



ATO – Treasury protocols

Access information about the ATO and Treasury Tax and Superannuation Protocol.

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The Treasury and the Australian Taxation Office (ATO) are joint stewards of Australia's tax system and some aspects of Australia's superannuation system. The Treasury and the ATO are committed to working collaboratively and continuously to provide the best possible advice to Government

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17 September 2012

Treasury and the Australian Taxation Office - Tax and Superannuation Protocol

The Treasury and the Australian Taxation Office (ATO) are joint stewards of Australia's tax system and some aspects of Australia's superannuation system. The Treasury and the ATO are committed to working collaboratively and continuously to provide the best possible advice to Government on issues affecting these systems, and the implementation of Government policy to meet the needs of the community who are the users of these systems.

The Treasury is a central policy agency and expected to anticipate and analyse policy issues with a whole of economy perspective, understand government and stakeholder circumstances and respond to changing events and directions. The ATO is the Government's principal revenue collection agency, and part of the Treasurer's portfolio. The ATO administers the tax and superannuation laws that are the subject of this Protocol.

Purpose of the Protocol

This Protocol provides a framework for the working arrangements between the Treasury and the ATO to enable the best possible functioning of the tax and superannuation systems that Treasury and the ATO share the stewardship of.

These working arrangements apply in designing new policies and laws that form part of these systems, and in the administration of that law once enacted. Treasury has accountability for providing advice to government on policy and law design issues. The ATO's administration of enacted laws includes forming views about the interpretation of those laws, recognising that the courts are the final arbiter on matters of statutory interpretation.

Principles of Australian Government best practice will underpin all work carried out within the Treasury and the ATO.

To support these purposes, the Protocol outlines the following arrangements that form part of the overall Treasury-ATO relationship:

- a. The integrated tax design process
- b. Quality assurance of new law
- c. Revenue costing
- d. The law and its administration

Designing new policies and laws - The integrated tax design process

Tax and superannuation policy, legislation and administration are integrally related and interdependent. Our approach to tax and superannuation design will endeavour to ensure that the administrative, compliance and interpretive experience of the ATO fully contributes to those policy and legislation processes and that there is a high level of integration across the policy, costings, legislative and administrative aspects of tax and superannuation changes. This approach supports the primary objectives of providing the best possible advice to Government, and implementation of new policy and law that meets user needs. An integrated tax design approach should encourage collaboration on costing process as well as a coherent approach to tax design, development and implementation. The coherence of the integrated tax design process will be reflected in both the approach to tax design and the tax policy outcomes.

A diagram has been developed to represent the key elements of the integrated tax design process and how it is envisaged that the process will work on a day to day process.

This diagram is included at Attachment A.

Designing new policies and laws - Quality assurance of new law

Quality assurance is both a framework and a process to give the Government confidence that its policy measures are being implemented and will be applied as intended.

The Treasury and the ATO will separately determine internal processes to assure the government of the quality of tax and superannuation legislation and will institute internal mechanisms that enable senior officers in each organisation to jointly sign off on this quality dimension before legislation is referred to a Minister for introduction into Parliament.

To guide internal processes, in April 2012 Treasury and the ATO developed a proposal for quality assuring tax and superannuation legislation and administration.

This quality assurance proposal is included at Attachment B.

Revenue costings

A key element of advising on policy proposals is considering the revenue impact on government and the distributional impacts on taxpayers.

The accountability of tax costings rests with Treasury. However, Treasury and the ATO share responsibility for costings and collaborate on all aspects of the costing process.

Treasury's Tax Analysis Division (TAD) will allocate responsibility for the costing of a specific new proposal having regard to availability of information, capabilities and other relevant factors. Wherever feasible, costings prepared by one agency should be reviewed by the other for quality assurance purposes.

The Treasury (TAD) will provide requests for costing or data to the Tax Office through the ATO's Revenue Analysis Branch (RAB). As part of the request, the Treasury will provide contextual information and the policy intent and the timeframe for the request. The request will include information on any likely or known timeframe for consideration by Government. Where a proposal has previously been costed, the Treasury will highlight any changes to the policy since the previous costing as well as any additional information available about the proposed operation of the policy.

