016–17. The Review and Dispute Resolution business line accounted for the second highest number of settlements conducted in 2015–16 and 2016–17. The Public Groups and International and the Small Business and Individuals business lines accounted for the smallest proportion of settlements (five per cent or less cumulatively) in both 2015–16 and 2016–17.

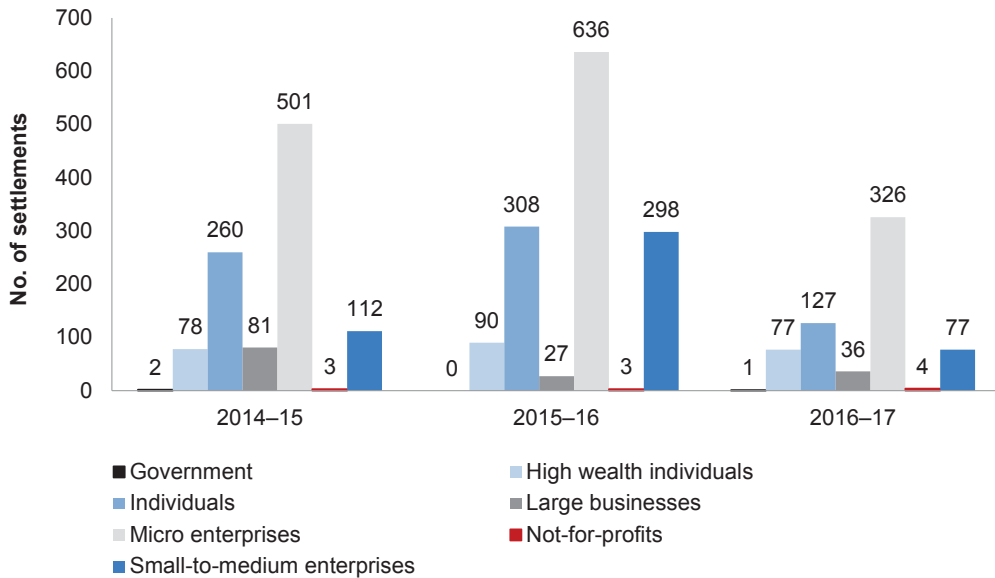
Figure 2.2: Number of settlements by business lines, 2014–15 to 2016–17



Note: The business line names are: Private Groups and High Wealth Individuals (PGH); Public Groups and International (PGI); Small Business (SMB); Individuals (IND); Indirect Tax (ITX); Superannuation (Super); and Review and Dispute Resolution (RDR).

Source: ANAO analysis of ATO data.

2.37 As outlined in paragraph 1.16 and Appendix 2, business lines are involved in settlements for different market segments. The number of settlements varies across the different taxpayer market segments. As illustrated in Figure 2.3, the largest number of settlements concluded in the three years from 2014–15 to 2016–17 was for the micro enterprises market segment followed by the individuals market segment. The government and not-for-profits market segments accounted for the least number of settlements in the last three years.

Figure 2.3: Number of settlements by market segments, 2014–15 to 2016–17

Source: ANAO analysis of ATO data.

2.38 The differences in the number of settlements undertaken across business lines can partly be attributed to the market segments administered and nature of the tax issues in dispute. The ANAO's consultations for the audit also indicate some operational differences by business line. For example, some external stakeholders commented that the Small Business and Individuals business lines appeared to be less inclined to enter into settlements at earlier stages of the dispute process. The ANAO's analysis of ATO settlement data shows that the proportion of settlements concluded by Small Business and Individuals at the pre-audit and audit stage was 15 per cent, 63 per cent and 91 per cent for 2014–15, 2015–16 and 2016–17 respectively.

Settlement variance by market segment

2.39 Table 2.2 outlines the settlement variance for each market segment for 2014–15 to 2016–17. It shows considerable differences between the various market segments and within market segments from year to year. Differences would be expected depending on the circumstances of the particular settlement cases, and it is not possible to draw conclusions about the appropriateness of the outcomes from a revenue perspective from analysing this aggregate data.

2.40 As a proxy indicator, the ATO has pointed to moderate variances from settlements with large corporate taxpayers, to counter criticism that settlements may favour the 'large end of town'.³¹ As shown in Table 2.2, the proportion of settlement variance for large businesses was less than 50 per cent in the last three years, was often lower than other market segments, and in 2015–16 was the lowest (26 per cent) among all market segments.

31 Commonwealth of Australia, *Supplementary Budget Estimates for 2017–18*, Senate Economics Legislation Committee, 25 October 2017.

Table 2.2: Settlement variance by market segments, 2014–15 to 2016–17

	Government	High wealth individuals	Individuals	Large businesses	Micro enterprises	Not-for-profits	Small-to-medium enterprises
2014–15							
Pre-settlement position (\$m)	4.0	288.6	412.6	5608.0	504.8	53.6	446.8
Settled position (\$m)	3.8	148.3	179.1	2934.1	279.6	14.5	295.3
Settlement variance (\$m)	0.2	140.3	233.5	2673.9	225.2	39.1	151.5
Variance %	5%	49%	57%	48%	45%	73%	34%
2015–16							
Pre-settlement position (\$m)	0	310.6	109.2	1337.1	283.3	3.3	414.0
Settled position (\$m)	0	96.1	52.4	993.9	142.4	1.3	285.5
Settlement variance (\$m)	0	214.5	56.8	343.2	140.9	2.0	128.5
Variance %	0%	69%	52%	26%	50%	60%	31%
2016–17							
Pre-settlement position (\$m)	2.0	237.2	402.8	2773.6	236.6	0.7	926.7
Settled position (\$m)	0.4	95.5	178.4	1411.2	162.7	0.1	850.8
Settlement variance (\$m)	1.6	141.7	224.4	1362.4	73.9	0.6	75.9
Variance %	78%	60%	56%	49%	31%	85%	8%

Source: ANAO analysis of ATO data.

2.41 To gain a further perspective on the negotiation of settlement outcomes, the ATO could conduct analysis to compare the pre-settlement positions in the initial settlement submission with the final settlement positions agreed through the settlement deeds. The results of the analysis could inform the ATO's ongoing settlement negotiation processes and practices.

Does the Australian Taxation Office have effective mechanisms to ensure taxpayer adherence to the terms of settlement?

The ATO has established a number of mechanisms to follow up on the settlement amounts payable to the ATO and to ensure that taxpayers abide by their future compliance obligations in the settlement deed. The process to follow up on the financial terms of settlement is effective, as evidenced by all required settlement payments having been made in the sampled cases. The ATO does not have a systematic approach to monitoring and analysing the extent of adherence to future compliance obligations.

