



Australian Government  
Australian Taxation Office

# 2017 CTA-ATO workshops: Justified trust and key taxpayer engagement

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# 1. Background

In October and November 2017, the ATO and the Corporate Tax Association (CTA) co-hosted a series of workshops around Australia on justified trust and Key Taxpayer Engagement.

This document focuses on the application of these initiatives to taxpayers in the Top 100 Program and represents the shared understanding reached in respect of areas of uncertainty discussed at these workshops.

The ATO thanks the CTA and its members for the feedback provided on the tax assurance report (including ratings guide) in advance of the workshops.

## 2. Key messages

- > The Top 100 Public and Multinational Business clients have a very large impact on the tax system and there is strong community interest in ensuring these taxpayers are paying the right amount of tax according to law.
- > Key Taxpayer Engagement (KTE) is the name of an overarching whole-of-tax approach we use to engage the largest public and multinational businesses. KTE is a tailored engagement approach where services and assurance activities are based upon the risk profile of the client.
- > The ATO uses the Justified Trust methodology to obtain greater assurance that the largest corporate taxpayers are meeting their tax obligations in a timely and transparent manner. It enables the ATO to provide greater certainty for taxpayers, direct ATO resources to where there may be non-compliance and provide greater confidence to the community.
- > Justified trust is a higher level of assurance than confirming certain risks do not arise. As justified trust depends on analysis of objective evidence, additional information requests are likely for most taxpayers as we work to obtain high assurance.
- > ATO client engagement teams understand the need to be open and provide timely updates, working so that there are 'no surprises' when our assurance outcomes are communicated in the tax assurance report.<sup>1</sup>
- > Equally, taxpayers understand the importance of true and correct disclosure to the ATO and the benefit of timely responses to ATO requests. The tax assurance report is the repository of information for the justified trust journey.
  - The Executive Summary of the tax assurance report will be provided to taxpayers as an 'annual report' of their progress. The ATO encourages the taxpayer's tax team and Board of directors (or an appropriate sub-committee of the Board) to discuss the outcomes reached, particularly where areas for improvement have been identified.
- > Assurance ratings on the four areas of focus in the Justified Trust methodology will be assigned per the ATO's ratings guide contained in the tax assurance report.
  - ATO client engagement teams will explain the basis of the assurance ratings reached, and what action is needed to reach higher levels of assurance.
  - Taxpayers will be kept informed of their progress under the Justified Trust methodology via their usual engagement processes, generally a pre-lodgment compliance review (PCR) or an annual compliance arrangement (ACA).
  - We expect to obtain high levels of assurance for most taxpayers over time.

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<sup>1</sup> For the purposes of this report "our" and "we" is a reference to the ATO and its officers.

- > The ATO will communicate the high-level outcomes of the program to the community through our public messaging (such as [Tax and Corporate Australia](#)). Taxpayers may choose to disclose all or part of their assurance outcomes or tax assurance reports.

## 3. Topics of focus

### 3.1. Risk differentiation framework

Under the risk differentiation framework (RDF) we moderate Top 100 taxpayers on an annual basis to determine our view of each taxpayer's relative risk profile. Top 100 taxpayers are then placed into one of the three risk categories – key taxpayer, key taxpayer with significant concerns or higher risk. More information about our risk categorisation approach for Top 100 taxpayers is available on our [website](#).

#### > How are the different taxes considered under the RDF moderation?

A separate RDF rating is given for each tax as appropriate (income tax, GST, excise and PRRT).

#### > How does justified trust relate to RDF?

Information gained through the justified trust review, including any areas identified as unassured, will feed into the RDF moderation process.

### 3.2. The Justified Trust methodology

Justified trust is an OECD concept that describes the level of assurance we seek that the right tax is reported and paid.<sup>2</sup> We use a structured approach (the Justified Trust methodology) to decide whether a taxpayer is paying the right amount of tax according to law. The Justified Trust methodology is applicable across income tax, indirect taxes (GST and excise) and petroleum resource rent tax.

