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Dear Nathan

ANAO performance audit - ATO's engagement with tax practitioners

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 170,000 members in over 100 countries and regions. We make this submission on behalf of our members and in the broader public interest.

The Australian National Audit Office's (ANAO) **performance audit** of the ATO's engagement with tax practitioners is timely and important. Many of our members in public practice are, or are supervised by, registered tax or BAS agents (tax practitioners) and tax services form a key component of their professional service offerings. Tax practitioners are an essential component of our nation's self-assessment regime with most Australian businesses and individuals lodging their tax returns through tax agents and engaging BAS agents to assist with their bookkeeping and activity statement obligations.

Therefore, the ATO's effective engagement with and support of tax practitioners is critical to maintain high levels of voluntary compliance, ensure the proper application of tax laws and successfully implement new policies and programs. This requires an ongoing relationship between the ATO and tax practitioners that builds trust, mutual respect and open communication. This dynamic needs to be carefully managed and it can be tested in many ways. Recent examples include the pressures from implementing JobKeeper, the ATO's approach to lodgment deferrals, changes to the ATO communication processes, and guidance on the allocation of professional firm profits and trust reimbursement agreements.

As a professional association, CPA Australia represents tax practitioner stakeholders, and we have the privilege of engaging with the ATO through multiple channels and forums. We seek to leverage our connection with our members to facilitate the flow of information between the ATO and tax practitioners, and to raise and deal with issues in a constructive and timely manner. We consider our role to be highly important to the ATO's tax practitioner engagement strategy and activities, given the breadth of our membership and commitment to professional standards.

The spectrum of ATO tax practitioner-focused engagement activities encompasses the provision of services (e.g., Online Services for Agents), education (e.g., webinars, public guidance) and support (e.g., lodgment deferrals, private binding rulings) through to tax practitioner – or intermediary-focused – compliance strategies. Tax practitioners are also often the main contact for client engagement activities such as reviews and audits. Given their high level of interaction with the ATO and tax system, tax practitioner experiences with and perceptions of the ATO can greatly influence the effectiveness of the ATO's efforts in virtually all programs of work.

As a general observation, it is our experience that the ATO recognises and values tax practitioners as a fundamental part of the tax and superannuation systems. A significant volume of outputs and activities are constantly being created to keep tax practitioners informed across all markets and obligations, while programs are designed with tax practitioners in mind. Information on tax practitioner support and compliance activities is also made available. It is our view that this is an efficient and effective approach for the ATO to take, as it is cheaper to support tax practitioners who then provide correct advice to their clients, than for the ATO to attempt to educate and police all taxpayers directly.

While we identify a number of areas where issues have arisen, the ATO should be given credit for working with tax practitioners to design them into the tax and superannuation systems, managing consultation groups that are able to engage properly on priority issues and for being responsive to tax practitioners' needs and concerns. We believe there are opportunities to enhance the timeliness of consultation processes and decision-making on priority issues, and for greater clarity on the responsibilities of each of the various ATO areas involved in tax practitioner engagement.

The period of the performance audit coincides with the COVID-19 economic response packages which the ATO was tasked to deliver. CPA Australia worked closely with the ATO during this time and commend them on the way they mobilised their resources and existing infrastructure to deliver the support. The consultation and communication processes were highly effective and there was ongoing, timely dialogue and quick decision making. While such an intense approach is not sustainable in the long-term, the experience has highlighted some key aspects of successful engagement.

We also note that the ATO has updated its Intermediary Engagement Strategy since the commencement of this performance audit and progress has been made on communicating its existence to tax practitioners. While this is positive, a clear picture of the totality of the ATO's tax practitioner and intermediaries' engagement strategies remains elusive.

Our responses to the questions posed by the ANAO are included in the Attachment.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy on 0466 675 194 or elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely,

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1. Did the ATO establish a fit for purpose strategy for engaging with tax practitioners?

Overall, the ATO recognises the role and value of tax agents, both explicitly and implicitly, in achieving its strategies and supporting the tax and superannuation systems. We observe references being made to tax practitioners in both internal and external documents, and senior ATO staff have publicly stated their recognition of the importance of the tax profession.

