

18 November, 2014

Ms Wendy Michaels
Audit manager
Australian National Audit Office

By email: wendy.michaels@anao.gov.au

Dear Ms Michaels

**AUSTRALIAN NATIONAL AUDIT OFFICE – REVIEW OF AUSTRALIAN TAXATION OFFICE’S
ADMINISTRATION OF CAPITAL GAINS TAX
COMMENTS BY STOCKBROKERS ASSOCIATION OF AUSTRALIA**

I refer to our telephone conversations with yourself and with Esther Ooi recently in regard to the Australian National Audit Office (ANAO)’s performance audit of the Australian Taxation Office (ATO)’s administration of capital gains tax (CGT) for small business and individual taxpayers.

I note that you indicated that the ATO’s proposals for introducing third party reporting by stockbrokers of share transaction by clients was a matter that was within scope of the ANAO’s brief, and that you would be interested in hearing the Stockbrokers Association of Australia’s thoughts. I note also that you are aware of the substance of the Association’s previous submissions in relation to this proposal, however you invited us to write to the ANAO further to express our views on the matter.

We apologise for not having written sooner. The last few weeks have coincided with the Association’s Annual General Meeting and Board elections, and it has been a very hectic period for us.

At the outset, we want to stress that the Stockbroker's Association has consistently acknowledged the Government's policy objectives in seeking to address the potential evasion of capital gains tax by taxpayers. The Association has not taken issue with the Government's aim in investigating ways of obtaining information that would assist with this objective.

Our principal concerns about the ATO's proposal for third reporting have been twofold. Firstly, there were existing avenues available to ATO to obtain much of the information that they were looking to obtain from stockbrokers, namely, by making use of the new ASIC market surveillance system (MAS), the development of which had already been paid for at considerable expense, mostly by stockbrokers. Imposing an additional reporting framework that would have replicated this, at considerable further cost to the stockbroking sector, and in a very difficult economic climate, was duplication and wasteful, we argued, and not a sensible or fair outcome.

The second area of concern for our members was that, even with the information to be obtained from third party reporting, we do not see how the ATO will be able to achieve what we understand their objective to be, namely, estimating and prefilling capital gains tax in a taxpayer's returns.

In relation to our first area of concern, we note that ATO has agreed with our submissions, and is in the process of developing a revised proposal that that would involve making use of the information about share trading that is in ASIC's possession, and subsequent data matching by ATO. The Association was pleased to see that ATO had listened to industry and was prepared to be flexible and logical in its search for a solution.

We want to acknowledge the ATO's engagement and consultation with the Stockbrokers Association on this proposal. We have found the ATO genuinely approachable and communicative as regards this proposal.

Although we have not yet seen a detailed description of the revised proposal, we understand that it will involve a substantially less administrative burden than the original reporting regime would have entailed. We understand that the revised proposal will involve an initial obligation on stockbrokers to provide certain client data to ATO to enable matching of trade data with a taxpayer. Thereafter, there will be some form of ongoing obligation to update this data for changes.

Whilst acknowledging that the ATO looks to have considerably reduced the likely impact on the stockbroking industry compared to the initial proposal, our members continue to hold grave reservations about the merits of what is still being proposed.

As you are no doubt aware, the issue of CGT is extremely complex, and our members still have difficulty seeing how the ATO will be able to get to a position of estimating or pre-filling a taxpayers CGT information. We still have difficulties seeing how the fundamental problems in determining CGT can be overcome. If this is the case, then even the revised proposal will be a wasted cost and resources.

We have identified these problems in our submissions to ATO, but will restate them here:-

- The reporting obligations will start from day 1, after which there will be a bank of data to draw from. However, there is no back capture of historic trade data. Therefore, how will ATO ever be in a position to know when a parcel of financial products was purchased, and the purchase price?
- even with knowledge of the purchase price, it will not be known whether the client has elected to apply cost-averaging to the products acquired, or if not, which parcel is actually being sold
- How will the LIFO rules be applied?
- How will ATO know whether clients have treated the financial products as being on revenue account or on capital account?
- How will ATO know whether the products are being held beneficially or on trust?

We understand that ATO had indicated that it has modelling and analytic tools that can address these questions, but our members have difficulty seeing how such tools could address matters such as these, many of which are at the election of the taxpayer.

Our members have questioned whether the only realistic position that the ATO can hope to get to is to identify that a CGT event has occurred, and then to flag that to the taxpayer as an item requiring completion. If one accepts this argument, then the ATO is already in a position to do this with the information that it is already obtaining from the share registries.

This information, whilst not including information as to price or broker fees, nevertheless does confirm that a transaction has occurred, and the date. The ATO can then monitor the CGT reporting that is made, and can audit returns to ensure compliance.

The issue therefore that our members have in this instance is not in challenging the right of the ATO to seek the information, but rather, to challenge requirements that will not achieve their objectives, and as a result will be a waste of resources.

We appreciate your invitation to the Association to provide your views. We would also appreciate the ANAO critically assessing the proposal on the basis of its audit principles to ensure that an efficient and effective outcome is achieved in the pursuit of the Government's objectives.

We would be happy to discuss any issues arising from our submissions on this issue. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au

Yours sincerely,



David W Horsfield
Managing Director/CEO