

TAX AND TIME TRAVEL: LOOKING BACK AND LOOKING FORWARD – A TAX ADMINISTRATOR’S PERSPECTIVE

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Time present and time past
Are both perhaps present in time future,
And time future contained in time past.¹

I INTRODUCTION

Historians often refer to the mistakes of the past as lessons for future actions. This paper addresses some significant events of past tax administrations and what we might expect looking forward.

More than ever, tax regulators are being called to account to demonstrate a robust stewardship of their tax systems and to ensure that revenue collection is broadly commensurate with economic activity and headline rates of tax. Political exuberance against multinationals in a world where some are perceived as not paying a fair and commensurate share of country tax has taken control of many policy agendas. Understanding the drivers and extent of such emerging practices will not only assist present strategic goals, it will shape the future tax system. It follows that decisions made by tax administrators on interpretation issues or concessions in areas of the tax law, or in relation to the handling of tax risks, can directly affect federal tax receipts well into the next decade.

This article addresses past events, present challenges and what the future might bring from a tax administration perspective.

II ROLE OF A REGULATOR LIKE THE AUSTRALIAN TAXATION OFFICE (ATO)

The ultimate litmus test of whether ideas worked well is whether they stood the test of time by serving government and the community as envisaged. Changes in the law that are judged harshly at the time may, with the benefit of hindsight, be understood as a good solution that was just too unpalatable for immediate implementation. A change in attitudes, some time further down the track, might allowing the concept to be (re)introduced. History recalls the

* The views expressed are a reflection of my experience working in many areas in the Australian Taxation Office (ATO) which included the role of Deputy Commissioner, Case Leader for the Public Groups and International Business Line. They are personal views based on my experience in tax administration.

¹ T S Eliot. *The Four Quartets*. From the opening lines of Quartet No1: *Burnt Norton*. Collected poems 1909–35 (1936) Faber & Faber.

attempt, back in the mid-1980s, to proceed with a sensible tax proposal for an Australia Card, where every citizen had a unique identifier known to all government departments.² This was an idea the community was not ready to embrace, and tax file numbers won the day; but we may yet see a unique identifier applied for wider social security purposes in the future. More recently in Australia we saw polarised opinions about new measures for a mining resource rent tax and a carbon tax. The very suggestion of new or increased taxes is enough to put politicians (all around the world) in hot water.³ The notion of 'formulary apportionment' of global income to ensure countries received their fair share of tax from cross-border transactions was also kicked around for a long time and is yet another concept that didn't find common appeal.

The strategic role of government revenue agencies is ultimately to provide a service to the public by effectively managing and shaping the Commonwealth tax and superannuation systems, to benefit all Australians – so it is a valued part of the community fabric.⁴ The ATO must be seen to act in a consistent and impartial manner and be subject to a balance of internal governance and external oversight to answer questions on our transparency and accountability for management of the tax system.

The record of the ATO on its primary function as the government's principal revenue collection agency stands for itself. Back in 1975–76 then-Commissioner Sir Edward Cain, CBE, reported net revenue collections of \$13.47b.⁵ By contrast, Commissioner Chris Jordan, AO, reported in the 2014–15 Annual Report total collections of \$336.8b – an almost 25-fold increase, albeit on a narrower tax base, and just ahead of nominal GDP growth over the same period, which had a 20-fold increase.⁶ Staff numbers also steadily increased over time to administer a changed mix of taxes; from the 1970s base of around 11,800 overall staff operating largely under state-based Deputy Commissioners to around 21,300 nationally based staff, over more dispersed locations.

² The Australia Card was proposed in 1986 as a national identity card. It responded to concerns about wide scale tax evasion, but did not gain popular public support because of privacy concerns. The legislation to introduce the card had already been rejected twice in the hostile Senate and it provided the trigger for the double dissolution of both houses, which led to the 1987 election in July, and a later decision of the new Government which was not to proceed with the Australia Card.

³ In an acceptance speech for the Grand Old Party (GOP) nomination in New Orleans at the Republican National Convention in 1988, the then presidential candidate George H W Bush famously said 'Read my lips: no new taxes'. This apparent commitment to voters was broken in a budget agreement in 1990 when defence spending escalated and the national budget deficit rose so taxes were increased in some areas. The current President elect has a different agenda for reduced tax rates that seems to have found common appeal for companies.

⁴ This aligns to a vision to be a leading tax administration known for its contemporary service, expertise and integrity. Back in the early 1990s, the Commissioner of Taxation, *Annual Report 1991–92*, Commissioner Overview at 3, published under the administration of then Commissioner T P Boucher, had the theme of working 'Towards a World Class Tax Administration', which remarked on new work underway to revitalise 'Australian tax administration'.

⁵ The Commissioner of Taxation, *Annual Report 1975–76*, at 18 lists total revenue of \$13.47b. The tax base at that time included estate duty, gift duty, sales tax, as well as levies for tobacco, wool, the stevedoring industry and fruit canning. The Health Insurance Levy had only just been introduced by *Income Tax Assessment Act 1976* at a basis rate of 2.5% for resident individuals so for the 1976–77 year three quarters of the basic rate applied, namely, 1.875%. The general company tax rate was 42.5%.

⁶ Nominal gross domestic product (GDP) in 1975–76 was \$83,150m and in 2014–15 it was \$1,609,992m, amounting to almost a twenty-fold increase. This assumes that taxation revenue is principally driven by movements in nominal income and at an aggregate level nominal GDP (I) is a proxy for national income.

There has been interest from time to time in estimating trends in ‘tax gaps’⁷ for the reason that the tax gap represents one high-level macro indicator of what has been lost. While generally sound, these indicators suffer from some inherent difficulties, given that they are based on estimates, assumptions and uncertainties. The initial tax gap measures may not be entirely robust benchmarks, especially as the range of accessible data sources improves to reduce uncertainty (for example by determining precise levels of non-detection of tax risks) and as assumptions are discarded and replaced by hard evidence. Notwithstanding such improved knowledge about the causes of the compliance gap, the absolute estimates may *increase* over time if it transpires that the basic approach has a conservative bias. What all this means is that we should expect in the future to improve on past efforts, but the outcome of improvements may not always be measured numerically.

A blueprint for a modern tax administration to be efficient and effective suggests some desirable features including adequate (operational) autonomy and adequate resources together with a stable legal framework (for assessment collection and enforcement) so that it can adequately respond to changing circumstances but is also accountable for its actions and subject to control and assessment.⁸

From time to time the ATO has been given various other roles outside traditional revenue collection, and it has necessarily shifted its focus to augment welfare delivery of government initiatives; so at various times the Commissioner of the day also had other hats to wear as the Child Support Registrar, the Development Allowance Authority, and (still) the Australian Business Registrar.⁹ Many of these initiatives set new administrative challenges for the ATO. Equally, they recognised the ATO as being capable of implementation of new functions that supported economic growth or collected payments on behalf of other agencies. Notwithstanding their eventual cessation or transition out of the agency, the effect has been to place greater demands on the ATO workforce, which has evolved and adapted to each challenge.

⁷ The compliance ‘tax gap’ is, broadly, the difference between taxes actually paid and what should have been paid if every entity or individual or remitter was fully compliant with their tax obligations. The related term ‘policy gap’ refers to tax foregone due to tax concessions that are part of the body of law (also called tax expenditures), especially those provisions that may be used to lower the tax levied or may operate to augment base erosion and profit-shifting to non-tax or low-tax jurisdictions.

⁸ European Commission report *Fiscal Blueprints – a path to a robust, modern and efficient tax administration* (European Communities 2007) 13–16. Also refer to the OECD report, *Tax Administration 2015, Comparative Information on OECD and other Advanced and Emerging Economies* (August 11, 2015) 23–6.

⁹ Under the *Child Support Act 1988* the Commissioner of Taxation became responsible for collection of child or spouse maintenance payments due under the Child Support Scheme until ten years later when it was sufficiently established to move out to the Department of Family and Community Services. Responsibility for the Development Allowance Authority, established in 1992, was also given to the Commissioner (or his delegates) as a statutory office holder responsible for management of tax incentive allowances under the *Development Allowance Authority Act 1992* for concessions that were designed to improve international competitiveness through ‘microeconomic reform’ for genuine private sector investment. There were two incentive schemes, the development allowance and the infrastructure borrowings tax offset scheme. However the initial incentives were terminated for new cases by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997* as the concession gave rise to unintended consequences and cost estimates (1993–2003) grew from \$100m to \$1.5b. Lastly the maintenance responsibility for the Australian Business Register accompanied the Australian Business Number single identifier that government introduced on 1 July 1999 as part of Government measures for a new tax system where some 2.8m requests for registration were received in that tax year.

The management of superannuation has been a significant concern for the ATO along with its partner agencies from the first appearance of superannuation funds in the tax law in the early 1960s.¹⁰ Then, it consisted of fairly rudimentary retirement vehicles. The more modern reforms have reacted to studies on our aging population and associated welfare burden. The superannuation industry controls a significant portion of the nation's investment,¹¹ and is too big to ignore. Complexity has emerged through a widening of policy and the imposition of compulsory employer superannuation support for employees (in the superannuation guarantee regime) and the current waves of employees' retirement savings held in SMSF vehicles. The demands on government, to encourage people to self-fund for their retirement and to decrease reliance on the public purse, are not likely to wane into the near future, given the bipartisan desire to reduce public debt.

III TAX ADMINISTRATION THEN AND NOW

The institution of the ATO is now 105 years old¹² and I don't plan to look back that far, although this history does present the seeds of many present initiatives, and no doubt some future ones.

A ATO Employee Experience

I commenced employment in the ATO in the somewhat myopic days of full ATO assessment, when the ATO manually checked information supplied in detailed paper tax returns. The workloads consisted of high-volume processing and 'technical scrutiny' of claims against taxable income. We coded the returns using alpha codes for a limited range of adjustments, and this was sent to data entry points which produced machine-generated advice notes issuing to taxpayers with their notices of assessment. Apart from the audit section, we had very limited personal contact with taxpayers, at either assessment or review stage, unless it was our role to review assessing action after lodgment of an objection in order to settle claims, based on a new opinion of the adequacy of evidence.