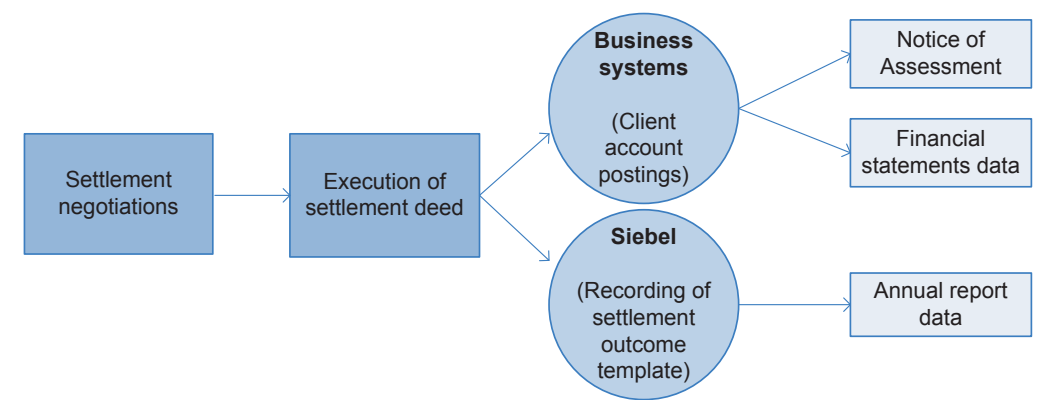
2.42 The ATO and taxpayer finalise a settlement by signing a deed that sets out the obligations to be adhered to by all parties to the settlement. Settlements can result in a financial outcome that involves payment of the settlement amount by the taxpayer to the ATO. The payment can be in full or by instalment, depending on the terms of the settlement.³² Settlements can also result in a non-financial outcome that involves future compliance obligations for the taxpayer; for example, the taxpayer undertakes to not claim certain deductions or credits, or to calculate taxable income on a specific basis going forward. Settlements for which there are no financial adjustments involved are known as in-principle settlements (refer paragraph 3.53).

2.43 There are different arrangements in place for the ATO to follow up the payment of the settlement sum or monitor the future compliance aspects of settlements.

Payment of settlement sum

2.44 Case officers are required to record the settlement outcomes in the ATO systems following the execution of the settlement deed. Figure 2.4 illustrates the recording of settlement outcomes for external reporting purposes.

Figure 2.4: Settlement outcomes and external reporting



Source: ANAO analysis of ATO information.

32 Often in settlement cases, an entity will have made an upfront payment (usually 50 per cent of the primary tax) in line with the ATO's approach to disputed debt recovery, as set out in *Practice Statement Law Administration 2011/4: Collection and recovery of disputed debts*.

2.45 Subsequent to the execution of the settlement deed, case officers are required to make necessary amendments to the taxpayer's client account so that a Notice of Assessment with the agreed tax liability can be raised. Different business lines have different processes for updating the client account to reflect settlement outcomes. There are three different ways for case officers to make amendments to the client account: key the amendments directly into the systems; refer the amendments to Client Account Services; or refer the amendments to the Private Groups and High Wealth Individuals Amendment Support Team.³³ Once the amendments have been made, the Statement of Account generated should be reviewed to ensure that the postings are correct prior to the Notice of Assessment being issued (refer paragraph 3.14 for discussion on the adequacy of guidance on checking client account amendments).

2.46 Accounting for settlements was a key area of audit focus for the ANAO's 2016–17 financial statements audit of the ATO. The financial statements audit procedures performed by the ANAO included examining a sample of 25 settlement cases from 2016–17³⁴ to reconcile the settlement amounts (primary tax, penalty and interest amounts) in the settlement deed to the taxpayer's client account, via a review of the amended Notice of Assessment and the Statement of Account. The ANAO financial statements audit found that the settlement amounts posted to the taxpayer's client account were materially correct and reflective of the terms of the settlement deed. Minor errors were identified in two (eight per cent) of the settlement cases sampled.

2.47 Once an amended Notice of Assessment has been issued, the amount of the tax liability is adjusted and will be recorded against the taxpayer's client account. Where the adjustment results in an additional tax liability, the Debt business line will then monitor and pursue the payment of any outstanding amount. Settlement amounts that are due and payable will be pursued under this standard follow-up process by the Debt business line. For settlements that involve instalments via a payment plan, the Debt business line will also monitor the arrangement to ensure that the taxpayer adheres to the payment terms.

2.48 The settlement case team in most of the client engagement business lines rely on the Debt business line to monitor and collect any outstanding settlement amount under the ATO usual debt process. However, in the Private Groups and High Wealth Individuals and the Public Groups and International business lines, the settlement case officer and decision-maker monitor the case pending collection in accordance with the settlement deed and the case is only closed in Siebel after the agreed settlement amount has been paid.

2.49 The ANAO financial statements audit also examined whether payments of the settlement amounts were made for the sample of settlement cases reviewed. Of the nine settlement cases reviewed that required payments, these were made for eight cases and was not yet due for the remaining case.³⁵

33 The Private Groups and High Wealth Individuals Amendment Support Team is the gatekeeper for business line amendments and provides essential support services to deliver business outcomes for the Client Engagement Group.

34 Seven of the cases in the financial statements audit sample were also in the population of settlement cases reviewed in the ANAO performance audit sample.

35 Not all cases in the financial statements audit sample resulted in a payment to the ATO. Some of the settlements resulted in a refund to the taxpayer and some related to carried forward losses or other future compliance obligations.

2.50 The ANAO's analysis and findings indicated that the ATO has effective processes in place to monitor the payment and collection of settlement amounts.

Taxpayer adherence to future compliance obligations

2.51 The ATO advised that there is no specific process within the client engagement business lines for monitoring taxpayer adherence to future compliance obligations following settlement. The future compliance element of a settlement can extend over a number of years and can involve different obligations required of the taxpayer dependent on the terms of settlement.

2.52 Different business lines have different approaches to follow up future compliance terms of settlement. The ATO advised the ANAO that it is the responsibility of the case officer to ensure that any future compliance obligations under the terms of settlement are satisfied.

2.53 In the Small Business and Individuals business lines, settlements that involve future compliance obligations generally require the taxpayers to carry out the undertakings within a short timeframe (30, 60 or 90 days). The settlement case officer and decision-maker are to monitor the progress of the case within the set timeframe to ensure that the taxpayers have abided by the future compliance obligations under the settlement deed. The case remains open in Siebel until the future compliance obligations have been undertaken.

2.54 For some taxpayers, their adherence to the future compliance terms of settlement may potentially be monitored and reviewed in due course as part of the ATO business-as-usual audit activities or compliance strategies.

2.55 The Public Groups and International business line undertakes ongoing reviews/assurance activities to monitor the compliance of the Top 100 and Top 1000 large multinational and public companies. Any relevant future compliance undertakings in settlements for these taxpayers will be captured as part of the ongoing reviews. Some settlements in Public Groups and International involve taxpayers agreeing to an advance pricing arrangement with the ATO on the method of application of the arm's length principle to their international related party dealings on a prospective basis. Advance pricing arrangements generally cover a period of three to five years and have an annual reporting requirement. Where the taxpayer obligations under the advance pricing arrangement have not been undertaken accordingly, it will trigger a follow up review in the ATO system.