In terms of a holistic strategy however, there is not a singular publicly available artefact that articulates the ATO's strategic approach to tax practitioners across the tax and superannuation systems and the intended outcomes. We do not have a clear understanding of how each of the various programs of work related to tax practitioners fits within an overarching framework.

While this may be due to the diversity of tax services and the fact that tax practitioners interact at every point within the tax and superannuation systems (e.g., from new law through to litigation), there is likely to be value in mapping the various strategies and activities – and their links to non-ATO stakeholders such as the Tax Practitioners Board (TPB) and professional associations – to identify opportunities to streamline, consolidate and better govern engagements with tax practitioners. This could include exploring and formalising the linkages and pathways between:

- risk and intelligence strategies that include or reference tax practitioners
- public advice and guidance products that target or are dependent on tax practitioners for a behavioural response
- compliance strategies across the Client Engagement Group that target or include tax practitioners, including Integrated compliance and Joint agency taskforces
- tax practitioner engagements undertaken by Service Delivery, particularly Lodge and Pay
- the TPB and ATO, including information sharing and joint actions¹
- the integration of tax practitioners into the design of ATO work programs, services and products
- the ATO Lodgment Program
- consultation activities
- the tax practitioner risk model, including feedback loops and connections with other ATO risk models.

The ATO does have a specific 'Intermediaries Engagement Strategy' that has been under development for several years and that the ATO is intending to make more accessible to tax practitioners. Consultation has been undertaken through the Tax Practitioner Stewardship Group (TPSG) and user testing. However, there remain areas of uncertainty including:

- The ATO's **information** provides only a general summary on their approach including **risk assessment**, and does not explain what occurs when the ATO approaches a tax practitioner to discuss its "risk view"²
- We were unable to locate information about the tax practitioner-focused compliance activities undertaken by the ATO including details of new policy proposal (NPP) funding and work being undertaken within Individuals and Intermediaries (I&I)
- The Intermediaries Engagement Strategy does not currently encompass other intermediary-related programs of work such as aggressive tax planning, the research and development tax incentive (RDTI), phoenix, professional firm profits, the shadow economy or criminal investigations, apart from a reference to 'internal referrals'
- There is limited public information on the tax agent risk model including whether it has been expanded to include business and non-individual entity clients, and BAS agents

¹ We understand that the ATO and TPB have signed a Memorandum of Understanding as part of the implementation of the recommendations from the Review of the Tax Practitioners Board, however, the details are not publicly available.

² For example, the tax practitioner would expect to be engaged on specific risk areas related to their own or particular clients' returns, much like the initiation of a series of specific issue reviews. This is articulated in the ATO's "**Working with you**" page. However, the informality and preliminary nature of the engagement gives rise to uncertainty for the tax practitioner as to the legal status of the enquiry, the need to engage legal representation, whether identified clients need to be informed and what information, if any, should be disclosed to the ATO. There are also concerns that ATO enquiries may seek to gather information beyond the tax laws, and move into the realm of the *Tax Agent Services Act 2009*, which is the responsibility of the TPB.

- The planned rollout of communication and products related to the Intermediaries Engagement Strategy, including target audience, the timeframes for making the ATO's "risk view" available to tax practitioners, the anticipated response from tax practitioners and the role of professional associations
- The need to more clearly delineate the roles of the ATO and the TPB and the scope of the ATO's interactions.

We have observed that since the commencement of the ANAO performance audit, the ATO's website information has been updated and additional communications have been issued which we have promoted to our members. To date, there has been no direct feedback, indicating that this particular strategy may not be considered relevant by many tax practitioners (i.e., they consider themselves to be low risk).

However, for those who are contacted by the ATO, as well as those who seek to actively manage such risks in their professional practice, it is important that they understand the purpose of the engagement and the possible outcomes from the outset. There should be clarity about the scope of the ATO's enquiries and potential consequences for the tax practitioner.

