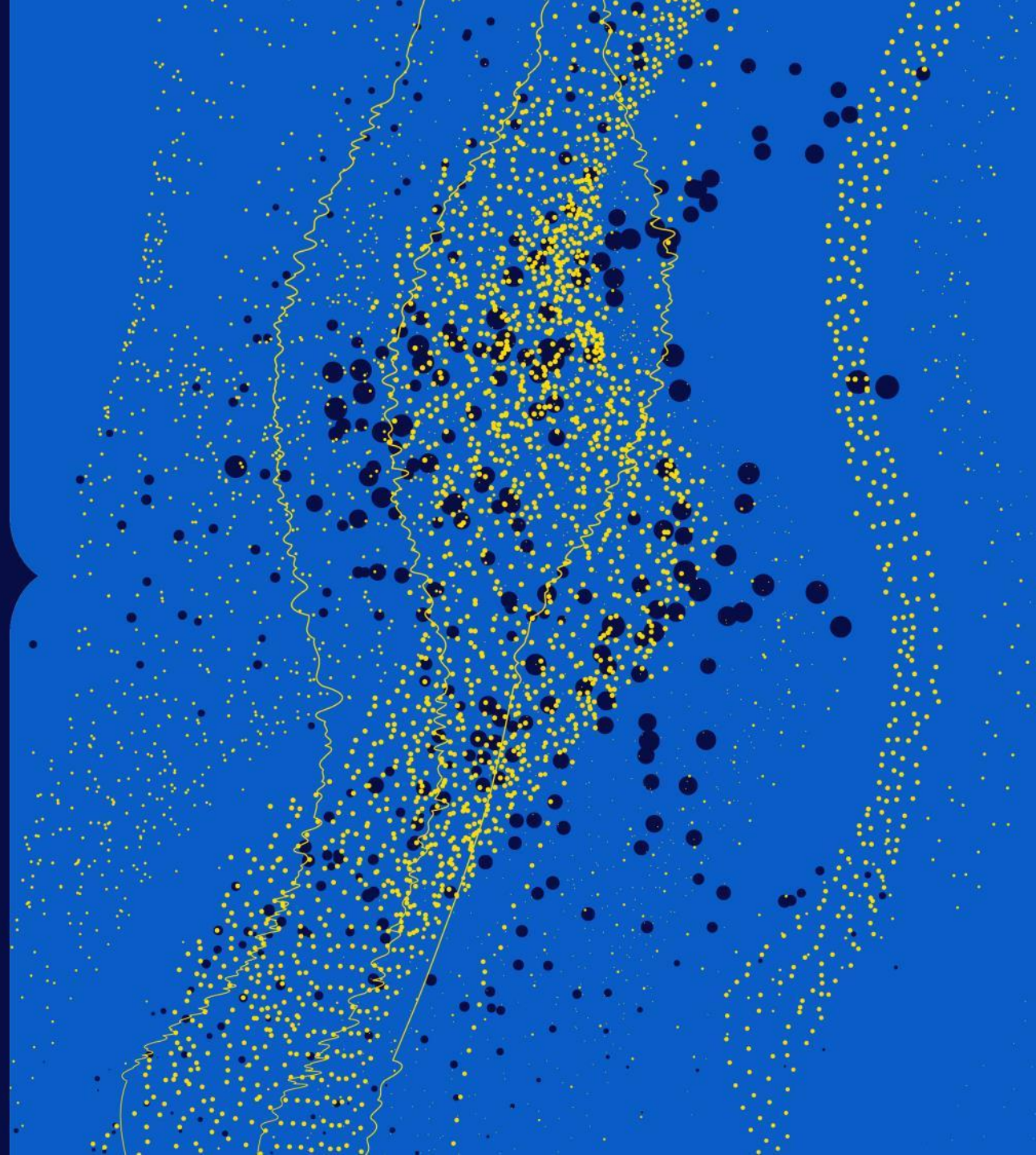


# Housekeeping

1. Communication will be managed through Chat on the right-hand side of the screen.
2. For any trouble shooting questions, please send a message in Chat and a CPA staff member will contact you.
3. For any questions for the presenter, please submit your questions to Everyone in Chat on the right-hand side of the screen.
4. Questions will be addressed at the end of the webinar.
5. Microphones and cameras will remain on mute for attendees for the duration of the webinar.