2.56 Similarly in the Private Groups and High Wealth Individuals business line, there are ongoing client engagement activities for the Top 320 privately owned and wealthy groups. The case team in Private Groups and High Wealth Individuals will closely monitor settlements for these Top 320 taxpayers to ensure that they adhere to applicable future compliance obligations. Private Groups and High Wealth Individuals is in the process of undertaking reviews for Project DO IT settlement cases to ensure that taxpayers have adhered to the offshore asset repatriation requirement under the terms of the settlement.

2.57 In many settlement cases in the Superannuation business line, future compliance is the primary reason for settlement. The Superannuation business line relies on reporting by providers and intermediaries in the superannuation industry to monitor taxpayer adherence to future compliance obligations following settlement. For example, approved auditors for self-managed superannuation funds are required to report any contraventions of superannuation laws to the ATO. When the audit team takes action on a contravention report, they will be able to see in

Siebel if a settlement was reached previously with the taxpayer and identify any non-adherence to future compliance obligations.

2.58 Notwithstanding the watching briefs and ongoing client engagement activities that exist within the various business lines, the ATO does not have a risk-based systematic approach to monitor and analyse taxpayer adherence to settlement terms involving future compliance obligations. The monitoring and analysis of taxpayer adherence to future compliance undertakings will provide an important opportunity for the ATO to learn about the effectiveness of using settlement to achieve compliance in the tax system. Taxpayer compliance is important in ensuring the collection of revenue by the ATO.

Recommendation no. 2

2.59 The Australian Taxation Office implements processes that provide assurance that settlement terms involving future compliance obligations are being met.

Australian Taxation Office response: *Agreed.*

2.60 *The ATO will consider how existing RDR and Client Engagement procedures could further incorporate a risk-based systematic approach to ensure future compliance terms within settlements are met going forward.*

3. Policies, procedures and public reporting

Areas examined

This chapter examined the adequacy of the ATO's policies and procedures on the use of settlements, and levels of conformance with those requirements. The chapter also examined the ATO's continuous improvement mechanisms for settlements, and transparency of public reporting on settlements.

Conclusion

The ATO has comprehensive policies and procedures to provide guidance to officers with settlement responsibilities, although there is scope for improved conformance with requirements to retain adequate settlement case records in its case management system. Effective mechanisms are in place for the ATO to identify issues, share lessons learnt and make improvements to settlement policies and procedures. The ATO has provided higher levels of public reporting about settlement activities than comparable national revenue authorities.

Areas for improvement

The ANAO made one recommendation aimed at improving the retention of settlement case records and evidence in Siebel (paragraph 3.27).

The ANAO also suggested that the ATO: incorporates additional materials and provides clearer guidance as part of its current review of settlement policies and procedures (paragraphs 3.5 to 3.15); and considers broadening the case selection criteria for Independent Assurance of Settlements reviews (paragraph 3.37).

Do current policies and procedures, including the Code of Settlement, provide sufficient, integrated and accessible guidance on the use of settlements?

The Code of Settlement and supplementary policies and procedures, to a large extent, provide sufficient guidance for officers administering settlements. Extensive information on settlement policies and procedures is available on the ATO intranet, which the ATO is currently reviewing and updating to make more streamlined and integrated. In reviewing settlement policies and procedures, the ATO could provide additional guidance on: principles for determining the terms and amount of settlement; conflicts of interest; widely-based settlements; and verifying that client account records reflect terms of settlements.

3.1 The Code of Settlement sets out the ATO's policy in relation to the settlement of tax disputes. The Code of Settlement is supplemented by a range of guidance material to support ATO officers to properly administer settlements. In addition, there are corporate and specific business line procedures that ATO officers need to apply in administering settlements. Examples of guidance available on settlement practices include: job aid guidance for recording settlements in Siebel; record keeping and case management policies; request for assistance from the Review and Dispute Resolution business line for pre-litigation legal services; consultation with the Debt business line in relation to payment arrangements and calculations of general interest charges; referral of widely-based tax disputes to the widely-based settlement panels; referrals to the Client

Account Services business area for amendments to client accounts³⁶; and delegation and authorisation guidelines.

3.2 The Review and Dispute Resolution business line, as corporate custodian for the ATO settlement process, is responsible for maintaining the settlement policies and procedures available on the ATO intranet. Extensive guidelines are accessible on the intranet pages by case officers, decision-makers and other ATO officers to support them in the end-to-end process of administering settlements.

3.3 In response to an ATO internal audit on the settlement process in June 2016, which highlighted several issues with respect to conformance with settlement policies and procedures, the ATO is reviewing and updating the content of the settlement guidance. As part of the update, the ATO is redesigning the intranet pages to make it easier for officers to navigate the settlement guidance materials. The update of settlement guidance is undertaken in consultation with the Settlement Coordinator Network. Once finalised, the revised settlement guidance will be promoted to staff involved in settlements via training sessions and internal communication channels.

3.4 While the ATO's policies and procedures on settlements are comprehensive and provide largely sufficient guidance for officers undertaking settlements, there is scope to incorporate additional details or materials in the guidance, as outlined below.

Amount and terms of settlement

3.5 The Code of Settlement and supplementary guidance focus on whether a settlement is appropriate based on three factors—relative strength of positions, costs versus benefits, and future compliance. The ATO advised that the parameters for determining the amount and terms of settlement also require consideration of the three factors, for example:

- 'relative strength of positions' may involve seeking advice from internal or external legal counsel on the prospects of success if the ATO position is litigated. The assessment of litigation risk will be an element in determining the amount and terms of settlement;
- 'costs versus benefits' involves analysis of financial positions, which sometimes requires expert input on valuation matters. The assessment of financial positions (such as capacity to pay of the taxpayer) will be an element in determining the settlement amount; and
- 'future compliance' often involves an agreement that the taxpayer will resolve outstanding compliance issues in the future, which will inform decisions on the amount and terms of settlement.

3.6 The settlement amount can include a number of components: primary tax; penalty; interest charges; notional tax; tax credits; and tax offsets. Guidance is in place to assist case officers to determine and calculate amounts for the ATO's pre-settlement and settled positions. The guidance on settlement amounts provides case officers with principles to apply in calculating

36 A taxpayer's client account records the financial transactions for the taxpayer. The client account has to be updated following settlement to reflect the terms of the executed settlement deed and to enable a Notice of Assessment with the agreed tax liability to be raised.

the various amounts. As the facts and circumstances in a dispute can be highly varied, the guidance is not prescriptive or formula-based.

3.7 The ATO has identified, through internal settlement assurance checks, scope to provide clearer guidance to case officers in relation to considering litigation risk, determining pre-settlement amounts and recording notional tax (refer paragraphs 3.44 and 3.46). The ATO advised that work is currently being undertaken to improve settlement guidance on determining settlement amounts. During the course of the ANAO's sampling of settlement cases, two cases were identified from the Review and Dispute Resolution business line that indicated case officer uncertainty in determining settlement amounts. Accordingly, the ATO could consider clarifying guidance on the principles applicable to determining settlement amounts.

