



**Australian Government**  
**Australian Taxation Office**

GPO Box 9977  
SYDNEY NSW 2001

29 September 2015

**By e-mail only: [capabilitypanel@treasury.gov.au](mailto:capabilitypanel@treasury.gov.au)**

Ms Karen Chester  
Chairperson  
Capability Review Panel  
The Treasury  
GPO Box 89  
Sydney NSW 2000

Dear Ms Chester

**Re: ATO Reinvention Documents**

Thank you again for meeting with representatives of the Australian Taxation Office (ATO) on 1 September 2015. I appreciated the candid nature of the discussion and the commitment from all parties to explore opportunities for enhanced cooperation in the management of regulatory challenges that impact on both our organisations.

As part of this discussion you expressed interest in the ATO's reinvention program and some key documents outlining the programs development and implementation.

Accordingly please find attached:

1. ATO Corporate Plan,
2. ATO Reinvention Blueprint,
3. ATO Reinvention Design Strategy,
4. ATO Leadership Strategy,
5. ATO Culture Strategy,
6. A number of other documents developed in association with and to support the preceding strategy guides.

Further documents on the ATO's reinvention program including multimedia presentations and interviews can be accessed at our reinvention website <http://reinventing.ato.gov.au/>.

I understand that you have already engaged in discussions with Assistant Commissioner Debra Unsworth from our Corporate and finance management area regarding the ATO's approach to the APSC Capability Review, as well as the current Functional and Efficiency Review. I would be happy to facilitate further discussions with relevant ATO management areas upon your request.

In the meantime I am in the process of finalising the ATO's written submission which will be submitted to you shortly. I am available to discuss any aspect of this letter and can be contacted on (02) 9374 1428 or email [Michael.Cranston@ato.gov.au](mailto:Michael.Cranston@ato.gov.au). In the alternative, you can also contact Will Day on (02) 6216 2270 or email [William.Day@ato.gov.au](mailto:William.Day@ato.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Cranston". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael Cranston  
Deputy Commissioner  
Australian Taxation Office



13 October 2015

**By e-mail only: [capabilitypanel@treasury.gov.au](mailto:capabilitypanel@treasury.gov.au)**

Ms Karen Chester  
Chairperson  
Capability Review Panel  
The Treasury  
GPO Box 89  
Sydney NSW 2000

Dear Ms Chester

**Re: Australian Taxation Office submission – Australian Securities and Investments Commission capability review**

Thank you for inviting the Australian Taxation Office (ATO) to make a submission to the committee on its capability review into the Australian Securities and Investments Commission (ASIC). The Commissioner of Taxation has asked me to respond on his and the ATO's behalf.

You will be aware that as requested in our meeting on 1 September 2015, we have recently provided a suite of our core ATO reinvention documents and facilitated your access to ATO officers who have had significant roles in our own reinvention program. For example, I understand that you have already engaged in discussions with our Corporate and Finance management areas regarding the ATO's approach to the APSC Capability Review of the ATO and the Functional and Efficiency Review. I would be happy to facilitate further discussions with relevant ATO management areas upon your request.

In completing this submission I have consulted widely across the ATO with operational areas that interact regularly with ASIC. In engaging in these discussions with my colleagues I am pleased to advise that as a whole, ATO staff consider they have established strong and open communication channels with their ASIC counterparts. Further I am advised that ASIC staff are considered to be competent, dedicated and willing to engage with us to improve administrative outcomes.

In drafting this response I have separated the discussion into four parts which identify:

- Key issues – which set the scene and context of our comments,
- Current state – which identifies our current interactions with ASIC,
- Desirable future state – which seeks to outline how our organisations might best engage going forward,
- Conclusion – summarising our input.

In taking this approach I hope to convey a contextual background to the panel and identify how we see the organisational relationship develop into the future as both our organisations undertake change and reinvention programs.