We are also not aware of the ATO's approach to measuring its performance in engaging with tax practitioners. We note that, given the high levels of tax agent representation across the taxpayer population and the diversity of practice structures and capabilities, it is challenging to obtain control or comparison groups, as well as to isolate the particular attributes of a tax practitioner that indicate a higher or lower level of risk. However, there are likely a suite of indicators that could be developed³, or, if already established, could be considered for public release or at least provided in consultation with TPSG members.

2. Did the ATO effectively engage and consult with tax practitioners in developing its strategy, services and support?

The ATO commits significant effort and resources to tax agent consultation and the established mechanisms provide multiple opportunities to engage. Tax practitioners are represented by their professional associations and selected practitioners on multiple stewardship and stakeholder groups, and public consultation processes provide the ability for the general tax practitioner population to engage. The structures and mechanisms used are generally appropriate. It is our view that more forums or different engagement methods will not necessarily lead to increased engagement or greater depth of insights.

We find that the ATO's established structures and focus areas are generally well-considered and well-managed. However, in our experience, the issues that do arise tend to relate to:

- which taxpayer groups, products, topics and services should be prioritised
- the decisions made by the ATO when potential alternatives may be available
- the way information is presented, and guidance is provided
- whether the engagement and communication efforts are reaching the intended audience and are conveying information and messages clearly
- poor communication or unintended consequences of changes, including to ATO processes and interpretive positions
- implementation of programs that require changes to practice processes, upskilling of staff or which introduce new obligations
- the release of ATO views on more contentious or uncertain areas of law
- the timeliness and efficiency of the ATO in responding to and progressing priority issues
- ongoing irritants or poor user experiences with ATO digital services
- inconsistent experiences with ATO Client Engagement and/or Objections and Review staff under the same ATO strategy or risk
- the distinction and demarcation between the roles of the ATO and the TPB.

³ For example, improvements to digital offerings for tax practitioners, enquiry response times, changes in the risk profile over time, attendance at ATO events, tax practitioner sentiment and user experience scores, changes in behaviour pre- and post-ATO intervention, revenue raised from tax practitioner-focused work, number of convictions/penalties/etc, and number of referrals to the TPB resulting in TPB action.

In addition, given its relationship with Treasury and the Assistant Treasurer, we observe that the ATO is often called upon to address policy issues or deal with problems in legislation, neither of which fall within its authority. This gives rise to questions such as how the ATO deals with this feedback, whether they regularly and systematically pass on feedback from tax practitioners to Treasury and/or the Minister, and indeed, whether they should.

As a general observation, we also find that consultation tends to be better for programs of work that are:

- a priority for the ATO Executive and senior commissioners
- managed by executives with experience in leading consultation processes and who have the authority to make decisions
- supported by staff with a sound understanding of the environment and ability to build relationships with external stakeholders.
- subject to clear deliverables and timeframes
- using project and change management processes.

We consider the formal ATO consultation groups to be essential for effective engagement. The issues covered in these forums are often complex, higher-risk and higher-impact meaning that proper consultation requires high levels of transparency and intensive discussion to reach a balanced and informed position. While groups like the TPSG, BAS Agent Advisory Group and Tax Practitioner Digital Implementation Group have a dedicated focus on tax practitioners⁴, tax practitioner issues are considered at virtually all forums given their inextricable links to taxpayers and the tax system. As such, tax practitioners are generally well-represented, and we find that the ATO is committed to engaging regularly and is open to feedback. It is our view that the groups are generally well-run and are performing their function.

We do, however, note there have been instances where tax practitioners/external members have had to exert effort to table agenda items, obtain the level of information necessary for proper discussion or arrange more detailed, out-of-session discussions. Some forums have been reported to have more “for information” items on the agenda than having substantive discussion on important issues of concern (either to tax agents or the ATO). That said, it is our experience that the ATO is generally responsive to issues raised by the profession and agendas are co-designed jointly with the external co-chair. We also acknowledge the efforts of ATO staff who present to the ATO groups, many of whom prepare detailed briefings and are receptive to feedback.

One ongoing issue is the use and terms of confidential consultation processes by the ATO. This has been discussed regularly with the ATO at the National Tax Liaison Group, TPSG and former Consultation Steering Group. While we respect the ATO’s choice to restrict its consultation in certain circumstances, we have highlighted that many issues often cannot be properly informed by the views of a selected few and, for professional associations, the insights and experience of our members are critical to provide comprehensive feedback.