Conflicts of interest

3.8 The ATO has a corporate policy on conflicts of interest that sets out the responsibilities of ATO officers in identifying, notifying and appropriately managing conflicts of interest. A conflict of interest occurs when an officer's personal interest could appear to, or is likely to, inappropriately influence their work. A conflict of interest may be real, perceived or potential, and financial or non-financial. All ATO Senior Executive Service officers are required to make an annual declaration in writing about their financial and other personal interests that could involve an actual or perceived conflict of interest.³⁷

3.9 The disclosure of conflicts of interest is critical to ensuring that ATO's decisions are made on proper grounds, without bias and for legitimate reasons. As with any other work associated with taxpayer dealings, the ATO's conflicts of interest policy is applicable to case officers, decision-makers and other officers involved with the consideration, negotiation and approval of settlements.

3.10 The ATO's conflicts of interest policy has not been referred to in the current guidelines and procedures for settlements.³⁸ It would be prudent to include references to the corporate conflicts of interest policy in settlement procedures or job aid guidance. The reference could be in the form of a reminder in the settlement submission template that officers consider and confirm whether a conflict of interest exists in relation to the settlement case.

Widely-based settlements

3.11 A widely-based settlement is a settlement involving at least 20 taxpayers disputing the ATO's view in relation to the same or a similar arrangement, including but not limited to tax avoidance schemes. A widely-based settlement proposal can be made by the ATO to offer certain terms of settlement to taxpayers, or made by and on behalf of taxpayers to settle tax disputes. All offers and proposals to settle widely-based tax disputes must be referred to a widely-based settlement panel for advice before entering into settlement negotiations. The purpose of the

37 The Commissioner of Taxation, a Second Commissioner or a Deputy Commissioner may apply this requirement to a non-Senior Executive Service officer if the role warrants particular transparency around personal interest. Otherwise, non-Senior Executive Service officers are only required to disclose a conflict of interest when they become aware of one arising.

38 The old Code of Settlement Practice referred ATO officers to the corporate policies on conflicts of interest and code of conduct.

panel is to ensure that the terms and conditions of the widely-based settlement proposals are appropriate and the settlement process is transparent. Details of settlement offers for schemes that have had widely-based settlements are published on the ATO's website.

3.12 Nine widely-based settlement cases were in the sample of 61 settlement cases examined by the ANAO—seven cases from Private Groups and High Wealth Individuals and two cases from Indirect Tax. These nine cases were not recorded in Siebel to enable accurate internal reporting on the number of widely-based settlements that had been referred to the widely-based settlement panel.³⁹ Nevertheless, the financial positions for these nine widely-based settlements were accurately recorded for public reporting purposes, and the settlement arrangements were published on the ATO's website.

3.13 The Siebel job aid guidance for recording settlements lacks clear information on recording widely-based settlements in Siebel, which may have contributed to the incomplete recording for the nine widely-based settlements examined. Further, the ATO Practice Statement that sets out the guidelines for settlement of widely-based tax disputes was last updated in June 2013 and refers to the old Code of Settlement Practice.⁴⁰ The ATO should ensure there is adequate and up-to-date guidance for widely-based settlements.

Amendments to client accounts

3.14 As discussed in paragraph 2.45, case officers are required to update the taxpayer's client account with relevant amendments following the execution of the settlement deed to reflect the terms of settlement. The ATO has policies and procedures that guide case officers in posting amendments to the client account. In addition, there are policies and procedures to provide guidance to case officers on processes in reviewing the Statement of Account and Notice of Assessment to verify that the amendments made to the client account are correct. While the guidance requires case officers to check the amounts posted on the client account, it does not specify the nature and extent of documentation required to evidence the check. The ANAO financial statements audit found variations in the extent of documentation prepared to evidence a review of client account amendments, including some instances where there was no evidence of review.⁴¹

3.15 The ANAO financial statements audit also observed instances where multiple amended Notices of Assessments were raised, cancelled and re-raised in order for the client account to correctly reflect the terms of the settlement deed. While this does not necessarily result in an incorrect outcome, processing errors may occur. This highlights the importance of documenting checks between the client account and the settlement deed. To ensure sufficient evidence that

39 There are two different outcome templates that are required to be completed in Siebel to accurately capture a widely-based settlement. In these nine cases, only the standard template that records financial settlement outcomes had been loaded. The template specific to widely-based settlements had not been loaded in these cases.

40 Australian Taxation Office, *Practice Statement Law Administration PS LA 2007/6: Guidelines for settlement of widely-based tax disputes* [Internet], 2007, available from <<https://www.ato.gov.au/law/view/document?src=hs&pit=99991231235958&arc=false&start=1&pageSize=10&total=9&num=0&docid=PSR%2FPS20076%2FNAT%2FATO%2F00001&dc=false&tm=phrase-basic-PS%20LA%202007%2F6>> [accessed 3 August 2017].

41 Case officers did not always document or retain Siebel records of the checks undertaken between the client account postings and the settlement deed. These did not lead to any material misstatement.

client account postings reflect the terms of settlement, the ATO should consider updating relevant policies and procedures to provide clearer guidance on the nature and extent of documentation required to demonstrate case officers' verification of client account amendments.

Does the Australian Taxation Office conform with its settlement policies and procedures?

There is scope for the ATO to improve its conformance with settlement policies and procedures. Areas with the lowest levels of conformance with requirements for recording in the ATO's case management system (Siebel) were: case officers completing tasks within required timeframes; attaching appropriate evidence of approvals and the rationale for settlements; accurately recording settlement amounts; and adequately explaining differences between amounts in settlement submissions and settlement deeds.

3.16 All settlements must be actioned and recorded in Siebel. To ensure transparency of settlement decision-making, the ATO's policy is that the following documentation must be attached to the settlement case or recorded as a case note in Siebel: settlement submissions; panel considerations; minutes of meetings; records of conversations; and details of calculations of settlement amounts. The Siebel job aid guidance stipulates the procedures for recording settlements in Siebel.

3.17 The ANAO sampled 61 settlements finalised between July 2016 and May 2017 to assess the ATO's conformance against the Code of Settlement and its supplementary policies and procedures.⁴² See paragraph 1.28 for an outline of the ANAO's sampling methodology.

Approvals, rationale and decision-making

3.18 Chapter 2 discussed conformance with pre-settlement assurance mechanisms, including approvals, rationale and decision-making. It notes generally high levels of conformance with Siebel requirements. Exceptions were in respect of recorded: approvals for settlement negotiations to proceed (five per cent of cases); approvals by an officer with the appropriate delegation for settlement negotiations to proceed (nine per cent); completed submissions (15 per cent); and evidence of adequately considering all three settlement factors (24 per cent).

3.19 Another area of lower conformance with Siebel requirements is the recording of approvals from an authorised officer for the issue of the settlement deed to the taxpayer for signing. Of the cases sampled, 37 cases (62 per cent) had the settlement deeds recorded as approved to be issued to the taxpayer. Thirty-six of the 37 cases had approvals from an officer with the appropriate delegation.

