

## **New Commissioner of Taxation – New emphasis on Alternative Dispute Resolution**

In his address at the Tax Institute's 28th Annual Convention in Perth on 14 March this year, the newly appointed Commissioner of Taxation, Chris Jordan (**Commissioner**) prioritised the increasing use of dispute resolution processes to resolve taxpayer disputes in a timely manner. The Commissioner stated that:

"...[an] area of business I believe can be improved is the speed of resolving issues taxpayers have with us and even hopefully reducing the number of disputes..."

Our experts will in future be more visible and accessible - not 'faceless decision makers'..."

The Commissioner went on to say that:

"Resolving disputes is a significant investment for the ATO and for taxpayers: it can be costly, time and resource consuming, and a potential risk to our relationships and reputation if not well handled."

On 1 August 2013, the Australian Tax Office (**ATO**) released Practice Statement Law Administration PS LA 2013/3 providing instructions to ATO personnel on what policies and guidelines must be followed when attempting to resolve or limit disputes by alternative dispute resolution (**ADR**). The PSLA defines ADR as an umbrella term for processes, other than judicial or tribunal determination, in which an impartial person, assists those in a dispute to resolve or narrow the issues between them.

### **ATO obligations with respect to ADR**

The PSLA further states that participation in the ADR by the ATO must be done fully and effectively. An obstructive or uncooperative attitude indicates a failure to participate in good faith. The ATO is to approach the ADR with 'good management' (i.e. in a way that is efficient, effective, economical and ethical and not inconsistent with the policies of the Commonwealth).

### **When to initiate ADR**

While there is no optimal time for ADR, the ATO considers that the following are appropriate circumstances when ADR may be initiated:

- after the ATO issues a position paper during an audit
- during a review at the objection stage before a final decision is made by an ATO officer, or
- during the litigation stage.

The ATO notes that attempting ADR too early may increase the overall cost to parties and unnecessary delay as parties may not be in an informed position to engage in discussions.

### **ATO expectations of taxpayers in ADR**

Paragraph 27 of the PSLA outlines the ATO's expectation of taxpayers in ADR:

*The ATO expects taxpayers and their representatives to:*

- *be prepared, including ensuring that all relevant people are participating or directly accessible*
- *participate fully, effectively and in good faith*
- *be authorised to discuss and resolve the dispute*
- *provide the ATO with all relevant documents prior to the ADR process, and*
- *be willing to negotiate and attempt to resolve all aspects of the dispute or clarify prior to the ADR process any limitation of the scope of the ADR process*

**What can taxpayers do if their expectations are not met?**

Where a taxpayer is dissatisfied with ATO during the ADR process, the taxpayer has the right to make a complaint.

A taxpayer should first try to resolve the matter with the tax officer involved in the ADR process and if still unsatisfied, the taxpayer should talk to the tax officer's manager.

If the manner in which the complaint is dealt with is unsatisfactory, the taxpayer may lodge a complaint using an online form from the ATO website.

**Internal ATO Mediation**

Recently, the ATO have initiated a pilot internal mediation process (**ATO IMP**). The ATO IMP utilises a senior ATO General Counsel to act as an independent mediator (**Mediator**) to facilitate the resolution of taxpayer disputes in a timely and cost effective manner. The Mediator is given a broad mandate and, importantly, is required to:

- act in an independent manner notwithstanding the Mediator's ATO employee status;
- to keep the taxpayer information disclosed during the mediation confidential.

We consider that the ATO IMP is a significant and welcome development in taxpayer dispute resolution.

We understand that there have been a limited number of ATO IMPs (currently numbering in the region of 30-40 cases). Rob Jeremiah and Paul Goldin of Sladen Legal have been actively involved in the ATO IMP having successfully resolved several taxpayer disputes through the ATO IMP.

Based on our experience we can corroborate the impartiality of the Mediator and the retention of taxpayer confidentiality following disclosures made to the Mediator in confidence and during the ATO IMP.

Sladen Legal would be happy to assist you with considering the suitability for and the possibility of utilising the ATO IMP for any taxpayer disputes you or your client base may have.

**For more information on taxation, please contact:**

Rob Jeremiah  
Principal  
03 9611 0103  
rjeremiah@sladen.com.au

or

Paul Goldin  
Tax Consultant  
03 9611 0152  
pgoldin@sladen.com.au

Sladen Legal  
Level 5, 707 Collins Street  
Melbourne 3008  
Victoria Australia

PO Box 633  
Collins Street West  
Victoria 8007

T +61 3 9620 9399  
F +61 3 9620 9288

sladen.com.au