The lexicon we used last century included ATO buzzwords like 'Chief Assessor directives' and 'Canberra Income Tax Circular Memorandums' (CITCM) – a form of internally binding ruling – and it was an age when tax enquiry counters distributed verbal tax advice.

¹⁰ See the majority judgment of Stone and Allsop JJ in *Cameron Brae Pty Ltd v FCT*, 2007 ATC 4936 at 4945, [2007] FCAFC 135 where the legislative history of superannuation (in the context of s 82AAE) is recounted, noting the first appearance of superannuation as follows:

'[29] The first definition of the phrase 'superannuation fund' in the tax legislation appeared in the 1961 Act by the insertion of s 121B into the Tax Act...[and]...was variously amended.' The *Income Tax Assessment Act 1936* (Cth) introduced the present s 6(1) definition of a superannuation fund to mean (in part) '(a) a scheme for the payment of superannuation benefits'.

¹¹ Australian Bureau of Statistics, *Managed Funds, Australia*, September 2015, reported that the managed funds industry had \$2,590.6b under management.

¹² The First Annual Report was by the Commissioner of Land Tax in 1912, relating to the operations of the Federal Land Tax Department in the first year of existence (1910–11) and provided to Parliament by the then Treasurer of the Commonwealth, The Right Honorable Andrew Fisher. Of note, under the heading 'Evasion of the Act', at 11, it is stated: 'It may be fairly stated that, so far as the investigations of the Department have yet disclosed, the cases of deliberate breach or evasion are few in number.' Non-lodgements, debt collection activity, objections and appeals all get coverage.

We worked in large, breezy, open-plan offices without air conditioning or partitions, with one group telephone for half the floor area and a working day tabulated by time clock (Bundy Cards) for each employee, and a rattly tea trolley to herald the morning and afternoon work breaks. There was no capital gains tax, no goods and services tax, no fringe benefits tax, no comprehensive thin capitalisation rules and no taxation of financial instruments regime or a tax consolidation regime, so the interaction problems we now experience in the tax legislation were limited. In fact, a lot of time was spent on defining and refining the basics of tax law – the ambit of income, deductions, rebates and concessions. Those were the days of targets to achieve daily output tallies, with limited time for technical scrutiny and with machine-like turnover of file stock of salary and wage, partnership, trust, and to a lesser extent company and superannuation returns.

The ATO has more recently focused on the employee experience and capability improvements through knowledge sharing, updating workplace infrastructure to create an agile work environment of virtual desktop platforms. This is designed to create a smarter and adaptable workforce. The pace of technology innovation has allowed government an enhanced ability to use technology to drive efficiencies, as we moved away from typing pools of dedicated people on typewriters and towards a computer on every desk. Twenty-five years ago our ‘aim was that... 30 per cent of staff would have access to business tools to meet the needs of the office of the future.’¹³ The present ATO Executive might justifiably be able to trumpet that they have well surpassed that objective.

B Attitudes to Tax Administration

ATO attitudes to administration have certainly evolved over time – from early times of ‘protecting the revenue’, to a more efficient and effective operation that ensures taxpayers’ willing participation in the tax system through payment of the right amount of tax at the right time, thereby building community confidence.¹⁴

With the introduction of *The Freedom of Information Act 1982* (Cth), a greater environment of openness came to Australian Public Service agencies, and the ATO published many internal guidance notes to make them generally available, as well as making other material gathered under its formal powers available on request. Almost a decade earlier, in the mid-1970s, the Commissioner’s Annual Report had its own version of a release of (internal) information detailing the people who had an ‘understatement of taxable income’ during the year, including names, suburb of residential address (or town) of individuals and occupation/business of all individuals and companies and the amount of that understatement, together with the amount of penalty imposed, for the relevant years.¹⁵

If a sign of a mature tax system is the sophistication of its risk and collection mechanisms, then it might well be expected that both mechanisms will continue to feature on the improvement continuum into the future.

Risk detection mechanisms that were used at the turn of this century in Australian tax administration relied heavily on data matching, with intelligence from both audits and

¹³ Commissioner of Taxation, *Annual Report 1991–92*, 138, ‘Goal: Staff finding the ATO a satisfying place to work: Business Tools Objective’.

¹⁴ ATO Program Blue Print Summary 2015 <<http://reinventing.ato.gov.au/program-blueprint-summary>>.

¹⁵ See Commissioner of Taxation, *Annual Reports of 1974–75 and 1975–76*: Schedule 1 ‘Breaches and Evasions’.

provision of advice, as well as community contacts, research initiatives and a newly formed Analytics Project.¹⁶ The ATO's risk systems were somewhat rudimentary in the 1980s, just at the time foreign banks were given licences to operate in Australia. Rather than management-initiated audits, specialist in-house economists were employed to look at the tax performance of various sub-segments of large and medium companies operating in Australia, and those that displayed signs of low or no profit margins came onto the ATO's radar. Also of interest to the ATO were innovative financial instruments, the substance of which were not well understood in the ATO at that time. An attempt to access information not freely made available to the ATO on particular financial arrangements was discussed in an often-cited court case in which the ATO auditors had carried out an 'unannounced visit' on Citibank's premises to seek information using the Commissioner's general access power.¹⁷ The courts properly pointed out the need for due process in seeking broad access and allowing claims for legal professional privilege to be made.

The ATO does indeed acknowledge the right of taxpayers to make claims for legal professional privilege, and also allows an opportunity to make a claim for the accountants' concession.¹⁸ Occasionally, in my experience, we have found that broad claims to exclude access to tranches of documents on the basis of alleged privilege are capable of stopping difficult audits in their tracks, and the ATO is at pains to make sure that such claims are asserted only where they properly apply. In the instructive words of Lord Justice Hamilton:

Claiming privilege in an affidavit of documents is not like pronouncing a spell, which, once uttered, makes all the documents taboo.¹⁹

IV THE ADVENT OF SELF-ASSESSMENT AND RULINGS

What sparked one of the most significant changes to tax administration was undoubtedly the introduction of the self-assessment system on 1 July 1986.²⁰ In this new world of self-assessment, income tax returns were no longer technically scrutinised by income tax assessors. Rather, tax returns were input directly into the data warehouse repository and the ATO shifted emphasis to post-assessment audit and 'compliance improvement activities'.²¹ Development of sophisticated risk systems that tapped into a suite of meta-data to drive compliance plans was inconceivable at that time, as was the notion of the ATO providing electronic pre-filled information on personal tax returns.

¹⁶ Commissioner of Taxation, *Annual Report 2002-03*, 70-71 (Michael Carmody).

¹⁷ *FCT & Ors v Citibank Ltd* 89 ATC 4268.

¹⁸ In November 1989, the ATO granted a concession to clients of professional accounting advisors which allowed such advisors to withhold, in the absence of exceptional circumstances, certain documents from the ATO.

¹⁹ *Birmingham and Midland Motor Omnibus Company Ltd v London and North Western Railway Company* [1913] 3 KB 850 at 859.

²⁰ See House of Representatives Hansard, 63, Treasurer Paul Keating, 2nd reading of Appropriation Bill No1 1985-86 on 20 August 1985: 'The Government has also approved the implementation of a system of self-assessment by taxpayers to be introduced from 1 July 1986. This will greatly increase the capacity of the Tax Office to concentrate its efforts on the main areas of avoidance and evasion and increase efficiency in processing tax returns.'

²¹ Address by Michael D'Ascenzo (then Acting First Assistant Commissioner of Taxation) to the National Convention of the Taxation Institute of Australia on 9 May 1993 at 2.

The internal review that made traditional assessing production work redundant found simply that changes were needed in the face of the:

1. 'costs associated to assess business and company returns';
2. insufficient detection and treatment of general non-compliance with tax obligations; and
3. 'lack of job satisfaction for staff'.

At the time, various stakeholder associations were involved and it was heralded as a new age of consultation and openness by the ATO – which a former Commissioner referenced as allowing the ATO to put 'past enmities aside' – akin to the Berlin wall coming down, and through such co-operation, building 'a modern tax administration, world class.'²²

In fact the tax profession, in that decade and since, has been heavily involved in consultation on many novel movements in tax legislation stemming from numerous legislative amendments coming from the Tax Law Improvement Project that introduced the 1997 Act along with some new measures,²³ and the mandatory Regulation Impact Statements that came into being to estimate impacts of proposals affecting business.²⁴ In the 2000s, the integrity of the tax system was sought to be improved by a new consolidations regime,²⁵ among other changes, the biggest being the abolition of sales tax and the introduction of a goods and services tax on 1 July 2000.

Consultation emerged as a key plank in the modus operandi of Treasury, the Board of Taxation and the ATO. Notwithstanding its undoubted benefits, the growth of various levels of consultation may perhaps have been over-enthusiastically adopted in the ATO.²⁶ A recent review of ATO industry, professional and community consultation committees under the ATO Reinvention banner noted duplication and attendant resourcing issues, and the decision was made to reduce them from 68 to 8, and reduce the number of internal committees from 45 to 22, with special-purpose and technical forums convened as required.²⁷

²² Ibid. Footnote 10 at 8, citing the (then) Commissioner T B Boucher's statement to the Joint Public Accounts Committee of 29 May 1992.

²³ The new *Income Tax Assessment Act 1997* was written to make the law more understandable and principle based. Also in the 1990s we saw *Taxation of Financial Arrangements* Consultation document (December 1993) followed by an Issues paper in 1996 etc. (until legislation emerged), the redrafting of the *Thin Capitalisation* provisions in TLAB (No 4) 1997, the introduction of *Controlled Foreign Companies* rules (1990) to tax foreign source income of Australian residents and extending Part IVA to include withholding tax avoidance (per s 177CA in the 1996–97 income year).

²⁴ This followed the government's Regulation Review and was part of, 'More Time for Business' 24 March 1997 by the Hon John Howard.

²⁵ Per various *New Business Tax System Bills* in 2002. Other highlights included the Simplified Tax System for small business; the Australian Business Number became our single business identifier; the PAYGI system replaced provisional tax, prescribed payments, company instalments and withholding tax; and let's not forget company headline tax rates plummeted from 36% to 34% in 2000–01 and then to 30% for 2001–02.