Assurance and reporting

3.20 The settlement outcome template records the details of each settlement, and is used for various corporate reports including annual reports. After a deed has been executed, the case

⁴² As discussed in Chapter 1, one of the 61 sampled cases was a Project DO IT settlement. As Project DO IT cases follow a different settlement process, the results from this case have been excluded from the analysis in this section.

officer must load a settlement outcome template in Siebel within 14 days of the execution date. Of the cases sampled, 37 cases (62 per cent) had loaded the settlement outcome template within 14 days of the execution date. Of the cases that had templates loaded outside of the 14 days, six cases had over 100 days between the deed execution date and outcome template load date, with the highest being 491 days.

3.21 To enable accurate reporting, case officers have to reconcile the pre-settlement amounts and settled amounts recorded in the settlement outcome template in Siebel against the executed settlement deed and the settlement submission. Where there are differences in the recorded settlement amounts in those two documents, these must be explained and details of calculations attached to the case in Siebel. Of the cases sampled, four cases (seven per cent) had errors in the settlement outcome templates.⁴³ The ATO revised the case information in Siebel subsequent to the ANAO's identification of the errors. The ANAO's sampling also found 15 cases (25 per cent) that did not have sufficient evidence or documentation attached in Siebel to substantiate the calculation of some settlement amounts. Seven of these 15 cases were from the Review and Dispute Resolution business line.

3.22 Upon conclusion of a settlement, a settlement coordinator is required to complete an integrity checklist as an assurance check on the accuracy of information recorded in the settlement outcome template. As outlined in paragraph 1.21, the requirement for integrity checklists was removed as part of the ATO corporate red tape reduction initiative in July 2015. The Private Groups and High Wealth Individuals and the Public Groups and International business lines chose to continue with the integrity checklists when their use became optional. The Settlement Coordinator Network reinstated the integrity checklists for all business lines from March 2017. By June 2017, all business lines except Review and Dispute Resolution and Superannuation had resumed the use of the integrity checklists. Due to varying requirements across business lines, only cases that required an integrity checklist were included in the ANAO's sample for the purpose of testing this criterion.

3.23 Of the sampled cases that were required to complete an integrity checklist, 30 cases (88 per cent) had the checklists attached in Siebel. In cases where an integrity checklist is required, the checklist must be completed and attached to the case within 28 days of the deed execution date.⁴⁴ Of the 30 cases that had an integrity checklist attached, 50 per cent were completed and saved in Siebel within the required timeframe.

3.24 Table 3.1 provides an overview of the ANAO's sampling results around each business line's conformance with the recording of settlement outcomes and assurance checks in Siebel.

43 The errors included inaccurately recording components of settlement amounts (penalties and primary tax), and incorrectly creating multiple settlement outcome templates for a single settlement that relates to different revenue products (income tax, and goods and services tax).

44 The ATO advised the ANAO in November 2017 that there was no longer a strict requirement to complete the integrity checklist within 28 days since it was reinstated in early 2017, but its policies and procedures had not been updated to reflect the change. The ANAO has tested the timeliness of integrity check completion against the 28 day requirement as stated in ATO procedures at the time of the audit.

Table 3.1: Assurance and reporting conformance by business line

Siebel requirements	Private Groups and High Wealth Individuals	Public Groups and International	Small Business and Individuals	Indirect Tax	Superannuation	Review and Dispute Resolution
Settlement outcome template loaded within required timeframe	74% 17 cases	60% 3 cases	60% 3 cases	60% 3 cases	56% 5 cases	46% 6 cases
Cases with sufficient evidence/documentation to support calculations of amounts in settlement outcome templates	83% 19 cases	80% 4 cases	80% 4 cases	80% 4 cases	89% 8 cases	46% 6 cases
Settlement integrity check completed ^a	100% 19 cases	100% 5 cases	20% ^b 1 case	100% 5 cases	N/A	N/A
Settlement integrity check completed within required timeframe ^a	47% 9 cases	40% 2 cases	0% ^b 0 cases	80% 4 cases	N/A	N/A

Note a: Percentages are of all cases that required an integrity check to be completed (see paragraph 3.22).

Note b: Small Business and Individuals advised that while integrity checklists had been completed for all cases in the ANAO sample, not all had been saved in Siebel.

Source: ANAO sampling result.

3.25 More broadly, the ANAO's sample of settlement cases identified a lack of consistency in record keeping procedures. There were variances in the methods used to record evidence in Siebel, and many instances where evidence had not been saved in Siebel as required. Variances were observable both between business lines, and occasionally within the same business line. The ANAO's sampling also identified a lack of consistent naming conventions; particularly in large settlement cases that often contained hundreds of attached documents. Settlement coordinators from ATO business lines also advised that a lack of record keeping conventions in Siebel caused issues from an assurance perspective.

3.26 Siebel non-conformance issues were identified in an ATO internal audit in June 2016. These issues included: non-conformance with the 14 day timeframe to load the settlement outcome template; errors in the completion of settlement outcome templates; non-conformance with corporate record keeping requirements; and lack of use of settlement submission templates.

Recommendation no. 3

3.27 The Australian Taxation Office enforces the retention of adequate settlement case records and evidence in Siebel.

Australian Taxation Office response: *Agreed.*

3.28 *The Settlement Coordinators Network will continue to work as a collective of business lines involved in settlements to undertake QA processes to ensure that records are retained in line with the ATO's procedures and requirements. Improvements to date on this have been the recent re-implementation of the Settlement Integrity Check, which now also employs a consistent check and process for all business areas engaged in settlement.*

Does the Australian Taxation Office have effective mechanisms to identify issues, share lessons learnt and make improvements to settlement policies and procedures?

The ATO's introduction of the Independent Assurance of Settlements external review, the Settlement Coordinator Network, external stakeholder consultation, and quality assurance and management reporting processes are effective mechanisms to identify issues, share lessons learnt and make improvements to settlement policies and procedures. There would be merit in the ATO focusing on improving its compliance with settlement policies and procedures.

3.29 The ATO has mechanisms in place to identify opportunities to improve settlement policies and procedures.

Independent Assurance of Settlements

3.30 In July 2015, the ATO approached Justice Downes about participating in a pilot program aimed at providing independent assurance on the ATO's use of settlements. The pilot was initiated in response to public concerns about the appropriateness of the ATO's settlement practices, particularly settlement of tax disputes involving large corporate taxpayers.⁴⁵

3.31 The pilot was conducted over 2015–16 during which Justice Downes examined 16 settlement cases. Based on this work, he provided two reports to the ATO which explored various issues and options including: the purpose of the independent assurance and the level of assurance which can be provided by an independent assurer who is not a taxation expert; at what stage the independent assurance should be conducted (that is pre or post settlement); how settlement cases should be selected for independent assurance; and what changes needed to be

45 Those concerns were expressed in reports by the Senate Economics References Committee's inquiry into 'Corporate Tax Avoidance'. In August 2015, the Senate Economics References Committee released the first part of a report *You cannot tax what you cannot see*, available from <[https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Economics/Corporate Tax Avoidance/Report part 1](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1)>. In April 2016, the committee released the second part of the report *Gaming the system*, available from <[https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Economics/Corporate Tax Avoidance/Report part 2](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_2)>. A further report is due to be released in May 2018.

made to the processes around recording the settlement, including the reasons for settlement and the settlement outcomes, to support an accurate and informed review by an independent assurer.

