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Inspector-General of Taxation
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Dear Mr Noroozi

REVIEW INTO THE ATO'S IMPLEMENTATION OF THE CHANGE PROGRAM

We refer to your Press Release dated 5 May 2010 in which you invited interested parties to lodge a submission in respect of your current review into the implementation of the Change Program by the Australian Taxation Office (ATO), and to the accompanying correspondence setting out the terms of reference of that review.

CPA Australia represents the diverse interests of more than 129,000 members in over 110 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, we provide this submission in relation to your current review not only on behalf of our members but also for the accounting profession and in the broader public interest.

As set out in the review's terms of reference, the ATO's Change Program has been essentially implemented in three stages, and we understand that your office will take a staged approach to the review by initially focussing on the implementation of the third phase of the program being the module processing income tax returns and payments (known as the 'income tax release').

Further, the terms of reference of that review announced by the Assistant Treasurer Senator Nick Sherry on 19 April 2010 confirmed that your review would involve an examination of:

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

As previously discussed, our submission focuses on terms of reference (a) (b) and (d) to the extent that they relate to the income tax release which was deployed in January 2010.

BACKGROUND

Prior to responding to the specific matters raised in your submission guidelines, CPA Australia would like to broadly detail our response to the often significantly detrimental impact the problems associated with the ATO's change program have increasingly had on public practitioners and their clients.

CPA Australia has responded in a number of forums to convey members concerns as set out below:

- Our Senior Tax Counsel and representatives of the other professional bodies attended a video-conference on 22 March 2010 with various practitioners and ATO staff to discuss various issues associated with the design of revised notices of assessment and statements of account and related communication issues
- Concerns on the Change Program were formally raised with the Commissioner of Taxation and the relevant Second Commissioner by representatives of CPA Australia and the other professional bodies at a meeting of the National Tax Liaison Group on 31 March 2010
- CPA Australia thereafter sought member feedback in several editions of CPA Tax News stressing that we would act on member feedback. To date we have received approximately 120 emails from affected members and directly intervened on member's behalf when requested to do so often on prolonged and complex matters
- Our Chief Executive Officer attended a teleconference with the Second Commissioner responsible for the Change Program implementation on 19 April 2010 which briefed senior management on errors or delays arising from the income tax release
- CPA Australia subsequently forwarded correspondence to the relevant Second Commissioner dated 21 April 2010 listing issues raised by practitioners which had been collated since CPA Australia requested member feedback on the implementation of the income tax release in the edition of CPA Tax News issued on 15 April 2010
- Our Senior Tax Counsel attended an urgent meeting with the Second Commissioner's management team on 23 April 2010 where we listed numerous technical and commercial issues identified by members. At that meeting we sought lodgment deferrals until 30 June, appropriate compensation and an issues log transparently detailing all ATO issues requiring resolution
- At this meeting the ATO also agreed to help expedite outstanding refunds if the public practitioner provided client tax file numbers. We subsequently intervened on behalf of 25 member clients to ensure that refunds were expedited which sometimes took numerous phone calls or emails to resolve; and
- CPA Australia also met with the IGT on 20 April 2010 to express member concern and to provide input into your office's review of the ATO's change program implementation.

It should also be noted that we were in regular (and sometimes daily) contact with senior ATO management during late April and early May 2010 as we sought to mutually progress issues and understand the scope of any particular issues identified by members.

Such interaction has been in addition to our ongoing participation in relation to tax consultative forums including the Australian Tax Practitioner Forum and the Lodgment

Working Group where senior ATO management, tax practitioners and professional body representatives having been collectively seeking to resolve and clarify member issues arising from the income tax release.

CPA Australia remains committed to working with the ATO in all relevant tax consultative fora to ensure that any residual issues arising from the income tax release are appropriately addressed, and will continue to constructively work with the ATO in terms of resolving outstanding issues and communicating key outcomes via various CPA Australia media where required.

We now provide specific comments in respect of the review in accordance with the guidelines as set out in your terms of reference as they relate to the income tax release.

A. THE IMPACTS OF THE CHANGE PROGRAM ON TAXPAYERS, TAXPAYER REPRESENTATIVES AND OTHER EXTERNAL CLIENTS OF THE ATO

Paragraph 2.8 of the terms of reference notes that concerns have been raised with your office on the following issues arising from the income tax release:

1. Incorrect liabilities shown on notices of assessment
2. Delays in issuing refunds and refund cheques not being attached to credit notices of assessment
3. Shifting advice on when refund cheques would be received
4. Incorrect dates of lodgment of returns and consequent incorrect general interest charge calculations; and
5. Payment liabilities being brought forward by seven weeks incorrectly.