²⁶ See the Report of the Commissioner of Taxation 2008–09, where the three Cs were embraced – consultation, collaboration and co-design.

²⁷ Geoff Leeper, then Second Commissioner, People, Systems and Services, Address to the National Tax Practitioner Conference, Sydney, Wednesday, 18 June 2014 said that 'a considerable amount of time was invested in the old arrangements, with almost 1,500 external people participating in 230 meetings

While core issues should invariably benefit from consultation, the future may not lie in committee-driven consultation but in more interactive, real-time management and intelligence gathering where collective knowledge sharing takes place.

The Self-Assessment Priority Tasks Project (1991) made recommendations that also led to a new system of binding public rulings and binding private rulings, along with new systems for penalty and interest, although the freedom of information changes had started off an earlier internal rulings process.²⁸

The ATO's Public Rulings guidance is a key service that publishes ATO technical interpretations. It came of age with notifications by way of the Commonwealth Gazette, and a panel of professional tax experts at the review and clearance stage to bring in commercial acumen and independent views. The initial, untracked/unnumbered issuance of private binding rulings matured considerably after implementation of quality standards and improvements recommended after several substantial reviews.²⁹ Guidance through the provision of ATO views continues to be a hallmark of its service, and it assists voluntary compliance.

V ASSISTANCE TO TAXPAYERS, AND COMMUNITY EXPECTATIONS

In our current environment, individual taxpayers enjoy the benefit of pre-filled electronic tax returns, populated with financial institution data, dividend data, employer information and other benefit information using the downloadable e-Tax module and the newer web-based myTax. The ATO is part of myGov, which now has more than 4.3m linked clients, as a single point of entry for government service. The ATO is moving to a future that has a digital interface platform, needing very little taxpayer effort to supply information or prepare documentation in many cases, especially for workers on a lower income.

I can recall a time in 2004 when I was responsible for management of the Individuals business line. An officer advised me he had developed an instruction guide for any taxpayer who was in receipt of an eligible termination payment to calculate the concessional and full tax outcome. It had more than 70 steps, with all possible permutations covered. While that was indeed a very thorough approach, I asked him to have another go at more simplified instructions to cover the basics for self-preparers.

a year as part of 68 ongoing committees. This has been significantly reduced to eight stewardship committees plus project-like consultation for specific issues.' See also similar comments from Chris Jordan, Commissioner of Taxation in his address to the ATAX 11th International Tax Administration Conference, Sydney, 14 April 2014. Note the Commissioner of Taxation, *Annual Report 2014–15* which recounts that 68 matters were consulted on and completed, and 53 matters were in progress.

²⁸ A Report on Aspects of Income Tax Self-Assessment in August 2004 by Treasury further suggested improvements to the advice system, to make it more responsive including the option of a deemed negative ruling for those older than 60 days, refraining from ruling on issues not directly raised in private binding ruling (PBR) applications and shorter periods of review.

²⁹ For example, The Australian National Audit Office (ANAO) performance audit of July 2001, *The Australian Taxation Office's Administration of Taxation Rulings*, Audit Report No. 3 of 2001–2002 and the subsequent ANAO *Administration of Taxation Rulings – Follow up Audit*, Audit Report No. 7 of 2004–05, The Australian Treasury *Report on Aspects of Income Tax Self-Assessment*, August 2004, 7–25 and the more limited Inspector-General of Taxation (IGT) *Review of the Taxation Office's administration of public binding advice* in a report to the Assistant Treasurer of 7 April 2009; and an IGT report, *A review of potential revenue bias in private binding rulings* released on 25 February 2008.

One of the ATO's key performance indicators was the time-cost index for business and superannuation funds to prepare and complete key tax forms.³⁰ The ATO started very limited qualitative work on the costs of compliance for small business back in 1991 by focusing on record-keeping and reporting requirements. Various trends were identified, from inadequate software availability to the burdens of sales tax. This was not unusual, since the sales tax rules had developed from a single rate tax with limited exemptions (when introduced in 1930) to a much larger suite of assessment Acts and exemptions.³¹ Then, in September and October 1995, under the Compliance Improvement banner in conjunction with the Revenue Analysis branch, the ATO conducted wider, but limited studies,³² which revealed that the average time spent by businesses (surveyed) on tax activities per month was 18–23 hours.³³ However, the finding I most liked was that 'on average, businesses consider that they would save 94 hours per annum if federal taxation were abolished', and if allowed 'fair compensation' for their compliance costs, would claim approximately \$3,000 (outliers excluded). Yet on the upside, 'approximately half the respondents agreed that their requirements of the federal tax system improved the record keeping of their business.'

The Taxpayers' Charter marked a service shift for ATO operations on its commencement on 1 July 1997, as it applied to all taxpayers' interactions with the ATO and introduced a set of service standards against which administrative responses would be measured.³⁴ The genesis of the Charter followed a Joint Public Accounts Committee recommendation in 1993, and was in line with initiatives of some overseas tax jurisdictions in explicitly documenting expectations and commitments as to how revenue authorities would treat taxpayers and vice versa. The initiative also coincided with the Howard Government's statement that Service Charters were to apply to all government agencies that provided services to the public 'to create a more open and responsive service culture in the public sector'.³⁵ The ATO was now making a number of benchmark commitments to maintain professional excellence, and these were tracked through service standards that have been continuously maintained in governance reports against key performance measures. Levels of performance and ATO processes are aspects of tax administration that remain evergreen and will no doubt continue to be reviewed, noting that the Inspector-General of Taxation's and the work programs of the Australian National Audit Office (ANAO) feature strongly in performance reviews of the ATO.

In the same era (late December 1996) the ATO began measuring general community perceptions of its performance from individual and business taxpayers who had had contact

³⁰ Treasury Portfolio Budget Statements 2015–16: Budget related paper No 116 at 203.

³¹ The joint study with the Department of Industry, Technology and Commerce and researched by Dr Ian Wallschutzky, Associate Professor in Taxation, University of Newcastle, reviewed over 12 months, twelve small businesses, both new and well established, in Qld, Victoria and NSW.

³² Chris Evans, Katherine Ritchie, Binh Tran-Nam and Michael Walpole, UNSW, 27 November 1995, *Costs of Compliance: An Interim Report*.

³³ Brian Gibson & Ian Wallschutzky, Department of Commerce, University of Newcastle in a paper for a Tax Compliance Research Conference in Canberra in December 1993, *A Case Study Exploration of Taxation Compliance Issues in Small Business*. In the study conducted from interviews of 123 participants in the 12 months between November 1991 and 1992, time spent on tax compliance activities had increased from the 12-hour average per month and the impact was assessed at that time as 'either \$7,425 or \$16,335 depending on how opportunity cost was assessed.'

³⁴ The Joint Committee of Public Accounts recommended in their report number 326 of November 1993, that the ATO adopt a Taxpayers Charter to address a perceived imbalance of the Commissioner's wide powers for income tax collection against the rights of taxpayers.

³⁵ The Hon John Howard MP, 'More Time for Business,' 24 March 1997, 56.

with the ATO, to obtain views about its professionalism in respect of areas covered by the Charter.³⁶ The outcome was generally positive on competence and integrity, but work on ATO responsiveness and taxpayers rights continued.

Current surveys reveal positive feedback from the community on the ATO's 'perception of fairness' surveys³⁷ concerning individuals, and earlier resolution of tax disputes as alternatives to litigation was also perceived well. Technology has allowed feedback to be interactive and online, and for an ATO presence on Facebook/Twitter/You Tube – something that could not have been delivered in the past.³⁸ In addition, the Small Business Assist web page provides real-time guidance and support from an ATO officer on particular topics, and the Let's Talk Forum (discussion board) has interactive conversations with tax agents with topics like the 'digital by default initiative'. These avenues for positive engagement with the community fosters willing participation, in ways we would not have envisaged in times past. The ATO work covers both internal and external facing improvements.

VI STRUCTURE AND MODERNISATION OF THE ATO

Our brief history of the ATO records that one of the most significant decisions was to revitalise our computer capacity, to integrate it into our activities for better compliance and service initiatives and to modernise the ATO.³⁹ Typing pools where officers once took handwritten notes to be converted to type were closed, and work processes were redesigned. To transition from a processing organisation to a service-based organisation, we attended team-building workshops run in-house by senior tax officers, with a range of visitor trainers, from all walks of life, who demonstrated a broad range of skills including ethics, tactics and human resources management. This program, funded through the Public Services Commission, was a new style of manager training looking at the 'psychological and sociological problems' that may be experienced by ATO staff, which wasn't found in any rule book produced at the time.⁴⁰ In addition, a core competency model was developed to match

³⁶ Independent consultants such as Millward Brown Australia, were engaged by the ATO to initiate a process to obtain service feedback, as a way to gauge effectiveness. Around 2,000 people were randomly contacted by telephone with core questions (from 1996) and then in December 2000 a six monthly Professionalism survey was conducted using 9 characteristics expecting to achieve a 70% satisfaction rating. Regular feedback is now a feature of the modern ATO.

³⁷ Millward Brown Australia consultancy.

³⁸ Facebook – ATO page posts educational notes for different taxpayer communities to increase awareness. For example, deadlines to lodge returns, tips for small businesses – it allows the public to comment on the posts as well; You Tube – features videos on various tax and super topics including ranging from presentations by ATO officers on proposed legislative changes affecting foreign investors, through to basic educational videos on basic tax obligations targeting recent migrants. LinkedIn – promotes visibility of the ATO to the local and global professional working community. You can follow the ATO on this site to receive continual latest updates/posts and also be connected to those that are working in the organisation.

³⁹ Edmonds, Leigh, *Working for all Australians 1910–2010: A brief history of the Australian Taxation Office* ATO Canberra November 2010 at 196–206. The Modernisation Program is described in the Commissioner of Taxation, *Annual Report 1993–94*, 83–9, to have received in-principle approval from Government in 1987 for 'improving our services to the community and meeting the challenges of our changing environment toward the year 2000.'