3.32 The ATO adopted the Independent Assurance of Settlements (IAS) on an ongoing basis from February 2017. A panel of three eminent retired Federal Court judges—The Honourable Kevin Lindgren, The Honourable Brian Tamberlin and The Honourable Garry Downes (Justice Downes)—has been established to assure 10 to 12 settlement cases per year on a post-settlement basis. The three assurers review separate cases independently of one another. The cases are reviewed as soon as possible after the settlement is finalised to ensure case officers are still familiar with the facts of the case and are available to respond to questions from the assurers. The primary purpose of the IAS review is to provide the Government, Parliament and the community with confidence that ATO settlements are a ‘fair and reasonable outcome for the Australian community’.⁴⁶

3.33 The focus of the IAS reviews is currently on large market and multinational settlements, including those arising from the operations of the Corporate Tax Avoidance Taskforce. These settlements are completed in the Public Groups and International, Private Groups and High Wealth Individuals, and Review and Dispute Resolution business lines. Cases are automatically selected for independent assurance if they are in the large market and multinational market segments and meet the relevant thresholds.⁴⁷ Cases can also be selected if they are nominated by a Deputy Commissioner as significant or sensitive cases irrespective of size or market segment. The ATO developed the current selection criteria to provide a sufficient range of cases for review and has indicated that the criteria may be refined over time.

3.34 The IAS pilot has contributed to improvements in the ATO’s settlement process. During the pilot process, Justice Downes made a number of recommendations in his two reports aimed at improving the ATO’s documentation of reasons for using settlements to resolve disputes and deciding settlement terms. The settlement submission template was consequently revised to improve clarity and transparency. The three business lines that deal with the large market and multinational market are currently using the latest version of the template while the other business lines are using an earlier version. Justice Downes also recommended that reviews of settlement procedures and guidelines in relation to panel referrals and authority to settle be undertaken but they are yet to be progressed further by the ATO (refer paragraphs 2.24 and 2.25).

3.35 The ongoing IAS process is an effective mechanism for the ATO to identify issues and potential improvements in relation to the conduct of settlements, and to share learnings from the process. The assurers undertaking the IAS reviews provide a report with their findings on each case to the ATO. The reports are distributed to the relevant executives (Deputy Commissioners and Assistant Commissioners) for discussion, and fortnightly IAS Triumvirate⁴⁸ meetings are held

46 Australian Taxation Office, ‘Independent Assurance of Settlements (IAS)’, ATO intranet page, June 2017.

47 Settlements in the large market and multinational market segments are selected if: the ATO pre-settlement amount (tax, penalties and interest) is greater than \$50 million; or the settled amount is greater than \$20 million; or the variance between the pre-settlement amount and the settled amount is greater than \$20 million.

48 Three Assistant Commissioners from the Public Groups and International, Private Groups and High Wealth Individuals, and Review and Dispute Resolution business lines comprise the IAS Triumvirate.

to discuss feedback from the assurers and the learnings from the IAS process. The IAS Triumvirate meetings also identify and discuss cases to be considered for the IAS review and other administrative aspects of the IAS process. The reports will subsequently be distributed to the case teams, followed by debrief sessions for the case teams to share their learnings from the IAS process and suggested improvements around settlement practices.

3.36 As at October 2017, nine settlement cases had been assured under the IAS process and all were found to have achieved a fair and reasonable outcome for the Australian community. The ATO had received reports on the nine assured cases. Reports for the first three assured cases were shared with the case teams and debrief sessions held in July 2017. Reports for the fourth to sixth assured cases were also shared with the case teams and debrief sessions were held in early October 2017. The ATO advised that it is in the process of collating the learnings and feedback associated with the IAS assured cases and has not yet progressed to implement the improvements identified. For the IAS process to add value to the settlement process, the ATO should ensure that it implements improvements and changes to settlement practices that it agrees to.

3.37 Of the nine cases assured as at October 2017, six were automatically selected for meeting the set thresholds for IAS assurance and three were selected by Deputy Commissioners. The Deputy Commissioners' selection injects an element of flexibility into the ATO's case selection for IAS. The ATO could extend this flexibility over time by including a selection of smaller cases and cases chosen at random, in line with the views of Justice Downes as expressed in his first report for the IAS pilot.

ATO consultative forums

3.38 The Dispute Resolution Working Group and the Legal Practitioners Round Table are the two relevant external stakeholder consultative forums through which the ATO consults on matters in relation to settlements and dispute resolution.

3.39 The Dispute Resolution Working Group is a forum for the ATO and external representatives from the tax profession and industry bodies to discuss and develop dispute resolution strategies, including the ATO's approach to settlements.⁴⁹ The group meets approximately quarterly. The ATO uses this consultative group to gain external perspectives on dispute resolution initiatives, improvements and changes. Settlement initiatives such as the IAS pilot were discussed with this group and the ATO has informed the group of the implementation of the IAS process.

3.40 External stakeholders from the Dispute Resolution Working Group commented to the ANAO on the effective functioning of the consultative forum, which has contributed to the development of a range of useful ATO products and guidance on dispute resolution. However, one stakeholder pointed out that the ATO has not updated information on its website to reflect the current activities of the Dispute Resolution Working Group—the meeting minutes from September 2013 were the last published information about the group.

49 The Dispute Resolution Working Group is chaired by the Deputy Commissioner of Review and Dispute Resolution. Non-ATO members include representatives from: Chartered Accountants Australia and New Zealand; The Tax Institute; Federal Court; Administrative Appeals Tribunal; Law Council of Australia; Independent Contractors of Australia; Corporate Tax Association; Hall and Wilcox; and CPA Australia.

3.41 The Law Practitioners Round Table is a regular forum that supports the ongoing relationship between the ATO and the legal profession. It enables legal practitioners to share feedback with the ATO and identify areas of improvement for ATO services, including dispute resolution and settlements. The forum has discussed issues such as the ATO's test case litigation program, the IAS process and members' feedback on settlement deeds, settlement approaches and settlement processes.

Settlement Coordinator Network

3.42 The ATO established the Settlement Coordinator Network in February 2017 to replace the previous Settlement Improvement and Assurance Forum. The purpose of the Settlement Coordinator Network is to oversee improvements to and provide assurance of the integrity of settlement policies, practices and procedures. The Settlement Coordinator Network meets fortnightly and is facilitated by the Review and Dispute Resolution business line.⁵⁰ The network is a forum for settlement coordinators to discuss settlement issues from their respective business lines and for each network member to contribute to the resolution of identified issues. It is also a forum for sharing better practices and approaches in the conduct of settlements.

3.43 In the ANAO's interviews with settlement coordinators across all the business lines during the course of the audit, the coordinators commented that the Settlement Coordinator Network is a valuable forum for them to share information, learn from the experience of other network members and identify potential improvements to settlements at an enterprise level.

