



Australian Government

Inspector-General of Taxation

Taxation Ombudsman

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Ms Narelle Kelly
Review and Dispute Resolution
Australian Taxation Office
By email to: NationalTaxClinics@ato.gov.au

Dear Ms Kelly

Consultation paper – National Tax Clinic open competitive grant program

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) welcomes the opportunity to contribute some observations and submissions to the Australian Taxation Office's Consultation paper – National Tax Clinic open competitive grant program¹.

The IGTO is an independent, Commonwealth agency with a statutory objective of improving the tax administration system for the benefit of all taxpayers, tax practitioners and other entities. For this purpose, we investigate taxation administration actions, systems and laws, as well as complaints about the actions and decisions of Tax Officials – of the Australian Taxation Office (ATO) or the Tax Practitioners Board (TPB). The IGTO seeks 'to assure and ensure that there is fair, equitable, and transparent administration of the tax system consistent with community expectations.'²

The IGTO considers that the National Tax Clinic program is an important Government initiative which assists unrepresented taxpayers with their tax-related affairs whilst also providing students with practical experience under the supervision of a qualified tax agent.

We would also take this opportunity to alert you to our comments in relation to the Tax Clinics in our submission to the Senate Economics Legislation Committee *Inquiry into the Performance of the Inspector-General of Taxation*, namely:

Recommendation 9 – Introduce more formal arrangements between the IGTO and Australian Tax Clinics to facilitate a seamless delivery of service to the community. This would also provide an efficient and effective means to improve the geographic reach of the IGTO – including for the purposes of receiving complaints in time zones and locations outside Sydney.³

¹ Australian Taxation Office (ATO), *Consultation paper – National Tax Clinic open competitive grant program* (2020) <www.ato.gov.au/General/Gen/Consultation-paper--National-Tax-Clinic-open-competitive-grant-program/>

² Inspector-General of Taxation and Taxation Ombudsman (IGTO), *Corporate Plan 2021 – 2024* (2020) p 5.

³ IGTO, *Submission to the Senate Economics Legislation Committee Inquiry into the Performance of the Inspector-General of Taxation* (2019) p 15.

Observation 3 – *The Committee consider whether more formalised, integrated and cooperative liaison arrangements as between the Taxation Ombudsman and AAT (and other support mechanisms – such as Tax Clinics) are appropriate. This would provide more holistic management of taxpayer complaints and dispute resolution. Importantly, this would deliver a faster and more cost effective support service for the more vulnerable individuals and unrepresented small business.*⁴

We note that the Senate Economics Legislation Committee made a recommendation (Recommendation 11) in its June 2020 report for the Australian Government to consider the benefits of introducing more formal arrangements between the IGTO and Australian Tax Clinics. The Government is yet to respond formally to this recommendation.

Our understanding of the context of the National Tax Clinics in the Australian tax administration system is based on the existing Low Income Taxpayer Clinic (LITC) program established in the United States of America (USA) from the 1970s. The LITC Program is a federal grant program through which the Internal Revenue Service (IRS) provides funding to LITCs. The mission of the LITCs is stated in their annual report as:

‘Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low-income or speak English as a second language by:

- *Providing pro bono representation on their behalf in tax disputes with the IRS;*
- *Educating them about their rights and responsibilities as taxpayers; and*
- *Identifying and advocating for issues that impact these taxpayers.*⁵

The announcement of the Australian National Tax Clinic Program by the Honourable Prime Minister Scott Morrison outlined similar objectives to ‘provide free assistance to small businesses and individuals with disputes with the ATO. These tax clinics will ensure small businesses in need have access to specialist advice from tax practitioners and students in the field on a pro bono basis.’⁶

In reference to the Prime Minister’s announcement of the National Tax Clinic Program, the Honourable Stuart Robert, Assistant Treasurer at the time, provided further details about the program and its objectives in his address at the 2018 Australasian Tax Teachers Association Conference.⁷ He stated that the Australian government wanted to ensure taxpayers who have a tax problem have the support they need to achieve a fair outcome.