⁴⁰ The Managing in the Nineties Program (MIN) was heavy on practical training and experiential learning and 'light on theory' and resonated well with many people who were enrolled into the Program. Its aim was to have it rolled out to 17 offices: (71st Report) Commissioner of Taxation, *Annual Report 1991–92*, 156.

employee skill sets with ATO work types, and the ATO supported a Bachelor of Taxation degree through the University of NSW (ATAX) for undergraduate degrees and from 1993 for postgraduate courses.⁴¹

In the 1990s the ATO became a new nationally run business organisation that took over from the old state-run branch offices. I found myself as a national litigation appeals manager fielding calls on cases around the country, which was quite a learning curve. Tax Law Services was set up in 1994 to provide technical leadership throughout the ATO to resolve complex technical matters in an environment where 'all technical staff could perform at their optimum'. It consisted of three arms: Legislative Services, whose primary role was policy advice and our window to government; Tax Counsel Network, which was a team of senior technical resources; and a Practice Management & Development arm, which developed technological and support tools and professional development activities. All three resulted from the government's investment in the ATO's Compliance Strategy in September 1992. The then ATO's Second Commissioner (of Law) saw that the National Tax Practice role was 'interpreting, applying, mending and/or developing the law'.⁴²

In terms of client engagement, the ATO unveiled a Compliance Pyramid that formed the subject matter of many PhD theses and research papers and provided a 'valuable framework for compliance work' in the ATO.⁴³ The ATO Compliance Model worked well to depict the levels of help and engagement warranted against levels of compliance behaviour. At the base of the pyramid, where most taxpayers converged, mutual 'Trust and Cooperation' was observed; in the middle this became 'passive' facilitation, then 'active' facilitation, until, at the top pointy end of the pyramid, a small group of high-risk taxpayers warranted 'tougher enforcement'.⁴⁴

VII TAX REFORM AND THE ATO'S CONTRIBUTION

It is fair to say that some attempts at making tax law less complex and more equitable or simpler are well documented and seem to have taken time to gestate.⁴⁵ The *Asprey Report* completed in 1975 had a central objective of broadening the tax base and lowering taxes. Sounds like a familiar theme.

The tax reform package announced in September of 1985 by then Treasurer Keating introduced across-the-board cuts in marginal tax rates, a new tax on fringe benefits and capital gains tax and the taxation of income from foreign sources, with an allowance for foreign tax already paid. Cabinet decided that it was not the right time to introduce a consumption tax, because they were advised that a 'yield from a tax on services and a major

⁴¹ Our three major training programs were the Australian Taxation Studies Program (ATAX), the Taxation Officer Development (TOD) program (eg TOD 1 competency based training for lowest graded officers was developed with the Public Sector Union) and continuing professional development. ATAX began in 1991 and by 2002 had 582 graduates, largely from the ATO.

⁴² Peter Simpson, then Second Commissioner as reported in our staff magazine, *Tax People*, 1994.

⁴³ Michael D'Ascenzo, *Y2K relationships – the ATO and you post 2000*, *Taxation in Australia*, Vol 34, No.8 February 2000, 421–30.

⁴⁴ *Ibid.*

⁴⁵ For example, the 1959 Commonwealth Committee on Taxation, chaired by Sir George Ligertwood addressed tax avoidance reform but other recommendations were not picked up until the next major reform exercise in 1972 by Justice KW Asprey and the Taxation Review Committee.

extension of the wholesale sales tax' would be insufficient to fund tax cuts to low income earners.⁴⁶

When capital gains tax was introduced from September 1985 on gains not previously taxed, it managed to generate revenue beyond Treasury expectations.⁴⁷ A number of factors contributed to this, including the growth in the global and Australian economies in that decade, the scope of the net as drafted, and the lack of concessional rates. In the early days, we had a number of interpretative and technical issues to determine, and we issued an early form of tax determination to provide quick answers to vexed issues.

The policy and non-policy initiatives stemming from reviews recommending the major initiative of a goods and services tax (GST), as well as a new PAYG system, involved large-scale reforms that meant a major overhaul of ATO systems and procedures, and which impacted on many jobs in the ATO.⁴⁸ The ensuing massive recruitment exercise, which employed 4,000 new staff to deal with the additional workload in call centres and enquiry counters, is legendary in the ATO, and such recruitment is not likely to be seen on such a significant level again.

Since the handover of law design to Treasury, the ATO has contributed ideas and opinions, especially about the administrative workability of proposed new laws. It has courageously pointed out likely impediments or flaws, and provided practical input on possible improvements to proposed changes. Its corporate plan speaks of influencing policy and law design for more certain outcomes.⁴⁹

The most comprehensive and important examination of the tax and transfer system (excluding GST and superannuation) was conducted by the Henry Review in 2008–09, at the time of the global financial crisis. It produced some enlightened ideas for a future tax system.

Beyond tax reform, large-scale tax changes traditionally bring with them an increase in implementation challenges for tax administration and present opportunities for our expert workforce.

Remarkably, though, with all the media concentration on companies' tax obligations, the tax mix – where the Commonwealth derives its (direct) revenue – has not changed significantly in 60 years. It has been observed that about 50 per cent is from personal income tax collections and (in the last decade) about 20 per cent in company income tax. However, tax

⁴⁶ Cabinet Decision No. 6513 – Tax reform. Secretary to Cabinet file note dated 12 August 1985: NAA: A13979, 6513, National Archives of Australia. Australian Government publication.

⁴⁷ National Archives of Australia, Australian Government. There were no reliable 'statistics available regarding the distributions of capital gains across income ranges in Australia' although information from Cabinet Decision No. 5629 from 12 May 1985 (at 402) suggests that early low estimates of revenue collections were derived from Canadian capital gains data (by grade of income) by chart at 405. These were later overshadowed by estimated collections of around \$300m in revenue over a 5 year period: NAA: A14039, 2865.

⁴⁸ This occurred mainly through the Tax Simplification Taskforce in 1990, the Review of Business Taxation Report in 1999 (Ralph Report) and the *A New Tax System* (ANTS). There was also an 8 person 'New Tax System Advisory Board' established in July 1999 by the Treasurer to assist with effective implementation, to minimise transitional issues and to advise government about assistance to business and community sectors.

⁴⁹ When the ATO sees weaknesses in the tax law it advises government and occasionally this process of advice and subsequent public announcement has not worked as well as intended, for example where a stockpile of proposed legislative improvements is not enacted.

reform does bring changes within tax bases.⁵⁰ Leaving aside indirect taxes, it is hard to see the incidence and reliance on personal tax changing much in the future, as the world trend statistics show continuing stability in individual income tax and indirect tax as a steady source of revenue.⁵¹

Tax reform is a perennial topic for academics, the business community and indeed government. The big projects have been difficult to bring to fruition unscathed, and greater success is sometimes found in targeted reforms – notwithstanding the exceptional predicaments, trade-offs and carve-outs that can arise to adversely impact on an effective design for new taxes, for example the Mining Resource Rent Tax and Carbon Tax.

Clearly taxation concessions should assist the growth of businesses in their establishment and early stages, and once they are mature concessions should be stemmed and a fair share of tax paid by back to the community that is buying the goods and services of the business, or allowing exploitation of resources in our country. The challenge of balancing the system for greater simplicity, equity and clarity is ongoing.

VIII SCHEMES THAT FRUSTRATED THE BEST TAX ADMINISTRATORS AND ONGOING CHALLENGING AREAS

A *Frustrating Schemes of the Past*

The ATO's investigation of tax avoidance activities in the late 1970s to early 1980s grew well beyond its ability and the extent of taxpayer involvement took everyone by surprise, such that ATO resourcing barely kept pace with the monster.

The Annual Reports of the Commissioner to Parliament recount the frustration of the Australian tax administration at trying to address and understand the 'new and ingenious misuse of tax provisions' which was exacerbated by the use of 'evasive tactics' to frustrate ATO investigative action and featured 'deliberately concealing the facts' and 'making claims based on fictitious transactions'.⁵²

It is still at times extremely difficult to get the full facts necessary to properly determine tax risks, and to the extent that asymmetric information flows arise that inhibit parties from arriving at good decision making, it creates delays. It is important that tax administrations

⁵⁰ M Stewart, A Moore, P Whiteford and R Q Grafton, *A Stocktake of the Tax System and Directions for Reform – 5 years after the Henry Review*, February 2015, Tax and Transfer Policy Institute, Crawford School of Public Policy Paper, Australian National University at 30 and Chart 3.4 *Composition of the Commonwealth Tax System since 1950 (to 2012)*.

⁵¹ OECD *Revenue Statistics* report 2015, summary *press release 03/12/2015*: 'Corporate tax revenues have been falling across OECD countries since the global economic crisis, putting greater pressure on individual taxpayers to ensure that governments meet financing requirements, according to new data from the OECD's annual Revenue Statistics publication. Average revenues from corporate incomes and gains fell from 3.6% to 2.8% of gross domestic product (GDP) over the 2007–14 period. Revenues from individual income tax grew from 8.8% to 8.9% and VAT revenues grew from 6.5% to 6.8% over the same period'. Hence the concentration of the topic at the G20 country group and evolution of the Base Erosion and Profit Shifting Project to review some international mismatched tax law that allows corporate profits to be shifted or eliminated.