Revenue costings provided to the Treasury by the ATO will, where agreed, include a compliance cost assessment and information on the administrative impacts of the proposal. The ATO will also advise whether it will be able to implement the measure by the proposed start date and/or details of start date preferences. The response will also incorporate any possible issue or difficulty that taxpayers, tax agents or other intermediaries are likely to have in being ready to comply with the measure by the proposed start date.

Enacted law - The law in administration

Whilst acknowledging that the Courts are the final arbiters of the laws made by Parliament, the ATO interprets and enforces enacted law that it is responsible for administering.

In forming its view on the interpretation of law, the ATO will routinely consult senior members of Treasury's Law Design Practice and the professions, and undertake community consultation and release draft

views for public comment in accordance with its long standing practices.

The ATO will engage the Treasury on policy and law design issues that are identified in the administration of the law at the earliest possible juncture. In particular, where the ATO identifies that enacted law is not operating consistently with what is understood to be the policy intent of the law, the ATO will provide advice to Treasury recommending law change to ensure that the policy intent is met.

The ATO will also provide advice to Treasury in circumstances where:

- There is a significant risk that enacted law is not operating consistently with what is understood to be the policy intent of the law, or
- The enacted law is operating consistently with what is understood to be the policy intent of the law, but there have been unforeseen impacts for the revenue, the community or administration.

Communication between the Treasury and the ATO

Subject to government and legal requirements, both agencies will share information to meet the objectives outlined in this Protocol. Communications between the Treasury and the ATO on tax and superannuation policy and law are always confidential.

Tax Policy Co-ordination Committee (TPCC)

The TPCC has responsibility for the management of the relationship between the Treasury and the ATO at an institutional level. TPCC meetings are held monthly and are attended by senior officers in the Treasury's Revenue Group and the ATO.

The TPCC has oversight of this Protocol and the attachments. It is envisaged that the Protocol and the attachments will be reviewed on an annual basis, as required, to ensure their consistency with the Protocol's objectives.

Resolving differences of view

At all times the Treasury and the ATO will seek to resolve any differences of view in a professional and collegiate manner.

At the earliest opportunity there will be meetings of relevant officials to clarify any differences of view between the Treasury and the ATO.

In the event that differences of view cannot be resolved without escalation it will be brought forward for consideration and discussion at the next TPCC meeting.

If differences of view cannot be resolved adequately to the satisfaction of both agencies by discussion at a

TPCC meeting, topics will be escalated for attention and discussion within the relevant Minister's office.

 Martin Parkinson	 Michael D'Ascenzo
Martin Parkinson Secretary to the Treasury	Michael D'Ascenzo Commissioner of Taxation
10 September 2012	

Attachment A

Integrated Tax design process for key measures

Key measures can include policy with high profile outcomes, complex law changes, complex administration, strict time limitations and a large community impact.

Download the Integrated Tax design process for key measures (PDF, 540Kb)

Attachment B

Quality assuring tax and superannuation legislation and its administration

Reflecting evolving economic developments, domestic and international tax and superannuation issues are increasingly intertwined. Moreover, issues and problems that develop in one part of the tax or superannuation system may well undermine objectives being

sought in another part and cause system-wide risks and issue management challenges. These influences can potentially weaken the tax and superannuation system and raise concerns about tax and superannuation system fragility.

The Australian Taxation Office (ATO) and Treasury share joint stewardship for the tax system. While carrying out this responsibility Treasury will have regard to the sustainability of the tax revenue stream or superannuation system as well as assessing the macroeconomic and structural policy implications of changes to tax revenue. The ATO's responsibilities include unique challenges in relation to revenue collection, law interpretation, administration, compliance and enforcement.

These responsibilities and pressures, along with increased scrutiny from parliamentary, statutory and public quarters, require Treasury and the ATO to actively coordinate their respective activities to ensure enhanced quality assurance.

For Treasury, that means bringing public finance principles and evidence, including revenue estimates to bear on key policy choices and crafting workable tax law that delivers the Government's policy objectives. For the ATO, that means injecting its administrative and interpretive skills in the development of legislation with a view to, assuring to the best extent possible, that draft tax and superannuation law can be interpreted and administered consistently with the Government's policy objectives.