The Honourable Stuart Robert stated that the tax clinics will fill a gap in the market for those individuals and small businesses that may not be able to afford proper advice and representation and who may otherwise fall through the cracks.⁸ He explained that each tax clinic would receive funding to support unrepresented individual or small business taxpayers with their tax obligations and reporting requirements by providing general taxation advice, education services, representation and advocacy for taxpayers. The Honourable Stuart Robert further noted that the interactions through the

⁴ IGTO, *Submission to the Senate Economics Legislation Committee Inquiry into the Performance of the Inspector-General of Taxation* (2019) p 16.

⁵ IRS Low Income Taxpayer Clinic Program Office, *Low Income Taxpayer Clinics Program Report 2020* (2020) p 1.

⁶ Prime Minister Scott Morrison, *Keynote Address Speech at the Australian Chamber of Commerce and Industry Annual Dinner* (28 November 2018) <<https://www.pm.gov.au/media/australianchamber-commerce-and-industry-annual-dinner>>

⁷ Stuart Robert, *Address to the Australasian Tax Teachers Association 31st annual conference* (19 January 2019) <<https://ministers.treasury.gov.au/ministers/stuart-robert-2018/speeches/address-australasian-tax-teachers-association-31st-annual>>

⁸ As above.

tax clinic service would result in those taxpayers understanding the taxation system and having more favourable interactions with the ATO.

The Honourable Stuart Robert also stated that the National Tax Clinic Program would complement the ATO's existing, long-running Tax Help program. He stated that taxpayers rely on the advice of trusted tax professionals and noted the importance of unrepresented taxpayers having the same opportunity to rely on tax professionals that represented taxpayers do. He acknowledged that taxpayers may more readily discuss their tax affairs with a volunteer or supervising tax professional at a tax clinic than they would necessarily disclose to an ATO officer.

This submission does not seek to make comment on taxation policies, including policies relating to the National Tax Clinic Program. However, we do offer observations and submissions on some 'key themes' that may be considered in relation to the National Tax Clinic program. That is to say that we have sought to identify important areas to obtain further insights, which the ATO may wish to consider in more detail in this process.

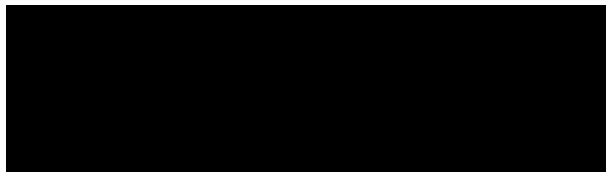
Our submission is focused on three key themes which we consider are important to the success of the National Tax Clinic Program, namely:

- Difficulties accessing the tax system and assistance to engage with the tax system are important considerations (refer Appendix A);
- Enabling engagement for those disengaged from the tax system (refer Appendix B); and
- Qualified Supervision for Tax Clinics (refer Appendix C).

Discussion of these themes is set out in the appendices attached to this letter as referenced above.

We trust that this submission is of assistance to the ATO in its consideration of the National Tax Clinic Program. If our office may be of any further assistance, or if the ATO requires us to elaborate on any matters that we have raised, please do not hesitate to contact me by email ([REDACTED]) or by phone ([REDACTED]).

Yours Faithfully



Karen Payne
Inspector-General of Taxation and Taxation Ombudsman

Appendix A – Difficulties accessing the tax system and assistance to engage with the tax system are important considerations

It is important to ensure individuals and small businesses, particularly the more vulnerable, are able to access assistance to engage with the tax system. In developing the National Tax Clinic open competitive grant program guidelines, we submit that the ATO should consider the following aspects of access either as eligibility or selection criteria for grants:

- Access to technology;
- Access to locations with assistance; and
- General awareness there is assistance is available.

We will elaborate on each of these themes in the sections immediately following.

Access to technology

The advent of electronic technology has transformed much of what we do in the modern economy and taxation administration is an area that has benefited significantly in this context. There is general support for technology and the benefits it provides, as evidenced by the vast majority of taxpayers and tax practitioners who adopt it. However, it is important to acknowledge that there may be certain citizen or taxpayer groups who may be left behind in such an environment, due to lack of access for a range of reasons. The IGTO has commented on this issue in previous investigation reviews in a technology context and it is helpful to restate extracts from the relevant report below in further considering this issue in a wider context⁹.