⁵² 59th Report of the Commissioner of Taxation 1979–80: *Management, Organization, Compliance and Personnel* at 4 and *Tax Avoidance* at 7.

improve the transparency of transactions that involve worldwide financial flows, related-party dealings and the taxation implications of global arrangements.⁵³

A popular method of avoidance of taxation that proliferated from the 1970s was stripping companies of their assets (or pre-tax profits) prior to their tax liabilities being paid. This was described as an 'alarming tactic' because it was compounded by an attendant lack of provision in the company's (bank) accounts for any (subsequent) tax payments that may be assessed; it was regarded as tax evasion pure and simple.⁵⁴ In response, the Commonwealth Parliament passed a number of related Acts in 1982, the most important of which was the *Taxation (Unpaid Company Tax) Assessment Act 1982*, which sought to recover evaded taxes under the *Crimes (Taxation Offences) Act 1980*. The ATO ultimately issued many notices to former owners or vendor shareholders for recoupment of tax where it was thought they were bona fide owners/directors of companies, but some found their way into the 'bottom of the harbour' repository of the criminally inclined. The tax evasion was very bold, blatant and a serious threat to the equity and fairness of the tax system, such that the remedial legislation was given a retrospective application (to all schemes uncovered that were 'practised on a wide scale entered into on or after 1 January 1972'), and the law excluded judicial review as to the assessment of the recoupment tax under the *Administrative Decisions (Judicial Review) Act 1977*.⁵⁵

Famously, an opponent of that legislation was Senator Don Chipp – who, speaking against the bill in the Senate, said:

Good heavens; give politicians the chance to legislate retrospectively and we will open a Pandora's box. I find that quite frightening. On this occasion a Pandora's box is opened in the excuse of catching the filthy people who cheat on tax. It is done for a noble purpose, one might say, and I agree. But I have never been one to subscribe to the view that the end justifies the means. That sort of proposition leads one down a track which is fraught with disaster. That is the track that Adolf Hitler went down. It is the track that every tyrant in history has gone down; that is, to make illegal today something which was legal last year.⁵⁶

Notwithstanding Senator Chipp's colourful remarks on the introduction of retrospective legislation,⁵⁷ it can be justified to ensure consistency of treatment to all participants (not the fewer late entrants). The era marked a change in the way the ATO handled large tranches of work, and in its awareness of the extent of evasion practices. The retrospectivity issue will

⁵³ The Senate Enquiry Reference Committee – enquiry into corporate tax avoidance Interim Report of 2015, has made specific recommendations to deal with Multinationals.

⁵⁴ Ibid.

⁵⁵ Explanatory Memorandum, *Taxation (Unpaid Company Tax) Assessment Bill 1982*, Part I. Treasurer Hon John Howard.

⁵⁶ See *Senate Hansard*, 19 November 1982 at 2,592.

⁵⁷ Senate Standing Order 30 also addresses retrospective bills in the tax context, by stating that if they are not introduced within 6 months of announcement then the commencement date will be after introduction of legislation into Parliament – effectively when the bill is made public. Treasury reviewed this aspect in August 2004 in their *Report on Aspects of Income Tax Self-Assessment* and concluded that retrospective start dates are appropriate to correct an unintended consequence, to address a tax avoidance issue or to correct an undesirable behavioural change on a measure-by-measure basis.

surely be a feature of legislative change and tax administration at some future time to ensure transactions falling within the same class being treated consistently.⁵⁸

Our internal history records that by 1983, the ATO had successfully employed another 580 staff⁵⁹ to strengthen overall compliance activities, and with the retirement of Chief Justice Barwick from the High Court the ATO was again successful in a tax avoidance case.⁶⁰ The waxing and waning of contentious issues in litigated tax cases will no doubt be another feature of a tax system where significant issues emerge to present uncertainty.

B Frustrations of the More Recent Past

The High Court informed us, in judgments on several test cases which the ATO considered amounted to avoidance of tax under the former s 260, that the general anti-avoidance law didn't work – because, evidently, the taxpayer had a choice of tax-effective arrangements and the ATO was not permitted to reconstruct the arrangement to produce a different tax effect. The age of tax avoidance annihilation under s 260 was replaced by the age of Part IVA. The changed law allowed an objective view of a particular arrangement and its surrounding circumstances, and included countering the then-prominent dividend stripping schemes which purported to replace otherwise taxable profits into the hands of shareholders in a tax free form.

It was not until about 1997 that the ATO commenced work on what became known as 'mass marketed schemes', after it became aware of how pervasive they had become and how innovative the arrangements were. Many aggressive promoters had made fees from targeting ordinary Australians such as miners in Kalgoorlie, to claim large deductions for arrangements that created tax benefits. These included schemes related to afforestation, agriculture, franchises, employee benefit and films, where large tax refunds were promised for very little equity outlay and non-recourse loans supposedly funded by future revenue flows. It was all too good to be true, quite uncommercial in nature, and certainly ineffective under the tax law.⁶¹

⁵⁸ Note the Full Federal Court decision in *IOOF Holdings Ltd v FCT & Anor* [2014] FCAFC 91, an appeal from a private ruling challenging whether it was entitled to deductions for rights to future income (RTFI) in respect to shares in Australian Wealth Management, where it was held that there was no 'accrued right' to have the matter determined according to the law that existed before the Consolidation provisions were amended to remove the deduction for RTFI, in Tax Laws Amendment (2012 Measures No.2) Act 2012.

⁵⁹ Leigh Edmonds, *Working for all Australians 1910–2010: A Brief History of the Australian Taxation Office*, 172–3. See also the 59th Report of the Commissioner of Taxation 1979–80 where at 4 the Public Service Board approved an addition of 400 staff to the staff ceiling for that year and 180 in the following year.

⁶⁰ The High Court refused special leave to appeal against the Full Federal Court case of *Leary v FCT* 80 ATC 4438, where counsel for the taxpayer had argued before the Full Federal Court that notwithstanding a material advantage had been obtained by the taxpayer paying \$10,000 to the Order of St John, the taxpayer should not be deprived of a gift deduction. At the time, this was a significant case for the Commissioner to win.

⁶¹ The ATO applied the general anti avoidance provisions to many schemes, a Senate enquiry was conducted and the Ombudsman investigated the Budplan arrangements after investor complaints and for the benefit of 'affected investors, tax advisers and financial planners'. Refer to the publicly released reports of the Commonwealth Ombudsman under s 35A of *Ombudsman Act 1976*: '*The ATO and Budplan*' of June 1999; and '*ATO and Main Camp; Report into the investigation into the ATO's handling of claims for tax deductions by investors in mass-marketed tax effective schemes known as Main Camp*'. Recommendations were adopted by the ATO and some legislative measures were also introduced such as a limit on prepayments related to tax shelters.

By 30 June 2001, the ATO had finalised its views on 176 investment schemes involving some 40,000 taxpayers caught up in one or more of the arrangements.⁶² The administrative reaction to the issues was, once understood, to reduce the interest rate on debts, start a print advertising campaign with warnings and fact sheets, and look at dispute resolution mechanisms. I was part of the widely held settlement panel that approved terms of settlement offered to individual investors on some arrangements to resolve disputes, and guidelines were posted on our website.

Had the ATO been able to detect and comprehend some early warning signs, or had there been systematic intelligence signalling material changes to high-risk refunds or instalment variation patterns as they were occurring – then the acknowledged slow administrative responses to the extensive risks may have permitted real-time assessments. Today's Smarter Data initiatives are designed to assist with risk patterns, but back then we used Product Rulings, introduced in June 1998 to create an avenue to advise our views at the early stages of prospectus-based offerings, to allow arrangers and prospective investors some certainty. Most of the litigation challenges by promoters to these arrangements found the ATO ultimately successful.⁶³

This dark era of aggressive tax planning led to the Commissioner releasing Taxpayer Alerts or early warnings about the administrative treatment of tax schemes that we had encountered and were likely to take action against. More comprehensively, the ATO shifted its focus to promoters and deterrence of this behaviour; hence a decision had to be made whether to bring in a taxpayer disclosure system for participants in an (identified) tax scheme, or whether a targeted deterrent should be aimed at those promoting the arrangements. The latter was viewed as preferable at the time, so in 2006 a penalty regime to deter the promotion of tax exploitation schemes was presumed to be the more effective approach, especially with the ability to seek voluntary undertakings from the promoter or court injunctions.⁶⁴ In response to the need to provide more guidance, the ATO employed targeted advice material, *Don't Take the Bait*, and fact sheets for Investors Tax Planning – *Investigate before investing* – to give simple, clear tips to investors.

IX ATO PRESENCE ON THE INTERNATIONAL FRONT

Today we marvel that wealth can be made rapidly by young entrepreneurs devising digital services to a mass audience. The scale of such value creation with global activities defies the traditional concepts of 'source' and 'residence' and creates new issues to solve. The new words to describe the attendant loss of country revenue by groups using global tax-advantaged positions cannot be labelled with the old nomenclature, so a new term is coined, 'base erosion and profit shifting'. With much global attention, the Organisation for Economic Co-operation and Development (OECD) has progressed its work on base erosion topics, and has pursued the development of guiding principles aimed at achieving greater tax

⁶² Commissioner of Taxation Annual Report of 2000–01 at 49.

⁶³ For example, the Budplan scheme case of *Howland-Rose & Ors v FCT* 2002 ATC 4200 where tax benefits were denied by the court, and denial of research and development expenses in the Administrative Appeals Tribunal case of *Brody & Ors v FCT* 2007 ATC 2493.

⁶⁴ *Taxation Laws Amendments (2006 Measures No.1) Act 2006*. The government has signalled its intent to progress a new disclosure reporting regime for aggressive tax planning schemes to apply to tax and financial advisors. A May 2016 Treasury consultation Paper, *OECD Proposals for Mandatory Disclosure of Tax Information*, closed for comment in July 2016.

transparency and consensus measures that can be adopted by countries in their domestic laws. It is anticipated that the implementation of improved avenues to exchange information between jurisdictions, and proposed multilateral instruments to efficiently implement treaty changes without the need to renegotiate a myriad of bilateral treaties, will augment international cooperation between countries to combat treaty shopping and other forms of treaty opportunism.⁶⁵ There is inherent good sense in finding shared solutions for commonly encountered problems, in the world of tax.

Looking back to overseas postings in the 1970s, the ATO had representatives in two locations, London and in Washington DC.⁶⁶ This was at a stage when just nine double tax agreements had been negotiated. I was posted to Washington DC in 2005–07 to a designated task force to assist with our overseas work. I was co-located with other countries, and there was more focus on tax risk. During my posting, a small US-based international task force shared expertise to review international ‘tax shelter’ cross-border arrangements⁶⁷ through the lenses of primary drivers of bank secrecy jurisdiction concerns, tax law mismatches, financing arbitrage, use of structures, concessions offered, losses and the adequacy of the tax administration approaches to detect and deter the promotion of schemes. This was all executed in an environment which was strictly subject to our respective treaty exchange limitations. It was an initiative of its time, and served its purpose well for participating countries to build stronger collaboration and understanding of the shared global tax challenges.