Quality assurance: what, how and when

Ensuring that legislation accurately reflects the Government's policy intent is a critical element of the Treasury's policy advising and legislation implementation role. In developing new legislation, it is imperative that agreement is reached with the tax administrator (the ATO) that the legislation will achieve the Government's policy intent and a commitment that it can and will be administered in that way. Where such agreement cannot be reached, it will be critical to identify the reasons for the impasse and potential remedies and to advise the Government if any change in policy is required.

In this context, quality assurance is both a framework and process to give the Government confidence that its policy measures are being implemented and will apply as intended. A quality-assured piece of tax or superannuation legislation would be one that has been formally assured to have been prepared to the highest professional standards

of the Treasury and ATO and is intended to do what it is meant to, acknowledging that legislative prescriptions cannot always anticipate all factual scenarios nor the hazards of litigation.

Treasury will ensure that policy development has regard to the economic impacts, including those relating to particular groups of taxpayers or industry segments. The associated revenue impacts of a policy change will need to identify behavioural responses, be well documented and be of a sufficient quality and detail to be capable of clear explanation to parliamentarians and other stakeholders. Treasury must continually improve its understanding of the tax and superannuation system in operation, including through closer collaboration with the ATO and tax and superannuation practitioners. In particular, Treasury will foster a shared understanding with the ATO about economic policy objectives that find expression in tax or superannuation legislation.

Tax and superannuation legislation will be clearly expressed so that it can be interpreted and administered consistently with its intent. The ATO adopts a purposive interpretation of the law which, subject to the terms of the law itself, will ensure that the application is relatively stable: it will not change noticeably from the time the law is drafted and enacted to the issuance of ATO interpretative decisions, practice statements, and public and private rulings. The interpretative approaches of the courts from time to time are relevant here. The ATO is cognisant of these trends in its role in the application of the tax and superannuation law. The application of the law will also have to have due regard to factual scenarios, not identified at the time and therefore not well catered for in the words used in the drafting of the law.

The most accountable way to proceed would be for the Treasury and ATO to institute internal mechanisms that would enable designated senior officers in each organisation to 'jointly sign off' on this quality dimension before legislation is referred to a minister for introduction into Parliament.

Institutional accountabilities

Treasury

Policy development and the resulting drafting instructions for tax and superannuation legislation will be developed by Treasury in close continuous collaboration with the ATO. To assist the ATO to participate as fully as practicable in law development, the ATO will be closely involved with the development of the drafting instructions, given

appropriate opportunity to comment and provided with drafting instructions as sent to the Office of Parliamentary Counsel. The ATO will also be provided with an opportunity to contribute to and review the development of draft legislation and contribute to the development of extrinsic materials before introduction into Parliament. In the rare cases where this is impossible it will be by prior arrangement between the Executive Director of Revenue Group and the relevant Second Commissioner at the ATO.

A designated senior Treasury officer would formally assure that a piece of draft legislation has passed internal quality assurance processes and that, as far as practicable, the Bill and extrinsic materials clearly articulates the Government's intended policy. Such processes will involve the policy having been tested through appropriate consultation, including with external tax and superannuation experts (as envisaged by external engagement and consultation); critical internal assessment (from the Tax Policy and the Tax Specialists networks); and other knowledge sources within Treasury and the ATO, as appropriate.

ATO

Noting that the final arbiter on the interpretation of the statute is the Court, the authorised ATO senior officer will formally assure as far as practicable that a piece of draft legislation can and will be interpreted and administered consistently with the Government's stated policy intention, as articulated in drafting instructions, relevant objects clauses and extrinsic materials, or formally advise the Treasury as soon as practicable if the ATO consider the words used in the drafting instructions, draft law or extrinsic materials will depart from the understood policy intent. That senior ATO officer will draw on ATO's tax and superannuation legal and interpretative and systems resources to provide such assurance.

Strategic oversight of quality assurance

Tax Policy Coordination Committee is best positioned to oversee and support the joint quality assurance program. This oversight would include:

- communicating the purpose and deliverables of quality assurance to all relevant staff in the organisations;
- resolving differences of view that might impede the process; and

- discussing critical tax and superannuation policy and legislation issues as necessary.

The Treasury and the Australian Taxation Office

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