# What to do when the ATO comes knocking

Understanding the ATO's engagement  
approach



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# WEBINAR OVERVIEW

1. ATO purpose
  2. Review client file
  3. Undertake risk assessment
  4. Inform your client
  5. Prepare to respond
  6. Engaging with the ATO
  7. Complaints, objections and disputes
  8. Objecting
  9. Tax Practitioners Board
-

# Presenters

## **Sue Williamson**

**Partner**

### **Holding Redlich**

Sue is a partner in the Dispute Resolution and Litigation team with more than 30 years' experience in federal and state tax risk and dispute management including:

- tax audits
- alternative dispute resolution (ADR)
- tax litigation
- ATO powers in relation to access to premises and production of documents
- ATO anti-avoidance powers.

## **David Hall**

**Partner**

### **Findex**

David is a FCPA, and Chartered Tax Adviser, has over 30 years' tax experience and leads the North Queensland Tax Advisory team. He specialises in providing practical advice in a complex taxation environment.

His areas of expertise are diverse and includes corporate taxation, CGT and small business CGT concessions, taxation of trusts, restructuring, purchase and sale of businesses and entities, estate and succession planning.

## **Elinor Kasapidis**

**Senior Manager Tax Policy**

### **CPA Australia**

Elinor is responsible for the development of policy, research and advocacy on issues related to tax policy, legislation and administration in Australia and internationally.

She leads the CPA Australia Taxation Centre of Excellence and represents CPA Australia and its members on a variety of tax-related forums and groups.



# The ATO

## Client engagement and focus areas

# ATO Client Engagement

- The ATO analyses tax returns, forms and other data sources for a range of risks that are tailored depending on the size, industry, wealth, specific technical issues and economic and tax performance of taxpayer groups
- The Client Engagement Group is the ATO's compliance area and is comprised of:
  - Individuals and Intermediaries
  - Small Business
  - Private Wealth
  - Public Groups and International
  - Superannuation and Employer Obligations
  - Integrated Compliance
  - Smarter Data Program
- The ATO communicates its focus areas and engagement approach through a range of channels including:
  - Media releases, social media, newsletters, speeches and webinars
  - Public advice and guidance including rulings, taxpayer alerts, practical compliance guidelines and web guidance
  - Public engagement including media appearances, podcasts, webinars and publications.

# Selected focus areas



## INDIVIDUALS

Work-related deductions  
Rental properties  
Capital gains  
Undeclared income



## SMALL BUSINESS & PRIVATE WEALTH

Trust taxation  
Personal use of business assets  
Personal services income/business  
Restructures & succession planning  
Offshore income and investments



## TAX PRACTITIONERS

Teardrop risk model  
Practitioner risk view  
Performance across registration,  
lodgment, reporting and payment



## TAX GOVERNANCE

Weaknesses in accountable management  
and oversight  
Reporting integrity  
Recognition and escalation of tax issues  
and risks



## SHADOW ECONOMY

Undeclared income  
Unexplained wealth  
Poor record-keeping  
Lodgment performance  
Employee entitlements



## TAX AVOIDANCE AND FRAUD

Trust taskforce  
Anti-avoidance provisions  
Illegal phoenixing  
Serious financial and organised  
crime

# What to do

9 steps to consider



# 1. ATO purpose

- The ATO will have a reason for contacting you
  - Initial ATO communication should provide some explanation
  - ATO contact details should be provided to you
- What is the purpose of the enquiry?
    - Which Client Engagement area is contacting you?
  - What product does the engagement fall under?
    - Risk review – specific issue or comprehensive
    - Integrity or refund checks
    - Audits
    - Engagement programs – Top 1000, Top 500, Next 5000
  - Which tax risks or issues are being considered?
    - What are the specific tax issues?
    - Is it a particular tax return label?
  - What are the concerns?
    - Substantiation
    - Incorrect tax treatment
    - Restructuring or commercial deals
    - Poor economic or tax outcomes
    - Undeclared income

## 2. Review client file

Before representing your client and responding to the ATO, check your practice records on the client.