### **Key issues**

- The ATO is an active and visible regulator with a well-educated and experienced workforce administering revenue laws that directly affect corporations and the Australian financial system. We try wherever we can to work co-operatively with other regulatory authorities and make considered and risk based decisions about our resource allocation and compliance activities to support whole of Government outcomes.
- We monitor Australia's financial system closely and work with Government and Treasury and other agencies to ensure the health of the revenue system is maintained and that outcomes are consistent with policy decisions.
- We consider ASIC to be a valuable partner agency whose effectiveness and efficiency as a regulator has a cascading effect on financial system integrity which directly affects the revenue system and our work.
- We see our relationship with the ASIC as being very important to the achievement of ATO outcomes and further to addressing risks to confidence and supporting the integrity of the Australian financial and tax, excise and superannuation systems.
- Proper corporation management, tax debt and insolvency issues are a major risk to tax system integrity. Every year the ATO initiates about 1300 company windups and as at 30 June 2015 the ATO had \$19.2 billion in unpaid collectable tax debt on its books with approximately 35% attributable to corporations.
- The Governments' Statements of Expectation for both ASIC and the ATO are to maintain effective and collaborative working partnerships with other agencies to ensure the proper functioning of Australia's regulatory frameworks.
- The Government policy also requires that regulators should adopt a risk-based approach to compliance obligations, engagement and enforcement, allowing for proportionate approaches suited to the size, nature, complexity and risk of regulated entities. This allows regulators to achieve their objectives more efficiently and reduce the overall regulatory burden, particularly for small businesses. This approach also recognises that it is not possible or efficient to eliminate all risks and that trade-offs in risk reductions are necessary.

## Current state

- The ATO primarily deals with ASIC on two main levels, as an information provider through its maintenance of a number of data registries and secondly as a regulator of corporations and directors, administrators and liquidators, and Self-managed Superannuation Fund (SMSF) auditors.
- We believe our organisations have well established communication linkages and effective channels for accessing ASIC registry information. Further we consider we have reasonable engagement and opportunity for dialogue with ASIC in terms of their role as a regulator of corporations, directors, administrators and SMSF auditors.
- We have seen some very positive outcomes in terms of ASIC’s collaboration with the ATO on engaging the SMSF auditor sector, as well as their regulatory action against registered SMSF auditors as a result of ATO referrals to them. Previously there was some concern about ASIC’s timeliness and willingness to take action on referred SMSF auditors, due in part to the transition to the new ASIC registration regime and ASIC resource constraints.
- Both agencies acknowledge statutory limitations on ASIC providing information to the ATO.<sup>1</sup> This is particularly apparent if the ATO has not sought the information under our joint Memorandum of Understanding or if the information has been compulsorily acquired by ASIC for another purpose (in which case ASIC consider they are required to afford procedural fairness and alert the individuals or companies associated with the information and seek their views on disclosure, this notification and delay may prejudice ATO audit outcomes).<sup>2</sup> ASIC acknowledged this communication difficulty in their submission to the Parliamentary inquiry into Corporate Tax avoidance.
- We also acknowledge ASIC’s approach is changing. For example in their response to the Parliamentary inquiry into Corporate Tax avoidance they identified a desire to progress and remedy some long standing financial system integrity issues such as:
  - lack of disclosure of related party information in financial reports,
  - grandfathered lack of reporting for large proprietary companies,
  - lack of ongoing confirmation that a proprietary company is a “small company”,
  - limitations on information sharing with the ATO,
  - lack of proof of identity for company directors,
  - allowing “backdating” of company director appointments,
  - allowing reporting relief for foreign groups operating through proprietary companies.

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<sup>1</sup> Section 127 of the *Australian Securities and Investments Act 2001* does not include the ATO as an organisation to which ASIC can disclose information.