3.44 The Settlement Coordinator Network is able to directly effect changes in relation to settlement policies and procedures, with the design and implementation of improvements being managed by the chair of the network and other network members from Review and Dispute Resolution. Some of the changes implemented and potential improvements identified by the Settlement Coordinator Network include:

- the update and redesign of settlement guidance materials, which consists of providing clearer guidance for determining the pre-settlement amounts and a potential online calculator for determining the notional tax component;
- twice monthly quality assurance checks on settlement data undertaken by business line settlement coordinators as of March 2017 (refer paragraph 3.47);
- observations on completion of the settlement submission template across business lines (a standing agenda item), and ways to improve submissions; and
- redesign of the integrity checklist to include checks on amendments made to client accounts and in-principle settlements. Also, the network discussed the use of a digital and more integrated checklist for all business lines, which will be initially trialled by case officers in Review and Dispute Resolution.

50 The frequency of the Settlement Coordinator Network meetings was originally monthly when the forum was established. The meetings were changed to fortnightly around July 2017.

Quality assurance and management reporting

Quality assurance

3.45 Settlements are quality assured as part of ATO Quality, which is an enterprise approach to measuring, assessing and improving the quality of ATO's work. ATO Quality reviews involve assessments of the quality of ATO's customer service, accountability, accuracy and performance. ATO Quality uses a sampling methodology to select cases for review and is undertaken by quality assessors across the ATO each quarter. The results of ATO Quality assessments are recorded and reported on the ATO Protect Enterprise Risk Management System. The results highlight the relevant areas of ATO's work where there are opportunities for improvements in any of the four quality measures. ANAO's analysis of the Protect data extract for settlement cases reviewed under the ATO Quality framework from 1 July 2015 to 31 March 2017 found that 67 (31 per cent) of the 215 cases were assessed as 'need improvements' in their overall quality measures. A recurring improvement area identified from the assessment results is the quality of documentation and evidence to support settlement decision-making. This issue identified is consistent with the findings from the ANAO's sampling of settlement cases. The ATO should take action to improve the retention of settlement case records and evidence in Siebel.

3.46 The Public Groups and International business line conducts a settlement assurance review that is additional to the assurance checks performed by settlement coordinators, ATO Quality reviews and the Independent Assurance of Settlements external review. The annual Public Groups and International settlement assurance review selects a sample of higher value settlements for review. The intent is to conduct an assurance review on at least 50 per cent of those settlements that have not been reviewed by the Independent Assurance of Settlements during the year. The purpose of the review is to identify opportunities for improvement in the settlement process. An internal report with recommendations will be prepared following the assurance review and shared with relevant stakeholders. An example of a potential improvement area identified via the review is settlement guidance on litigation risk consideration, pre-settlement amount determination and the recording of the notional tax settlement outcomes. There is merit in other business lines adopting a settlement assurance process such as the one conducted by Public Groups and International.

Management reporting

3.47 The Review and Dispute Resolution business line prepares monthly settlement reports for all business lines involved in settlements, based on data recorded in the settlement outcome template in Siebel. The business line also prepares a report consisting of a list of all settlements finalised in the first and third week of every month, which is provided to settlement coordinators in each business line for assurance checks.⁵¹ The purpose of the twice monthly checks is to provide assurance that the information recorded in the settlement outcome template is correct,

51 Information to be checked by the settlement coordinators include: the financial positions of the settlement; the responsible business line; the stage at which settlement occurred; and the reason for settlement.

as it is used for public reporting purposes. These assurance checks also enable the ATO to identify potential areas of improvement in its settlement recording and processes.⁵²

3.48 Quarterly reports in relation to settlements—*Settlement Conformance with Obligations-ATO's Code of Settlement*—are generated for the ATO Corporate Conformance team⁵³, which reports the ATO's overall conformance with settlement obligations to the Audit and Risk Committee. The quarterly conformance reports are approved by the Deputy Commissioner of Review and Dispute Resolution to demonstrate the ATO's level of conformance with settlement obligations under the Code of Settlement, disclose matters of non-conformance and emerging issues, and outline actions required to reach full conformance. The quarterly reports provide confidence that assurance activities on settlements are operating as intended and ensure any issues are identified and addressed. The ANAO's analysis of the quarterly conformance reports found that the ATO's assessment of its level of conformance with the Code of Settlement has been consistently at a high level. According to the ATO, a high level of conformance is determined to be substantial conformance to all the obligations under the Code of Settlement, where there are some low risk matters that require improvement and are being addressed by usual business processes. A recurring issue identified is the accuracy and timeliness of recording settlement decisions within Siebel. The ATO has stated in the conformance reports that its mitigation actions include resolution via the Settlement Coordinator Network, communications and training for officers on its settlement guidance. The Siebel recording issue identified by the ATO is consistent with the ANAO's audit findings, as discussed above.

3.49 The other type of management reports in which settlements are discussed is the quarterly *RDR Executive Performance Report*. These reports include reporting on settlements across all ATO business lines, with high-level reporting on the proportion of settlements occurring at earlier stages of disputes and the IAS review (number of cases referred for external assurance and findings of the review). Settlement issues identified from these quarterly reports are to be discussed at the monthly Review and Dispute Resolution Executive meetings. The ANAO's analysis of the minutes for these meetings found that there have been discussions of settlement issues, including the IAS external review, the amendment of the instruments of authorisation for Review and Dispute Resolution, assistance provided to other business lines for the preparation of settlement deeds, and progress updates on issues identified from the ANAO performance and financial statements audits.

52 For example, the ATO has identified from the twice monthly assurance checks an issue with the accuracy of recording the 'stage at which settlement occurred'. That is, if the case settled after the audit assessment was issued but prior to objection, the perception of some case officers was the audit was completed, and they incorrectly recorded it as settled in the next phase—objection.

53 The quarterly settlement conformance with obligations reports commenced with the introduction of the current Code of Settlement in October 2014.

Does the Australian Taxation Office’s public reporting provide adequate transparency around the use of settlements?

The ATO provides sufficient transparency around settlements in its public reporting, having regard to restrictions on disclosing information on particular settlements. The settlement information reported publicly by the ATO includes data on: the stage at which settlements occurred; and market segment and client group breakdowns of the number of settlement cases finalised, pre-settlement and settled ATO positions, and settlement variance. The ATO also provides a statement in its annual reports about the Independent Assurance of Settlements process and the level of confidence indicated by the review findings. When compared to other national revenue authorities, the ATO provided the highest level of public reporting around settlement activities.

3.50 As outlined in paragraph 2.44 and illustrated by Figure 2.4, the ATO uses data entered into the settlement outcome template in Siebel to inform its public reporting. The ATO publicly reports information of concluded settlements in its annual reports and on its website. The settlement information is reported at an aggregate level, and does not identify individual settlement cases due to confidentiality of settlement terms and privacy of taxpayers. Settlement information reported by the ATO includes:

- the stage at which settlements occur—pre-audit, audit, objection, tribunal and court; and
- a market segment and client group⁵⁴ breakdown of the number of settlement cases, the pre-settlement position, the settled position and the settlement variance.