We address each of these issues separately below:

1. Incorrect liabilities shown on notices of assessment

Broadly, we directly received seven member complaints expressing concerns that notices of assessment were incorrectly calculated. Most of these complaints related to notices of assessment which involved an application of the primary producer averaging provisions which the Second Commissioner acknowledged was partly a systemic issue due to human error in the meeting with the professional bodies held on 23 April 2010.

A member contacted us contending that claims for the refundable baby bonus tax offset were incorrectly omitted from assessments whilst another member was concerned that the Medicare Levy Surcharge was not correctly applied. Following prompt discussions with the relevant tax office representatives we understand that such errors were anomalous and non-systemic in nature.

2. Delays in issuing refunds and refund cheques not being attached to credit notices of assessment

The single largest complaint received from our members related to the ATO's delay in issuing taxpayer refunds for the year ended 30 June 2009. This disruption also led to severe reverse work flow and cash shortages being incurred by many practitioners as well as considerable concern about the reliability of ATO bulletins issued by the Second Commissioner which are discussed below.

Taken collectively we have an exchange of approximately 60 emails (and various related telephone discussions) relating to such delays which covers a broad range of practices and taxpayers over various timeframes. The outstanding refunds ranged from relatively minor sums to a single case where a refund of \$255,000 was involved. We also note that many other practitioners did not formally contact us on such matters, but some have informally advised us (particularly at our recent Divisional public practitioner conventions in both Victoria and New South Wales) as well as other member engagement events that they were adversely affected by the delayed refunds albeit to varying degrees.

The detrimental impact of such a delay is best illustrated by the following examples:

- One member advised on 26 April 2010 that he lodged a tax return in October 2009 which should have resulted in a credit assessment and refund cheque for approximately \$37,000 which the taxpayer required to fund the payment of other tax liabilities which was still outstanding at the date he contacted us
- A member who is the Senior Accountant of a small company lodged that company's income tax return for the year ended 30 June 2009 in the first week of December 2009 in accordance with the ATO's recommendation that returns be lodged prior to mid December 2009 even though it was not technically due for lodgment until 15 January 2010. The member contacted us seeking our assistance in expediting the estimated refund of approximately \$74,000 on 16 April 2010. Following the ATO's meeting with the professional bodies on 23 April 2010 the member eventually received his manually processed refund on 10 May 2010
- A member in public practice lodged an income tax return for a client on 16 December 2010 for \$41,362 which ultimately issued via Electronic Funds Transfer (EFT) on 13 May 2010. The member concerned was bemused and annoyed as the client had been issued refunds for similar amounts in earlier years without delay; and
- A Victorian small practice contacted us to advise that approximately 300 refunds relating to client returns lodged before close of business in December 2009 were still outstanding as at 16 April 2010 which equated to approximately \$50,000 in tax agent fees. Following direct intervention by the relevant Deputy Commissioner of Taxation most of these refunds were progressively issued by 13 May 2010.

As you will appreciate we have not been able to precisely verify all the background facts to these particular scenarios or whether there were any extenuating circumstances.

However, we note that all material outstanding amounts have now been refunded, and wish to acknowledge that the direct intervention of senior ATO management staff expedited the resolution of these matters.

CPA Australia also received a handful of complaints concerning the issue of notices of assessment without accompany refund cheques.

However, the impact of this error was partly mitigated by the ATO's issue of a prompt bulletin by the ATO on 14 April 2010 advising that approximately 140,000 cheques were not printed due to an error being an effective communication which helped both enabled members and professional associations to effectively deal with this delay.

Notwithstanding it still led to much double handling, time wastage and other related unbillable work being undertaken by tax agents.

3. Shifting advice on when refund cheques would be received

Many of the emails and telephone discussions relating to delayed refunds also expressed concern that the ATO were often providing shifting advice as to when a refund cheque was being received which led to significant reverse workflow and stress for both practitioners and ATO staff such as relationship managers.

The adverse impact on all parties is best exemplified in the following example.

An agent lodged returns for two individual primary producers for the year ended 30 June 2009 on 18 December 2009. The clients were due expected refunds of \$58,000 and \$59,000 respectively.