‘...the IGT believes the ATO should also conduct some research to assess issues such as how many taxpayers would be unlikely to have access to digital services or be able to proficiently interact electronically and the barriers which are preventing such interaction. The findings of this research could be applied to augment the ATO’s existing support, including ways in which the ATO could assist those taxpayers to overcome relevant barriers or determine where it has to continue to provide traditional access channels.’¹⁰

The ATO’s position of trust is very important in relation to technology access generally as it goes toward underpinning confidence in the system holistically. Research in this area is needed, applying a multifaceted approach which is cast across a wide range of individuals and small business, to better understand where technology may be a driver leaving some people behind. For example, internet access and cost relativities for regional, remote areas or low-income families or combination thereof. The next two areas seek to expand on potential areas being access to locations with tax assistance and the general awareness there is assistance available and it certainly may be the case that there is an interrelationship with technology access which should also be considered.

Access to locations with assistance

The National Tax Clinic Program should ideally provide and therefore reflect national access. It is also important that the Clinics are located (and accessible) where the service is needed. This will depend on the precise policy objective that the Clinics assist in fulfilling.

⁹ The original comment was made in relation to the elderly but applies equally in a much broader context

¹⁰ IGTO, *Review into the Future of the Tax Profession* (2018) p 82

The ATO may wish to consider geographical location as an impact upon taxpayers who may disengage or otherwise be falling between the cracks in terms of access and engagement with the tax system.

There is an oft held assumption that technology is rendering location less and less important and this may be correct in the general case as noted above and as experienced through the current Covid-19 pandemic. Locality issues may be standalone in nature or interconnected with other factors. For instance, a taxpayer may have a need or strong preference to deal directly with an officer in person, for example due to cultural reasons or cyber-security fears. Further, they may also have lack of access to transport, or where that cost of access is a barrier due to locality. It may be that a tax clinic provider may be able to bridge such a gap where that exists and it would be helpful to explore this further.

An option for consideration may be co-location of tax clinics with other services - for example, with Centrelink or in cooperation with financial services providers to broaden locality access. This may also mean considering the ability to locate tax clinics within the vicinity of public transportation - at or near train stations or other public points of access across Australia. It may also be that these could be temporary or 'pop-up' services (for example during tax time) to expand the range of access to regional areas and allow for broader coverage. Another option may be a mobile service – especially for remote and regional areas.

General awareness there is assistance available

It is an important to acknowledge there are differing levels of awareness between taxpayers of the services offered and their ability to access assistance.

Awareness of tax clinic services, particularly for those who may have disengaged and the more vulnerable taxpayers, is important for the clinics to achieve their policy objectives. If the community is not aware of, or otherwise does not have the capacity to engage for some reason, there is a risk that they will be left behind. The ATO may wish to make inquiries with the Tax Clinics on the potential outreach programs for the respective regional areas in their state or territory. The ATO's communication reach is potentially very broad and the merit of utilising the many channels available to the ATO to promote the National Tax Clinic Program is an important consideration. These options may include promoting tax clinics by reaching out to the wider community through social media platforms, such as Facebook, LinkedIn, ATO online communications and ATO correspondence.

The ATO may also seek to explore options for taxpayer education through the Clinics. As noted in our Review into Non-lodgement of Income Tax Returns:

'In respect of required non-lodgers, the reasons for not lodging remained consistent from year to year in the survey, suggesting that one of the main reasons for not lodging, even among those required to lodge, is the belief they are not required to do so. For example, common reasons given by required non-lodgers for failing to lodge included:

- *they thought they were below the income threshold (20 per cent of the required non-lodger population);*
- *being unemployed and not working and therefore believing there was no need to lodge (19 per cent of the required non-lodger population); and*
- *being on a pension or receiving Centrelink payments and therefore believing there was no need to lodge (18 per cent of the required non-lodger population).¹¹*

¹¹ IGTO, *Review into the non-lodgement of individual income tax returns* (2009) p 50.