A further issue is timeliness where confidential consultation has occurred over a period of years and participants, including professional associations, are unable to discuss or explore the issues even with their own colleagues or committee members for a lengthy period of time. This puts closed consultation participants in a difficult position as it is challenging to explain what has occurred when bound by confidentiality, and there is a presumption that closed consultation participants implicitly support or agree with the approach ultimately taken by the ATO, which may not be the case. We recommend that the ATO sets parameters for its use of confidential consultation so that it forms a short, discrete component of a broader plan that ultimately includes input from a more diverse group of tax practitioners and representatives.

Targeted consultation is another area where professional associations, representing tax practitioners, are not included by default. Given the breadth of activities undertaken by the ATO, we understand that each program of work will have its own consultation plan and identified stakeholders. However, there have been instances where we would expect to be invited but were not, or where we are listed in the target consultation groups but are not approached.

⁴ It is our understanding that the members of the Key Agent Program do not have a formal ATO group but rather the focus is on the provision of tailored support services by the ATO. While members are selectively invited to participate in specific consultations and working groups, there may be benefit in considering a more regular and structured way to engage. This will allow a collective view to be presented to the ATO by these key agents and may better facilitate improvements and changes to services and support for these agents and their clients.

The public advice and guidance work program is well managed on the ATO's consultation page and new consultations are included in ATO alerts.

The ATO approach to 'matters under consultation' could be improved as there remains a lack of clarity for external stakeholders as to how consultation participants are identified, if or when this work is shared with members of ATO groups and the public, and if or how the tax practitioner experience is being properly considered. It would also assist if alerts were issued when new items are added to the [Matters under consultation](#) page, as there is a risk that important consultations may otherwise be missed.

3. Did the ATO provide effective services and support for tax practitioners?

The ATO's services and support offerings for tax practitioners encompass a broad range of activities, including public advice and guidance, call centre support, Online Services for Agents, tax practitioner-dedicated communications and the Lodgment Program.

The ATO makes significant efforts to communicate its approach to tax agents, including interpretive guidance, website information, direct mail, speeches and webinars/podcasts. They also make their senior executives available to professional associations and other organisations for events and webinars.

The public advice and guidance work program is informed by input from tax practitioners and the ATO is open to receiving the profession's views on key issues and priorities. There may be opportunities for increased engagement with tax practitioners to assist the ATO in understanding the priority of and risks associated with particular issues, and to inform the design of the advice product.

With respect to call centre support, we do not receive regular complaints about the service. However, there are examples of incorrect advice being given over the phone and a lack of support in navigating the ATO's services. Many agents remain unaware of the tax practitioner assistance service and are often unsure how to escalate their issue when a problem arises. Our members also report that timeframes occasionally go beyond service standards, particularly for more complex queries.

For digital services, issues tend to arise in the areas of system availability (e.g., unplanned outages that disrupt practice operations) and system design (e.g., communication preferencing rules, self-service reporting functions). The ATO's engagement with digital service providers (DSPs) is also critical in this area as tax practitioners and their clients often use a suite of accounting and tax software, meaning seamless integration and consistency of data between retail and wholesale offerings is essential for practitioners' productivity and the accuracy of records. While changes requested by the tax profession may take significant time and/or advocacy takes some time to be considered by the ATO, once the decision to progress is made changes are implemented quite quickly.

The Lodgment Program is the mechanism by which the ATO manages lodgments by tax practitioners throughout the year and includes a performance management component (Lodgment Program support). We are pleased that, following ongoing advocacy from the profession, the Lodgment Program is currently under review. Our [submission](#) to the Lodgment Program Review provides our members' views on their experiences and areas of concern.

We have also presented the tax practitioners' experience in relation to the objections and review process in our [submission](#) to the Inspector General of Taxation and Taxation Ombudsman for her investigation into the ATO's management of objections.

Finally, we support the commentary provided by the Institute of Public Accountants (IPA) in its submission and confirm that the examples provided by the IPA in its submission also reflect the experiences of CPA Australia members.