<sup>2</sup> *Johns v. Australian Securities Commission* (1993) 178 CLR 408, especially pp 430-431 per Brennan J

## Desirable future state

- ASIC and the ATO work collaboratively as regulators with a shared interest in financial market management.
- Working with us as a proactive partner in the management of serious financial crime. By their nature, serious and organized criminal groups are clandestine, flexible, innovative and resilient and are driven by a profit motive. They increasingly use corporations and intermediaries and operate across multiple jurisdictions and exploit new and emerging technologies to communicate and evade detection. ASIC's assistance in managing this whole of Commonwealth risk is considered essential to meeting expected outcomes.
- Giving ASIC a "protection" purpose. ASIC's purposes as outlined in their governing Act<sup>3</sup> do not expressly list investor protection or market integrity as a core organisational purpose to which management and staff must have regard in managing their portfolio. This has the potential to focus priorities in administration toward enhanced market freedom and deregulation as the ultimate organisational goals at the expense of maintaining an appropriate balance with other outcomes such as market integrity and investor protection. A focus on market and investor protection would naturally lead to enhanced collaboration opportunities with other regulatory agencies such as the ATO through a clear alignment of strategic goals and associated outcomes.
- Information is shared freely between agencies and we look to avoid the duplication of the supervisory activities and look for opportunities to using existing regulation administered by each agency in order to ensure an integrated regulatory framework that also reduces compliance costs<sup>4</sup>.
- Proof of identity requirements for company directors including the creation of a unique director identifier. For example, the Australian Business Register (ABR) administered by the ATO requires the provision of tax file number, name, address and date of birth.<sup>5</sup> This lessens phoenix and fraud opportunities and further allows company directors to be better monitored in terms of performance.

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<sup>3</sup> Objects in the ASIC Act - Subsection 1(2) of the ASIC Act 2001 notes that ASIC must strive to:

- (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- (b) promote the confident and informed participation of investors and consumers in the financial system; and
- (d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
- (e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and
- (f) ensure that information is available as soon as practicable for access by the public; and
- (g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

<sup>4</sup> This might be achieved through a mutual information sharing and disclosure provision in relevant Acts for both ASIC and the ATO. Further resolving disclosure issues around "John's case" would greatly enhance our ability to work ASIC as a co-regulator.

<sup>5</sup> The government's policy statement for the Digital Economy was used to announce the commitment that by 2017 government agencies will offer their major services digitally online. Standard Business Reporting (SBR) is the government's key mechanism for making this happen, enabling the rationalisation and standardisation of reporting terms and information exchange standards.

- The streamline business registration proposed measure will more closely align company registration with their Australian Business Number (ABN). This will assist with identification of the entity for tax purposes.<sup>6</sup>
- Limiting company deregistration especially where there is non-payment of ASIC fees or where a company has outstanding tax debts, tax returns or activity statement lodgments.
- Exploring opportunities for both agencies to make joint announcements on regulatory issues that cover both agencies areas of responsibility.

## Conclusion

Overall we are satisfied with the level of engagement between our agencies. However we think there is a great opportunity as a potential outcome of this review process to improve our interactions and information flows (if the current legislative blockers for information sharing are remedied) which will have a beneficial effect on administrative outcomes and efficiencies. This will result in the better management of whole of Commonwealth risks, superior outcomes and the removal of unnecessary administrative and regulatory process.

I trust this information will assist the Committee and I am happy to provide any further assistance you may require. I am available to discuss any aspect of this submission and can be contacted on (02) 9374 1428 or email [Michael.Cranston@ato.gov.au](mailto:Michael.Cranston@ato.gov.au). In the alternative, you can also contact William Day on (02) 6216 2270 or email [William.Day@ato.gov.au](mailto:William.Day@ato.gov.au).

Yours sincerely



Michael Cranston  
Deputy Commissioner  
Australian Taxation Office

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<sup>6</sup> We do currently receive company registration information progressively from ASIC but the process is not automated nor is there automatic ABN registration process when a company is incorporated leading to phoenix and fraud opportunities from a tax perspective.