At present the posting is for one representative located at the OECD in Paris providing a full-time representational role and contributing to international programs of work. More commonly, in the current age of communication, we are better placed to hold international conference calls with our overseas revenue agency colleagues. Conference calls are conducted between separate teams representing each country, with appointees performing the role of Competent Authority to ensure the treaty rules are observed and to organise information flows.

The development of joint participation with other international revenue agencies was established through the quaintly named SGATAR, PATA, and CATAR groups.⁶⁸ In thinking back on our contribution to these forums, my experience was that they consisted of rewarding, albeit rudimentary work with developing countries at one level, and to more sophisticated exchanges of tax risk analysis practices with the more advanced economies. Have things changed that much? Well, to me, finding consensus on cross-border tax work requires diplomacy – not unlike the well-quoted description of what was required for success in foreign diplomacy:

There is nothing dramatic in the success of a diplomatist ... such victories ... are made up of a series of microscopic advantages: of a judicious suggestion here, of an opportune civility there, of a wise concession at one moment and a far sighted persistence at another... [that] no blunder can shake.⁶⁹

⁶⁵ BEPS Action Item 15 re a proposed OECD multilateral instrument to basically assist with treaty amendments for the BEPS action items.

⁶⁶ Then called ‘Counsellor (Taxation)’ in Washington DC and an ‘ATO Representative’ in London.

⁶⁷ Refer explanation in Australian Government *ATO Compliance Program 2010–11* at 27.

⁶⁸ Study Group on Asian Tax Administrations (SGATAR), Pacific Association of Tax Administrators (PATA) (no longer exists) and Commonwealth Association of Tax Administrators (CATAR).

⁶⁹ Lord Salisbury, Foreign Minister in UK Government, 19th century quote.

Collaboration by member countries to produce guidance on OECD project groups, in the pre-Base Erosion and Profit Shifting (BEPS) environment, epitomised this world of diplomacy. My experience was in an OECD study, as co-lead with a civil servant from Her Majesty's Revenue & Customs (UK), which had started to review ways to achieve better tax transparency for banks in early 2008. Banks that were consulted initially negotiated judiciously on the terms of reference for the study, to keep it focused on investment banking. However, the global financial crisis descended not long after the study got underway, which in one sense gave it greater impetus; yet it soon attracted a cautionary concern at another level as some banks began teetering towards collapse. The intended practical guidance for tax examinations by revenue administrators was overtaken by bailouts and other global events, such as new financial regulations taking precedence.⁷⁰

In the modern world, tax advocacy group campaigns and media headlines reveal intelligence leaked in documents from 'whistle-blower' informants that enabled publication of hidden sources of income and previously well shielded global tax avoidance or evasion practices. This greatly assisted the G20 Leaders to formulate Communiqués to acknowledge the risks of base erosion to modern tax systems and the consequent risk to their economies. It gave tax priority, thus allowing the pace of work and outputs to progress at a much faster pace than we have ever experienced in our history.

X AREAS OF RECENT INTEREST

A Profit Shifting

On the same operative date as the new general anti-avoidance rule (GAAR) came into effect (Part IVA, 27 May 1981), the then Treasurer also foreshadowed law to counter the practice known as transfer pricing, where parties to an international transaction do not deal with each other at arm's length and locate profits outside Australia (for example with high expenses in Australia) and thereby avoid Australian income tax – sounds like profit shifting.

Transfer pricing of goods, services and intangible property is an area of law involving complex legal and economic concepts and in which we have been reliant on experts to guide us through methodologies on arm's length pricing. The courts and tribunals have not always embraced the economic conclusions that either the ATO or the taxpayer relies upon, as advised by its experts.⁷¹

More than 30 years later we have brought in more workable laws to deal with modern-day transfer pricing of goods and services, but the whole changing world of digital commerce will ensure that it is a topic of attention well into the future of the global world of tax

⁷⁰ The report was commissioned by the Forum for Tax Administration (FTA) at the January 2008 Cape Town meeting. The booklet was published by the Organisation for Economic Co-Operation and Development booklet: *Building Transparent Tax Compliance by Banks*, 2009. The study team comprised the Australian Taxation Office, HM Revenue & Customs in the UK and the OECD Secretariat. Assistance came from 12 other FTA countries and two experienced banking personnel seconded to the study team.

⁷¹ Refer to Justice Downes of the AAT in *Roche Products Pty Ltd v FCT* [2008] AATA 639 who declined to accept the experts view of certain 'appropriate mark-ups' and 'medians' in inter-quartile ranges and in the absence of (in his view) a rational basis for distinguishing profit margins between comparable and non-comparable drugs, he determined a separate gross profit margin for prescription pharmaceuticals based on other evidence.

administration. The ability of companies to choose preferred jurisdictions in which to locate their value chain, source a function or adopt a risk has enabled some enterprises to shift profits and access significant worldwide reductions in the effective incidence of tax. Future tax administrations, however, although assisted by administrative safe harbours and interpretative guidance, will continue to track the complexities of international transactions to assess tax compliance risks, if disclosures are not comprehensive and reliable.

Any time the ambit of the GAAR provisions are extended we see a flurry of interest, as it traditionally brings in a fresh era of tax interpretation and comment from tax professionals. This may be a feature of challenges by the ATO to perceived abusive global multinationals' tax positions, and I expect the new multinational anti-avoidance law (MAAL), applying to tax benefits of significant global entities (effective from 1 January 2016), will be no different in setting new parameters of tax law controversy.⁷² The MAAL measure targets multinational entities that use artificial and contrived arrangements to avoid attribution of profits and so do not return a sufficient proportion of profit from Australian sales. Dialogue with the ATO is encouraged by affected entities, and it is expected that they will restructure their business chains to conform with and apply for ATO rulings to be assured their operations do not breach these new laws.⁷³

The community has seen a greater level of transparency in who pays their fair share of tax, and through advocacy groups and the media will be more vocal in holding companies accountable if not.⁷⁴ The ATO, like other administrations, seeks to stay current by reviewing the tax impact of taxpayers' commercial and financial dealings so we can spot the trends, provide certainty in our views, and assure the community we are fulfilling our role in signalling acceptable levels of tax to profits.⁷⁵ Notwithstanding these efforts to effect unilateral law changes and agreement to minimum standards of multilateral rules, the future changing technological environment will surely present its own challenges to the ability of tax administrations to address global (non-symmetrical) tax structuring and transparency, and will continue to require some degree of international coordination and cooperation to keep pace with innovative arrangements.

B High-Wealth Individuals

Another memorable watershed for the ATO was the establishment of the High Wealth Individuals Taskforce. In Australia in the 1995–96 tax year, the ATO trail blazed the segment by uncovering a small number of apparently wealthy family groups paying little or no

⁷² The new provisions amend the general anti avoidance rules and apply to significant global entities in regard to schemes entered into on or after 1 January 2016. The Explanatory Memorandum to *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015* explains (at 54) that the amount of penalty is doubled when imposed on qualifying entities that enter into profit shifting schemes, unless the entity has adopted a tax position that is reasonably arguable.

⁷³ Refer to ATO, Law Companion Guideline LCG 2015/2: Section 177DA of the *Income Tax Assessment Act 1936*: Schemes that limit a taxable presence in Australia.

⁷⁴ On 3 December 2015, the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 passed the Australian Senate requiring annual financial statements disclosing levels of tax by entities.

⁷⁵ The recently published 1st annual Corporate Transparency Report involves a transparency population of 1,539 entities (1,042 corporates with annual turnover >\$250m) for the 2013–14 income year, issued by the ATO on 17 December 2015, is one way to inform public debate about tax policy into the corporate tax system. A further release of taxation data for Australian-owned, private resident companies occurred in March 2016 to further assist the global push for transparency in the corporate tax system.

personal tax through a web of associated trust and company structures, thereby allowing one or more individual members to access welfare. Because privately owned and wealthy groups operated some of Australia's largest and most successful businesses, we conducted an extensive compliance review to work out their effective tax rates. We were faced with often complex financial and legal arrangements which many had structured to obscure, for revenue authorities, detection of any tax avoidance or tax sheltering. Some countries have more recently levied a greater burden of tax (or called for a tax surcharge) on their high-net-worth individuals or top-end earners, noting the disproportionate distribution of income as the gulf widens between the top 1 per cent and the rest. Aberrations like wealthy US hedge fund managers paying lower rates of capital taxes than ordinary people on their carried interest returns (ie not being treated as ordinary income) is one tax break for the elite.

Tax evasion, avoidance and crime (abuse of offshore secrecy arrangements) was addressed through the establishment of the Project Wickenby Taskforce in 2006. This involved a partnership of eight agencies to address the use of secrecy jurisdictions by individuals to avoid tax. Work is presently done through the eight multi-agency Australian Serious Crime Taskforce for serious and complex financial crimes.⁷⁶

Successful work by the Wickenby taskforce included approaches akin to tax amnesty to encourage people to come forward and voluntarily disclose unreported taxable income and obtain reduced penalties. For example, the 2014 voluntary disclosure initiative known as *Project DO IT*, which provides Australians with opportunities to declare undisclosed or incorrectly reported offshore financial activities, has seen 5,800 disclosures (as at 30 June 2015) lodged with the ATO. This is an example of newer approaches being adopted, and of the ATO working with the wider community to encourage international transparency in its dealings with the tax system.

In addition, *Project DO IT* assists with intelligence information on the range and scope of inappropriate offshore arrangements, including those who chose not to voluntarily disclose income, and it can be used to inform the ATO about risk and compliance approaches.

XI EXTERNAL SCRUTINY OF THE ATO AND THE ROLE OF THOSE CONDUCTING ATO OVERSIGHT

While the ATO has had its own (internal) audit committee since 1998–99, external scrutiny has taken place through various avenues.

A *The Australian National Audit Office (ANAO)*

The ANAO, as a separate government agency, has regularly conducted efficiency audits of the ATO for many years, about particular functions or advice, audit and debt programs of the ATO as well as aspects of tax administration.