Review the letter of engagement



Confirm the right to act on behalf  
of your client



Identify and manage any conflicts  
of interest

# 3. Undertake risk assessment

## FOR YOUR CLIENT

- Identify available documentation and evidence relevant to the ATO enquiry
- Confirm knowledge and interpretation of the relevant provisions and associated administrative and judicial guidance
- Risk-assess the client's position against the Commissioner's view
- Assess the likelihood or risk of an ATO adjustment
- Assess the potential penalty based on available evidence
- Consider Part IVC of the *Taxation Administration Act 1953*

## FOR YOUR PRACTICE

- Establish record-keeping practices consistent with ATO guidance
- Set up document management protocols to ensure that relevant documents are kept for the minimum retention periods
- Consider seeking independent advice for:
  - Second opinions
  - Risk management or mitigation strategies including voluntary disclosures
  - In the event of a Tax Practitioners Board (TPB) or promoter penalty investigation being commenced
- Consider risk-assessing practice processes against the *Tax Agent Services Act 2009* Professional Code of Conduct and TPB guidance.

# 4. Inform your client

- Confirm authority to act and the scope of engagement as required
- Address any conflicts of interest or confidentiality issues
- Inform your client of their rights and obligations under the Taxpayers' Charter and other relevant information
- Discuss the ATO enquiry
  - Advise clients of their risk profile and inform them of their options to manage and mitigate risk
    - Is there a reasonably arguable position?
    - Has reasonable care been taken?
    - Is there sufficient documentation to support the position?
    - What are the potential responses from the ATO?
    - How to proceed: amendments, voluntary disclosures, audit adjustment, objection, litigation
  - Different clients will have different preferences



# 5. Prepare to respond

- Agree with the client on the course of action
  - Establish a plan to respond to the ATO
  - Request additional time or refinements to scope as early as possible (if required)
  - Tailor the response to the ATO's enquiry
  - Be mindful that the ATO keeps records of all conversations and correspondence with the ATO.
- Fully understand the ATO's line of enquiry
  - Establish a proper understanding of the facts
  - Gather evidence
    - Support your client to identify and collate the necessary documentation and information
    - Check documents for direct relevance, legal professional privilege/accountants' concession and attached metadata
  - Identify areas of uncertainty
    - What additional evidence or advice may support the client's position?
    - How might the ATO respond to a disclosure or in an audit?
  - Communicate with the ATO
    - Targeting information requests
    - Confirming the basis of the enquiry
  - Prepare for any meetings with the ATO
    - Scope of discussion
    - Focus responses on the issues
    - False and misleading statements

# 6. Engaging with the ATO

Be prepared for ATO interactions and be aware of the evidence – written or verbal – that you are providing on behalf of your client. Keep your client informed as ATO enquiries can often evolve over time.



Identify the ATO contact and escalation points



Establish a common understanding of the issue and the facts with the ATO



Be mindful Professional Code of Conduct obligations under the *TASA*

# 7. Complaints, objections and disputes

External review

Internal review

Audit

FEDERAL COURT

ADMINISTRATIVE APPEALS TRIBUNAL

EARLY ASSESSMENT AND RESOLUTION

SETTLEMENT

ALTERNATIVE DISPUTE RESOLUTION

INDEPENDENT REVIEW SERVICE

IN-HOUSE FACILITATION

OBJECTION

COMPLAINTS

ATO MANAGER

ATO CASE OFFICER

INSPECTOR  
GENERAL OF  
TAXATION AND  
TAXATION  
OMBUDSMAN

# 8. Objecting to a decision

- Part IVC of the Taxation Administration Act 1953
- Many decisions can be objected to including penalties and interest
- Consider lodging an objection if:
  - you disagree with the way the ATO has interpreted the law
  - you're uncertain about your interpretation of the law
  - you want the option of seeking an external review if the ATO doesn't agree with you
  - the ATO has made a decision to retain a refund.

- If the ATO issues an amended assessment, review the basis of the decision (e.g., position paper or reasons for decision) including any penalties
- Has the ATO correctly interpreted the law and properly considered the relevant evidence?
- Is the level of penalty, if any, commensurate with the client's behaviour?
- What are the potential consequences for your client, you or your practice if no objection is lodged?
- Is there additional evidence or information not disclosed during the audit phase that may change the Commissioner's position?



Ensure that the objection form is properly completed. The reasons for objection should be thoroughly reasoned and clearly articulated. Seek specialist advice if required.



# 9. Tax Practitioners Board

The TPB received almost 1300 referrals in 2021-22, of which almost 250 were from the ATO. Potential breaches of the *TASA* identified by ATO officers during their engagements may be referred to the TPB.



## **CODE ITEM 7**

You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.



## **CODE ITEM 9**

You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.



## **CODE ITEM 10**

You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.



## **CODE ITEM 12**

You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.

# Q&A