3.51 The ANAO reviewed public reporting of settlement information in other comparable international revenue offices, including the United States, the United Kingdom and New Zealand. In comparison with other countries for which settlement information was publicly available, the ATO had the highest level of transparency when reporting on the use of settlements. Table 3.2 provides an overview of the ATO’s public reporting when compared to other national revenue authorities.

Table 3.2: International reporting of settlements in 2015–16

Reporting	Australia	United Kingdom	United States	New Zealand
Public reporting of settlement numbers	Yes	No	Yes	No
Public reporting of settlement amounts	Yes	No	Yes	No
Public reporting of settlements by market segments	Yes	No	No	No

Source: ANAO analysis of ATO and other national revenue authorities’ public reporting of settlement information.

54 The ATO has provided an analysis of settlements by both market segments and client groups in its annual report for 2016–17. It was the first time that the ATO has provided a breakdown of the settlement data by client groups. The ATO has stated in its 2016–17 annual report that it will be transitioning to reporting settlement information by client group only in future annual reports.

3.52 Settlement information reported by the ATO provides adequate details on the proportion of settlements undertaken and the settlement amount for each market segment and client group. The settled position reported for each market segment and client group provides information on the revenue that will be collected by the ATO based on the tax liabilities imposed as a result of the settlement. Conversely, the settlement variance provides an indication of the revenue potentially forgone by the ATO for each market segment and client group.

3.53 As discussed in paragraph 2.42, some settlements may not have a financial outcome. These in-principle settlements usually involve taxpayer's future behaviour. In-principle settlements are currently included in the settlement information reported publicly and are not separately identified. The ATO advised that the Settlement Coordinator Network is in the process of reviewing how to better record and report in-principle settlements. The Settlement Coordinator Network discussed that the inclusion of settlements that have no financial adjustment or variance in the total population of settlements for reporting purposes does not convey an accurate settlement story. The separate identification of in-principle settlements in ATO's reporting will provide a higher level of transparency around the use of settlements.

3.54 The ATO annual report for 2015–16 outlined the Independent Assurance of Settlements pilot undertaken by Justice Downes, including brief information on the findings and improvement opportunities identified in the pilot. The ATO advised that future annual reports will include the Independent Assurance of Settlements process, including a general statement about the assurance process and level of confidence indicated by the assurers' findings. The ATO has reported on the Independent Assurance of Settlements in its annual report for 2016–17. Due to legal restrictions, the ATO will not disclose particular issues or taxpayers in relation to the cases reviewed under the Independent Assurance of Settlements process. Given that the Independent Assurance of Settlements review focuses on large market and multinational enterprises settlements, reporting on the process of the review and whether the settlements are fair and reasonable outcomes for the Australian community will provide a higher level of assurance to Parliament and the general public around the ATO's settlement activities for large business taxpayers.



Grant Hehir
Auditor-General

Canberra ACT
13 December 2017

Appendices

Appendix 1 Australian Taxation Office response



Australian Government
Australian Taxation Office

Second Commissioner of Taxation

Ms Lisa Rauter
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Ms Rauter

AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT ON THE AUSTRALIAN TAXATION OFFICE'S USE OF SETTLEMENTS

Thank you for your letter dated 15 November 2017 and for the opportunity to provide comments on the proposed report on the Australian Taxation Office's Use of Settlements.

The ATO agrees with the 3 recommendations as presented in the section 19 report.

Attached is the ATO response to recommendations (Annexure 1) and summary of our comments to be included in the report (Annexure 2).

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter. I look forward to continuing the good working relationship developed in this performance audit.

If you require further information on this matter, please contact Catherine Willis, Assistant Commissioner Review and Dispute Resolution.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Mills'.

Andrew Mills
Second Commissioner
4 December 2017

Appendix 2 Characteristics of settlements in Australian Taxation Office business lines

Business line	Responsibilities of business line	Types of disputes commonly resulting in settlements	Market segments typically associated with settlements
Private Groups and High Wealth Individuals	<ul style="list-style-type: none"> • Compliance activities for: <ul style="list-style-type: none"> – Private groups (turnover exceeding \$2 million) – Individuals (turnover exceeding \$2 million) – High wealth individuals (net wealth over \$30 million) – Wealthy Australians (net wealth between \$5 million and \$30 million) – Not-for-profit organisations • Tax evasion and tax crime 	<ul style="list-style-type: none"> • Residency disputes with individuals • Application of the law around 'carrying on a business' • Non-disclosure of income • Revenue and capital issues 	<ul style="list-style-type: none"> • High wealth individuals • Small-to-medium enterprises • Micro enterprises • Not-for-profit organisations • Large businesses (many private groups fall into the Large Business market segment)
Public Groups and International	<ul style="list-style-type: none"> • Income tax issues for public groups and international entities • Tax avoidance task force 	<ul style="list-style-type: none"> • Multinational tax avoidance • Transaction disputes • Valuation disputes • Diverted profit disputes 	<ul style="list-style-type: none"> • Large businesses • Small-to-medium enterprises • Micro enterprises
Small Business and Individuals	<ul style="list-style-type: none"> • Pay-as-you-go (PAYG) withholding and income reporting systems for small businesses, employees and third party reporters 	<ul style="list-style-type: none"> • Tax schemes • Employee share schemes • Residency issues • Cash economy issues 	<ul style="list-style-type: none"> • Small-to-medium enterprises • Micro enterprises • Individuals
Indirect Tax	<ul style="list-style-type: none"> • Indirect taxes (e.g. goods and services tax, wine equalisation tax, luxury car tax, excise, excise equivalent goods, fuel tax credits) 	<ul style="list-style-type: none"> • Valuations • Property transactions • Issues involving taxation of state governments 	<ul style="list-style-type: none"> • Small-to-medium enterprises • Micro enterprises • Large businesses • Individuals

Business line	Responsibilities of business line	Types of disputes commonly resulting in settlements	Market segments typically associated with settlements
Superannuation	<ul style="list-style-type: none"> • Compliance activities for superannuation and income tax products 	<ul style="list-style-type: none"> • Regulator issues around self-managed super funds • Underpayment of pensions • Excess contribution tax • Superannuation guarantee 	<ul style="list-style-type: none"> • Micro enterprises • Individuals
Review and Dispute Resolution	<ul style="list-style-type: none"> • Dispute resolution, including: objections, independent reviews, litigation and alternative dispute resolution • Management of corporate settlement policies and procedures • Assurance of the settlement process • Provision of administrative support to business line staff and settlement coordinators • Settlement reporting • Facilitation of the settlement coordinator network 	<ul style="list-style-type: none"> • Tax disputes at objection and litigation phase 	<ul style="list-style-type: none"> • High wealth individuals • Small-to-medium enterprises • Micro enterprises • Not-for-profit organisations • Individuals • Large businesses • Government organisations

Source: ANAO analysis of ATO information.