- On 12 January 2010 the ATO verbally requested copies of their partnership income tax return for the year ended 30 June 2009 and copies of dividend statements. Copies were supplied that day via email directly to the tax officer that requested the information
- The agent thereafter requested that the processing of the returns be escalated on 16 March 2010 and were advised to expect a tax refund within 10 working days
- As the refunds were still outstanding on 30 March 2010 the agent rang the 'Tax Practitioner Services' help line on 30 March 2010 at which time the ATO advised that it would be several weeks before refunds could be processed due to computer problems
- The agent was ultimately contacted by the ATO on 7 April 2010 who advised that there was a computer problem regarding the calculation of averaging for primary producers and that the clients' refunds would not issue for a further two weeks
- The agent checked the ATO portal whilst the Tax Officer was on the phone and advised them that the ATO portal showed the client's return had been processed and the EFT refund was due for release on 9 April 2010
- The relevant Tax Officer was unable to advise why the ATO portal had shown the returns as processed. Nor was the Tax Officer able to confirm whether the refund would be released on 9 April 2010
- This Officer suggested that the agent contact the ATO Tax Practitioner service line which was unable to answer this question but advised the portal 'was probably incorrect'
- The refunds were not subsequently issued by the advised date of 9 April 2010 by which time the member's clients were funding their activities on a bank overdraft (rather than the outstanding tax refunds) the interest rate on which significantly exceeded interest paid on any overdue tax refunds
- The member then contacted us to seek our assistance in expediting this matter on 16 April 2010 and the refunds were issued soon thereafter.

As you will appreciate we do not know all the background facts to this particular incident, and we acknowledge the Second Commissioner's advice that there were human errors concerning the processing of some primary producer assessments.

However, we understand that many other practitioners experienced an equivalent range of delays in the issue of refunds which has caused frustration both for members and the ATO. To date the worst case we have found is a member who contends that up to 30 communications were made before the refund was issued by the ATO.

4. Incorrect dates of lodgment of returns and consequent incorrect general interest charge calculations

CPA Australia has received member complaints that there appeared to be a systems disconnect between validated lodgment reports and the date of the return's lodgment as disclosed on the tax agent portal.

As a corollary we anecdotally understand that certain practitioners may be concerned that the ATO has not correctly calculated interest on overdue refunds or that the General Interest Charge (GIC) may have been calculated on assessments where returns were in fact lodged by the required time.

We also received some adverse comments on the ATO's delay in issuing Electronic Lodgment Service (ELS) lists which are used by practitioners to determine whether all required returns on an agent's lodgment list have been processed and received by the ATO.

5. Payment liabilities being brought forward by seven weeks incorrectly

CPA Australia has not received any member comments on this issue as at the time of writing.

Other Member Issues.

Apart from the matters raised above CPA Australia has received member comments on the following issues:

- Members have expressed very strong concerns about the size and layout of the newly introduced notices of assessment and accompanying statements of account. Most of the member emails received on this matter are concerned with the perceived excessive length of the notices of assessment which are typically four pages long and sometimes may be up to eight pages long (whereas they were formerly two pages in length)

This practice is contrary to the ATO's usual sustainability processes and creates considerable additional non-chargeable work for members in either photocopying or scanning the notices which can in some instances be up to 8 pages in length

CPA Australia appreciates the representation made by the ATO at the meeting on 23 March 2010 that any redesign of the key features of the notice of assessment would need to take place under a staged approach. We also recognise that there will be more challenges associated with such a redesign where the individual taxpayer has complex tax affairs. Nonetheless we would encourage the ATO to expedite this initiative as it will save costs for all parties and improve member relationships with the ATO

- Various members were concerned about receiving notices of assessment and statements of account at varying times and would prefer to have them issued together. Moreover, some practitioners initially had trouble reconciling the details disclosed on these account documents which we understand will be (or have been) rectified following the consultation on 23 March 2010
- Income tax refunds were often placed in a member's trust account without any accompanying dissection of how such funds should be allocated due to the failure to issue notices of assessment. Members could not therefore accurately operate their trust accounts which meant after 1 March 2010 that they would have been in breach of section 30-10 of the Tax Agent Services Act (2009) as well as breaching the Australian Accounting Standard on trust accounts - APS 10.

- There is an apparent disconnect between the exchange of tax assessment data between the ATO and Centrelink who would not act on providing certain benefits in the absence of receiving an income tax assessment notice. We understand that there has been a similar failure to exchange certain data between the ATO and the Child Support Agency; and
- We understand that certain difficulties may have been encountered in transferring funds from the taxpayer's income tax account to the integrated client account and vice versa.

B. THE IMPACTS OF THE CHANGE PROGRAM WITHIN THE AUSTRALIAN TAXATION OFFICE

CPA Australia recognises that the income tax release was a massive undertaking and that it involved a significant amount of resources. We also acknowledge that the ATO regularly briefed professional associations and various practitioners on the scope of the income tax release over an extensive period of time in the lead up to this implementation in various consultative fora, and that it had actively sought practitioners input especially via initiatives such as the ATPF Change Program Group.