Information and education sessions offered through the Clinics may be a potential solution to reach those taxpayers that do not have the awareness or resources to understand their tax obligations. The challenges for small business were also considered in a review investigation context as extracted below for your reference.

*'In 2016, the ATO commissioned research to understand 'the small business education experience and their needs in relation to financial management'. One of the key findings was that a significant proportion of small businesses need educational support as they lack knowledge and confidence in managing tax and super obligations. Such support was considered to require tailoring to different competence levels and learning styles.'*¹²

The manner in which the Tax Clinics are able to improve upon the administration of the taxation system will certainly be of interest to affected parties, and needs to be canvassed with potential suppliers of such services so that identified gaps in these areas may be considered and addressed through this process.

¹² IGTO, *Review into the Future of the Tax Profession* (2018) p 48.

Appendix B – Enabling engagement for those disengaged from the tax system

The importance of voluntary engagement and compliance in a taxation system is the foundation-stone of effective administration. It is also important to recognise that there are a range of taxpayers who disengage from the system for various reasons.

The ATO website provides direction on the National Tax Clinic Program. In summary it is an initiative to help individuals and small business unable to afford professional advice and advocacy representation with their tax affairs. Where parties have disengaged, it will be helpful to establish a more fulsome understanding of these reasons giving rise to these gaps to better inform how tax clinic service access may assist in addressing these more effectively.

The ATO may also wish to explore whether disengagement from the tax system may be better informed by researching ATO complaints data more closely to identify areas where tax clinics may be able to address these gaps through an advice and advocacy role for this affected group. In the IGTO (for example), as noted in our submission to the Senate Economics Legislation Committee:

‘Investigating complaints provides our office with unique and valuable insights into the administrative practices of the ATO and TPB and their service delivery. In approaching our office, taxpayers and tax practitioners often raise concerns about:

- *not understanding the agency’s communications or actions and the options that may be available to them; ...*
- *the multiple interactions that are required to resolve an issue or complaint and the difficulties in navigating a number of areas within the agency and the tax system more broadly.’¹³*

While we, as the Taxation Ombudsman, are able to assist a range of taxpayers happily, we are not able to undertake direct advocacy for any party to ensure our independence is preserved. Tax clinics are a potential pathway to help individuals and small businesses to re-engage, who may not otherwise be able to do so without this advice and advocacy. The ATO’s own complaints data may be a rich source of insight to identify these gaps at first instance. Further, where tax clinics are established, there are also alternative channels to engage in further research to better understand barriers and potential solutions for re-engagement that may not have otherwise been achievable. The feedback from the combination of inquiry and research may help to better inform administration in this area and provide ongoing and lasting re-engagement with the taxation system for affected parties.

¹³ IGTO, *Submission to the Senate Economics Legislation Committee Inquiry into the Performance of the Inspector-General of Taxation* (2019) p 64.

Appendix C – Qualified supervision for Tax Clinics

The question of supervision is also dependent on the policy rationale for the Tax Clinics. Where the Clinics are an alternate source of taxation advice or representation in relation to taxation disputes, then qualified supervision is an important consideration.

Where they are merely to act as a shop-front to provide information or directions, then the question of supervision becomes less important, although the education requirements remain an important consideration.

The importance of having appropriately qualified personnel undertaking professional services has been considered in our investigation review into The Future of the Tax Profession where it explained that:

‘Education standards are an important element of any profession. Where there are different standards of education within a particular profession or regime, those affected justifiably feel that an uneven playing field has been created. Reaching consensus on such issues is undoubtedly difficult. A balance needs to be struck between consumer protection issues around flexibility and not imposing requirements on professionals that are unduly onerous. Those requirements also need to be consistently applied to all within that profession.’¹⁴

Given that the tax clinic advice is understood to be a free of charge service, it is important to consider the nature of appropriate supervision by a qualified tax agent or lawyer to provide quality assurance in the process.

There is a need to strike an appropriate balance between providing the Tax Clinics with flexibility in determining the service offering each clinic wishes to provide the community and yet also addressing consumer protection issues as noted above.

¹⁴ IGTO, *Review into The Future of the Tax Profession* (2018) p 123-124.