⁷⁶ See ATO Compliance Program 2011–12 at 24–5. The 7 other ATO partners for the current SFCT are: Australian Criminal Intelligence Committee, Australian Federal Police, Australian Securities & Investments Commission and (Cth) Director of Public Prosecutions, Australian Transaction Report and Analysis Centre, Australian Border Force and the Attorney General's Department.

B The Inspector-General of Taxation (IGT)

The IGT, as an independent reviewer, now incorporates tax complaint handling.⁷⁷ The appointment of an IGT took place along with proposals for a Board of Taxation following the 2001 Federal election, where the option was raised as a way to balance business advice from the ATO and Treasury and to complement the Commonwealth Ombudsman's role with individual taxpayers.⁷⁸ The ATO provides assistance to support the work of the eleven-member advisory Board of Taxation, which initiates tax system improvement measures or assistance with studies on tax matters at the request of the Treasurer. The functions given by Parliament to the IGT broadly consist of conducting reviews, at his own initiative, of the range of ATO systems used to administer tax laws.⁷⁹

In the 2014–15 year Commissioner Jordan reported, in his Annual Report in respect of external scrutiny reviews, that four Australian National Audit Office (ANAO) audits, five IGT reviews and one Commonwealth Ombudsman own-motion investigation were completed. In the current year (2015–16), three ANAO audits and two IGT reviews were completed, along with the (former) House of Representatives Standing Committee on Tax and Revenue Inquiry in early 2016.

C Parliamentary Committees

The Senate Economics Reference Committee (SERC) and House of Representatives committees can conduct inquiries into the operations of the ATO, and often the issues stem from media or community concerns. An example was the Senate referral of an enquiry into corporate tax avoidance of multinationals to the SERC, where some companies were called to provide evidence before the committee, as was the Commissioner and his officers. The changing dynamics of late reflect the greater degree of openness with which companies were asked to, and did, provide information about tax performance and tax compliance – information that is usually not in the public domain. It gave a greater insight into the real challenges of the ATO in reviewing and examining the complex financial affairs of large global corporations and certain stresses on the tax framework that requires close administering.

In present times, the House of Representatives Standing Committee on Tax and Revenue has a mandate to examine annual reports of agencies allocated to it by the Speaker of the House or a Minister.⁸⁰ After conducting hearings at which tax officials and key witnesses gave

⁷⁷ The ATO website notes that from 1 May 2015, the tax complaint handling role was transferred from the Commonwealth Ombudsman to the IGT as a way to enhance the systemic review role of the IGT and provide taxpayers with specialised and focused complaint handling for tax matters. The purpose of this move is to enhance the systematic and unique review role of the IGT.

⁷⁸ Josh Gordon, in his article in *The Age* of 22 March 2003 titled '*Senator slams Labor for impeding tax reforms*', stated that 'Facing a serious tax administration backlash during the 2001 federal election campaign, the Government promised to install an inspector-general of tax with inquisitorial powers to access confidential Tax Office information...Senator Coonan said the Government had an election mandate to introduce the reforms, and would not back down.'

⁷⁹ Sections 7 and 8 of the *Inspector-General of Taxation Act 2003*. The IGT may be requested to carry out a review by the Commissioner of Taxation, a Minister, a resolution of a committee of the House, but is not required to comply with the request.

⁸⁰ Standing Order 215. The Committee commenced to act as a scrutineer of the ATO in February 2014, a responsibility previously held by the Joint Committee of Public Accounts and Audit (JCPAA), to look into its previous year Annual Report to Parliament and assess ATO progress.

evidence,⁸¹ a report of the committee published its views, noting the moves towards simplification of tax returns, contemporary service and a commitment to comprehensively assess the tax gap.⁸² In the following review of the Commissioner's 2015 Annual Report it was reported that:

[3.33] The ATO is in the midst of two great, and related, changes. The expansion of the digital economy has meant that it is involved in an extensive program of technological change which in some cases is profoundly altering its approaches to doing business. At the same time it has embarked on a program of cultural change which is wide ranging enough to deserve the title 'Reinventing the ATO'.⁸³

Parliamentary committees will continue to review successive ATO annual reports, and it might be expected that interesting topics and oversight reports will engage the hearts and minds of the community where public interest matters arise.

The extent of external scrutiny and inquiries into the management and effectiveness of government agencies including the ATO, whatever the subject matter, is likely to continue.

XII TAX APPEALS AND DISPUTE RESOLUTION

The (then) Special Tax Adviser in the office of the Ombudsman (Cth) was one of our first external case mediators for disputes,⁸⁴ but since that time the ATO has moved to more available and trained in-house facilitation services to resolve disputes with taxpayers, and other formal and informal services as avenues for Alternate Dispute Resolution.

From our early times at the Taxation Boards of Review (now the Administrative Appeals Tribunal)⁸⁵ I, as one of the young Appeals and Review officers dealing with a considerable back log of (mainly individual taxpayers) smaller tax cases,⁸⁶ regularly appeared for the Commissioner before the members of the Boards. The attractiveness of a low \$2 appeal fee meant many people got their day at the Board and were self-represented or accompanied by their tax agents, and we were presented with some truly novel arguments, for example as to the need for lavish entertainment expenses, or for a barrister to be allowed his personal home water rates because he read his legal briefs in the toilet and while relaxing in the pool. Then there was the man who argued he should be allowed to depreciate his brain (for tax

⁸¹ Witnesses at the second hearing included the Commissioner of Taxation and senior staff of the Australian Taxation Office; Inspector-General and Deputy Inspector-General of Taxation; Senior Tax Counsel of the Tax Institute; Senior Tax Adviser of the Institute of Public Accountants; Head of Tax Policy of the Institute of Chartered Accountants of Australia and the CEO of the Council of Small Business Organisations of Australia.

⁸² Review of 2013 Annual Report of the Australian Taxation Office, Second Report, House of Representatives Standing Committee on Tax and Revenue, October 2014, at para 1.4.

⁸³ Review of the 2015 Annual Report of the Australian Taxation Office – First Report, tabled on 5 May 2016, Chapter 3. For the 44th Parliament the Committee comprised ten Members of the House of Representatives, with six members nominated by the Government and four nominated by non-Government parties.

⁸⁴ A recommendation of the JCPAA in the 1990s.

⁸⁵ On 1 July 1986 the Administrative Appeals Tribunal took over the tax jurisdiction of the Taxation Boards of Review.

⁸⁶ Around 80,000 cases nationally of which 47,000 were cleared in the 1991–92 tax year. See Annual Report at 35.

deduction purposes); the Commissioner argued in response that he should not be afforded a deduction for depreciation as his brain would have been fully depreciated already.

This leads me to litigation and memorable case law, which is too numerous to give justice to in this article. It will invoke some dissent, but I'll say that some impacted us organisationally more than others. The ones I think had the widest impact related to individuals' claims for work-related expenses which we had considered private in nature, such as stockings for flight attendants and sunglasses for outdoor workers, or a student receiving youth allowance yet being allowed to deduct education expenses against that income.⁸⁷ The Test Case Litigation Program gave rise to a useful avenue to fund clarification of these types of contentious areas of the tax law.⁸⁸

Overall, the ATO has a solid history of litigation, and it reflects good decision making by our tax administration. In the tax avoidance realm we were relieved to have the 'no nonsense' *Spotless* decision handed down, which has stood the test of time as referenced in the recent Federal Court *Orica* decision.⁸⁹ Other cases, where we did not succeed in applying the anti-avoidance rules – such as *Mills v FCT*⁹⁰ – mark legal clarification points in our strategic litigation program. It is likely, as strategic litigation evolves in 'hot spot' areas of global profit shifting, that the general anti-avoidance provisions will continue to be a relevant source of jurisprudence for Australian taxation purposes.

Actually, it was the more mundane topic of debt and deductibility of interest that gave rise to some of the more interesting tax cases, from the early days of questioning whether something was in the nature of interest and properly deductible or of a capital nature. Currently the most recent decision in *Chevron*, a transfer pricing case on the arms' length price of interest on a loan between related parties,⁹¹ is the first jurisprudence on that topic, and its outcome will not only steer the (previous) Division 13 of the ITAA 1936 but may well influence the testing of the replacement provisions of Subdivision 815-B and/or 815-C of ITAA 1997. The OECD's BEPS study was quite explicit in targeting consultation on three other tax risk areas where excessive interest deductions need to be countered: debt dumping or debt loading in high-tax countries; creation of intra-group debt at rates in excess of third party debt; and the mismatch of tax exempt income being able to be funded by deductible intra-group debt. Only legislative change can address these issues effectively in participating countries.⁹² Law clarification litigation necessarily means cases are lost and won by the ATO

⁸⁷ High Court decision in *FCT v Anstis* [2010] HCA 40 re youth allowance.

⁸⁸ The ATO Test Case Program received Ministerial approval for the 1995–96 tax year, and \$2m of funding was secured from the Department of Finance. In 2006–07 the IGT reviewed the administration of test case litigation and although found it to be soundly conducted recommended a number of changes to improve its operation: *Review of Tax Office Management of Part IVAC Litigation*, Chapter 6, 28 April 2006.

⁸⁹ See Commissioner of Taxation, *Annual Report 1999–2000*, 80. Refer to *FCT v Spotless Services Ltd* (1996) 186 CLR 404 and *Orica Limited v FCT* [2015] FCA 1399.

⁹⁰ *Mills v FCT* [2012] HCA 51.

⁹¹ *Chevron Australia Holdings Pty Ltd v FCT (No 4)* [2015] FCA 1092. Appeal to the Full Federal Court was undecided at the time of writing.

⁹² BEPS Action Item 4 OECD publication 2015. The UK's HM Treasury, as part of its Budget 2015 announced 'new business tax roadmap', released an open consultation paper on 22 October 2015 to seek views on how best to respond to the OECD proposals for countries to counter these risks and to modernise interest deductibility rules. Australia's Thin Capitalisation rules introduced in 2001 were strengthened in 2014 to prevent erosion of the Australian tax base from debt loading by introducing a safe harbour for general entities (with debt deductions >\$2m) of 1.5:1 and a worldwide gearing amount and a safe harbour limit for banks along with a capital limit.

over time, and the outcome is often dependent on the weight of evidence regarding the alleged mischief in Australian tax law terms, as the Revenue seeks to interpret some novel and interesting aspects of the tax system that give unintended relief and do not follow the more equitable policy principles proposed.