Nonetheless both the amount of errors ultimately encountered and the delay in rectifying some of these issues exceeded expectations of both CPA Australia and many public practitioner members.

We believe that part of the adverse community response to the upgrade arose from the volume of identified errors and the ATO's communications on the upgrade which we do not believe conveyed the breadth of the issues involved.

In our view this was partly due to many of the errors only gradually manifesting themselves which may have delayed appropriate communications especially as the ATO was seeking to identify which alleged errors were systemic or not.

Irrespective of the cause(s) it is the commonly held view of our public practitioner members that many of the ATO's communication bulletins were not sufficiently detailed so as to alert them on the full range of issues being encountered.

We therefore fully support the ATO's current initiative of maintaining an issues log detailing the identification and progressive resolution of all issues associated with the income tax release which the professional associations can monitor on behalf of the members, and its weekly update in the lead-up to the tax return lodgment period for the year ended 30 June 2010.

Whilst we understand that many of the issues arising under the income tax release have been or are being currently addressed we recommend that this initiative be continued by the ATO to ensure all potential issues are communicated as soon as practicable so that there is less market uncertainty concerning potential systems errors and delays.

D. ANY OTHER RELATED MATTERS

The cumulative impact of all the above errors and delays is that it has had a highly detrimental impact on a number of our members especially smaller accounting firms and sole practitioners.

For certain sole practitioners the impact of the delays in receiving tax refunds was acute where these members did not get paid for their services until the refunds were actually received by clients.

For example:

1. one practitioner who forwarded us an email on 16 April 2010 advised that they had been reduced to working 7 days a week for months on end and was about to cease her business at that time
2. another member advised that they were forced to borrow funds off her parents for living expenses as the dearth in refunds meant she had virtually no income for several months
3. similarly, another practitioner advised that she halved her salary and the mortgage of the family home was increased to provide her practice with working capital.

Clients also experienced similar financial difficulties, and we were advised that several small businesses could not obtain a bank overdraft as they could not produce an assessment notice for the year ended 30 June 2009.

The other major significant cost borne by members was the opportunity cost of foregone productive recoverable work as practitioners spent considerable periods of time in liaising with the ATO on delayed refunds and other change program issues or errors.

Once again this hidden cost was most keenly felt by smaller practices which did not have the staff or resources to efficiently absorb such costs.

Some of the negative impacts arising from such reverse workflow for member included the following:

- Loss of client goodwill as the tax agent was perceived as being the cause of the delayed refunds
- Low staff morale especially as practitioners or their staff had to contend with both frustrated clients and beleaguered ATO staff in progressing delayed refunds most of which was typically irrecoverable work
- Adjusted workloads to accommodate changing lodgment priorities which was difficult for smaller practices which are not geared for such flexibility
- Lack of cash funds to finance PAYG instalment payments, quarterly BAS payments and in one case tax agent registration fees
- Reliance on borrowings at punitive interest rates on bank overdrafts and credit cards to fund the working capital of the practice, and
- Considerable personal stress as members often worked massive amounts of overtime in order to ensure that their practices continued to be viable. Indeed, three members were

so desperate at one point that they threatened to close their practices such was their level of exasperation.

In raising these matters we acknowledge that the ATO acted swiftly in seeking to recognise cases of members experiencing extreme hardship and progressively increased their level of direct intervention in expediting refunds especially after the meeting held between the professional bodies and senior ATO management on 23 April 2010.

However, we strongly believe that the generic errors and processing delays which have arisen as a result of the income tax release highlight the need for some appropriate compensation mechanism to be introduced to reimburse members for both the actual costs and opportunity costs incurred in such circumstances.

Accordingly, we would urge your office to recommend in its final review that an equitable, simplified and transparent compensation regime should be introduced to reflect the costs borne by registered tax agents and BAS agents on any generic systems change (including the income tax release) which has a widespread impact on practitioners.

Such a regime should neither be as complex as the defective administration provisions or as discretionary as the Act of Grace provisions under section 33 of the Financial Management and Accountability Act (1997).

CPA Australia would be pleased to consult with interested parties on the design of such a compensation regime which we believe would be in the long-term benefit of all parties. Should you wish to discuss the above please contact our Mr. Mark Morris on (03) 9606 9860 or via email at mark.morris@cpaaustralia.com.au.

Yours faithfully



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