It is difficult to predict what future courts may have to ponder although ... our pivot towards a greater readiness to engage in Alternate Dispute Resolution means that we can deal more flexibly with inevitable disputation and ensure that the path to resolution of tax disputes will continue to be refined to practically give fair and equitable outcomes.⁹³

The remaining area to embark upon for our country is the novel notion of arbitration for unresolved double tax cases, where a taxpayer has requested Competent Authority intervention to assist in reducing or eliminating the economic or actual (two+ country) tax on the same profits. A Mutual Agreement Procedure (MAP) that is not resolved within a two-year period (ie country limitations will apply) can follow the OECD BEPS 14 proposal.⁹⁴ This proposal involves a mandatory binding MAP arbitration provision, which is to be negotiated as part of a 'multilateral instrument' that countries would ratify (as envisaged under BEPS Action Item 15). So, while some years away it presents a path forward for aspects of treaty disputes where it is otherwise hard to make progress or get any real traction.

XIII FUTURE EVOLUTION OF TAX

At one level, the tax administration of the future is about a number of initiatives working in harmony.

One valuable key initiative that will change many issues about tracking individuals' PAYG payments in the future is the 'Single Touch Payroll'. Once fully developed, it is capable of assuring employees that tax and superannuation are being deducted and remitted to the ATO on their behalf. In this new environment, payroll data can be sent to the ATO in real time. Then progressive payslip information is remitted to the ATO, rather than leaving the annual payment summary at the end of the tax year as the point of reconciliation (for tax and super).

The technology initiatives of the future will also incorporate elements of what have been piloted today, such as 'voice biometrics'. This style of speech analytics leverages the fact that every voice has unique physical and behavioural attributes, which include both (stable) tonal as well as (transient) environmental characteristics. A caller can voluntarily agree to allow their voice characteristics to be recorded to allow identification and retrieval of account details to assist with service queries.⁹⁵ Apart from voiceprints to allow for speedier

⁹³ House of Representatives Standing Committee on Tax and Revenue Report of March 2015 acknowledges that given different attitudes to tax and its complexity, disputes are 'inevitable', at 1 and recommendations made.

⁹⁴ *Making Dispute Resolution Mechanisms More Effective*, OECD BEPS Action Item 14 – 2015 Final Report, October 2015. On 31 October 2016 the OECD released a Schedule for country peer reviews together with the Terms of Reference to translate Action Item 14 minimum standard into 21 elements that are used to assess the legal and administrative framework of MAP programs in all countries being reviewed. A MAP reporting framework with statistics and profiles are to be published to assist with MAP guidance.

⁹⁵ As at January 2016, 1.4m people had voluntarily agreed to enrol to use this technology for their identification in relation to discussing their own tax affairs, and this number is expected to increase.

identification, there is the use of virtual assistants to resolve online enquiries and the launch of the ATO app. Such initiatives, along with the myGov fast, simple access to online services, will better shape the efficiency and effectiveness of our interactions with clients from the taxpayer population.

If we extend that thinking into the future, it is likely to mean our tax administration could potentially:

1. Embed a stream of contemporary digital services into our operations, that allows individuals to be alerted to, and helped with their obligations in advance;
2. Employ a complete range of global data sets that feed into analytic programs for holistic assessment of any direct or indirect tax risk and shift resources to emerging hot spots;
3. Achieve improvements in fairness and equity through:
 - a) leveraging behavioural psychology approaches beyond just debt collection initiatives and into innovation, to balance systems changes;
 - b) pursuing reliable assurances from business (eg 'justified trust')⁹⁶ to manage and control levels of large business compliance and international transparency; and
4. Demonstrate to government and the community that the tax and superannuation system continues to be well managed.

In the future, any new principles and programs should have enough flexibility to meet whatever economic, political, social or business need arises. Tax administrators who have worked in the service for many years have usually experienced the joys of seeing initiatives work and also experienced the disappointment of seeing courageous ideas flounder,⁹⁷ notwithstanding some truly valiant briefings to those that decide our policy and administrative settings.

Overall direction setting suggests that future growth is dependent on a strong, sustainable and balanced economy supported by a robust tax system. What the ATO desires as a capable and trusted tax administrator requires setting some strategic goals or aspirations, which in my view would include the following:

1. An efficient approach to personal income tax reporting with minimal compliance costs.⁹⁸
2. Tax being a function of business profits, not a separate global cost centre, so that tax follows the profits where they are made, rather than being an 'orchestrated product'.

⁹⁶ See for example an OECD Report in 2013 *Cooperative Compliance: A Framework*, which describes how tax administrations and large corporates base their relationship on mutual transparency, understanding and justified trust.

⁹⁷ Leigh Edmonds in the *Working for all Australians 1910–2010: A Brief History of the Australian Taxation Office*, ATO Canberra publication November 2010, 167 provides a *Eulogy for a tax bill* story, where an ATO senior official recounts receiving a bereavement card from a first Parliamentary Counsel, after the death of 5 tax bills that did not make it into law. The bills were designed to assist states to collect 'receipts taxes' and they were never legislated.

⁹⁸ Digital advances will allow improvements in prefilling of individual income tax returns with employment details, financial data (eg interest) and share data (eg dividends) and access CLARIFY account details.

3. Tax administrators understanding tax performance and perceived weaknesses in the tax and superannuation systems, through:
 - Creation of astute mechanisms for certainty to resolve disputes and advise on ATO interpretation of the various tax laws applicable to situations in an environment where the full facts are known and understood.
 - An advanced analytics program which is capable of organising our ever-increasing warehouse of data⁹⁹ in such a way that the ATO can find and use those key bits of information that will help us target our activities and programs in a more effective way to support operations including lodgment, debt, disputes, advice and assurance work.
 - The thirst for behavioural insights into patterns of compliance, risk and measurements of tax gaps should continue well into the future.
4. Having an inclusive, well-functioning program for streamlined and collaborative interactions with clients across Australian government agencies and international revenue agencies.
5. Enhanced 'real time' exchange of data and global business trends. In an age where service provider companies can bounce personal information around their global data centres (subject to privacy or regulatory constraints), tax administrations should use financial transparency initiatives to employ increasingly sophisticated automatic exchanges of information. A framework with other countries is proposed to be in place by 2017–18, along with the 'minimum standards' to be implemented which:
 - Create an improvement on the existing network of bilateral treaties through the widespread implementation of the BEPS action plan areas such as prevention of treaty shopping, country-by-country reporting, anti-hybrid rules, fighting harmful tax practices, etc.¹⁰⁰
 - Modernise all relevant partner country tax rules. The degree to which each country is able to adopt the suggested BEPS measures usually depends on what carve-outs businesses in that economy are willing to allow and the extent of administrative capability.
 - Check global trends and monitoring for double non-taxation.
6. Capacity to build for new challenges, prevent threats to the tax and superannuation systems and work towards fixing stresses on the administration through:

⁹⁹ The ATO holds and receives enormous amounts of data each year and it is growing at a rate of over 20%pa. In addition the ATO receives over 600m transactions of data each year from third parties. Such information flows will be further enhanced, through for example, Country-by-Country reporting, the Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement, Common Reporting Standard, Foreign Investment Review Board (FIRB), mandatory disclosure and automated exchange of rulings.

¹⁰⁰ The instrument was announced by the OECD as open for signature by all interested countries who want to assist with its implementation from 2016 (refer BEPS Final package of reports: Explanatory Statement 2015). This is BEPS Action Item 15 and incorporates Action Items 2, 6, 7 and 14. The existing global pool of around 3,600 bilateral double tax treaties have restrictions on how modern tax administrations can work together to improve their understanding of the dynamic of tax planning through transparency. The lesson was that we gain better momentum and ownership when moving in a responsive and coordinated way to new challenges to the integrity of our tax systems.

- Maintaining a capable qualified workforce that understands the long-term impact that compliance strategies, policy implementation and concessionary rulings have on community confidence and the future of tax effectiveness.
 - Modernising international tax rules to support multilateral approaches around cross-border harmful tax practices and transparency.
 - Working collaboratively with sectors of the community to improve the efficiency and experience of the tax and superannuation systems.
7. Advanced risk systems capability of the individual and the small business sectors and a deeper understanding of large business to provide:
- More accurate and comprehensive tax gap measure;¹⁰¹ and
 - Swifter dispute resolution mechanisms.
8. Continuing interest and scrutiny in public Senate/parliamentary domain as to whether multinationals and global citizens are paying their fair share of tax. At the international level, the focus on transparency and combating tax evasion is a consensus path. Checking implementation of minimum standards by conducting global reviews of country programs are the current monitoring approach of OECD peer review groups. If this approach achieves a better standardization of documentation procedures and if it provides improved tax certainty to guarantee future revenue flows, then it is likely to be an ongoing assessment framework.

XIV CONCLUSION

A blueprint for a modern tax administration to be efficient and effective suggests some desirable features including adequate operational autonomy and adequate resources, together with a stable legal framework for assessment, collection and enforcement, while at the same time the administration remains accountable for its actions and is subject to control and assessment.¹⁰² Assuming these features are present, the resulting outcome should be a very good standard of tax administration, service to the community and advice to government. The ATO, drawing on its long history, expects to continue to meet community expectations with whatever the future of administration of the tax and superannuation system holds.

¹⁰¹ Recommendation 5 of the JCPAA Report 398 was for the ATO to provide a mechanism to calculate the tax gap to increase overall efficiency and prevent GST fraud. In the Annual Report for 2014–15 the ATO added a number of new tax gap estimates to our GST and luxury car tax tax gaps, and plans to advise other tax gaps this tax year.

¹⁰² See Footnote 9. European Commission *'Fiscal Blueprints – a path to a robust, modern and efficient tax administration'* European Communities 2007 for best practice international application.

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