Under the Justified Trust methodology, we take a structured approach to gain this confidence by considering four key focus areas:

- Understanding the taxpayer's tax governance framework
- Identifying tax risks flagged to the market (for example, through Taxpayer Alerts, Practical Compliance Guidelines, or Public Rulings)
- Understanding significant and new transactions
- Understanding why the accounting and tax results vary

Identifying tax risks flagged to the market and seeking to understand significant and new transactions are not new aspects to our engagement approach. These areas are already reviewed through either a PCR or an ACA.

Analysis of effective tax borne (ETB) is an important part of understanding why the accounting and tax results vary. Wherever possible, the ATO uses information already on hand to undertake the ETB analysis, rather than requesting the information again from taxpayers.

ATO client engagement teams will continue to apply materiality thresholds they consider relevant for the taxpayer. Those materiality thresholds will be explained in the tax assurance report.

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<sup>2</sup> For more information on justified trust, please see <https://www.ato.gov.au/business/large-business/justified-trust/>

> **What is ‘tax assured’?**

Tax assured is the proportion of the tax base where the ATO has justified trust that the right amount of tax has been paid. Determination of tax assured is relevant to the assessment of the tax gap.

> **Are traditional audits still part of the compliance landscape?**

Yes. Audits can still form part of the tax compliance landscape where further and more detailed investigation of risk is considered necessary.

### 3.3. Key taxpayer engagement

Key taxpayer engagement (KTE) is the name of an overarching whole-of-tax approach we use to engage the largest public and multinational businesses (ie those taxpayers in the Top 100 Program). The significant feature of KTE is that it incorporates a multi-tax or whole-of-tax approach wherever practical and desirable.

In practice, this means we are working towards:

- a virtual whole-of-tax case team available for taxpayers, providing a single point of contact
- greater internal collaboration in the preparation of requests for information to minimise the number of requests that issue and to ensure we ‘ask once, collect once’ with greater sharing of information
- integrating indirect taxes into the tax risk management and governance review guide
- an integrated tax assurance report over time, covering all relevant taxes. Initially, there will be separate reports for income tax and indirect tax assurance activities.

Under the KTE, ACAs continue to be offered as our premium co-operative compliance product.

> **How do KTE, case products (PCR, ACA) and the Justified Trust methodology work together?**

KTE is the overarching multi-tax approach the ATO uses to engage with Top 100 clients. PCRs and ACAs are the case products the ATO will generally use during that engagement. Within these products the ATO will apply the Justified Trust methodology in order to gain assurance that the client is paying the right amount of tax according to law.

> **How will the GST monthly cycle work together with an annual PCR?**

The GST pre-lodgment compliance review involves real time review of monthly business activity statements (BAS) for a 12-month period starting in the current income year (aligned to the taxpayer’s reporting year).

Assurance activities will occur over the course of the year, on both a pre and post lodgment basis, having regard to the monthly lodgment cycle for BAS. The intention is to identify, discuss and resolve (or plan to resolve) significant risks prior to lodgment, where possible. Where necessary, a more intensive review or further follow-up action will be continued post-lodgment.

## 3.4. Tax assurance report

The tax assurance report (also known as the TAR) is an annual report prepared by the ATO for each Top 100 taxpayers. It records the justified trust journey for the taxpayer to date, and will generally cover a twelve-month period (e.g. the 2017 income tax year) for the taxpayer. The overall summary of assurance at the front of the report will be updated (i.e. year on year) to show the changes to the ratings over time. The tax assurance report has two parts, the Executive Summary and the Permanent File.

The Executive Summary is a comprehensive summary of the work undertaken on the areas of focus. It summarises our position, explains our assurance conclusions and outlines our future assurance plans. This is the document we prepare for release to taxpayers. Prior to releasing the document, ATO client engagement teams will have discussed the content with the taxpayer so the report doesn't contain any surprises when it is received.

The Permanent File is the working document to be retained by the ATO. It will serve as a knowledge repository for us to help ensure a seamless transfer of knowledge where personnel changes occur within the ATO client engagement team.

### > **How will taxpayers be updated on the progress of the tax assurance report?**

Taxpayers can expect ATO client engagement teams to update them regularly on the progress of the tax assurance report. Taxpayers will be kept informed of progress over the course of the justified trust engagement, through the channels agreed to with the ATO client engagement team.

### > **Can the taxpayer comment on the tax assurance report before it is finalised?**

The tax assurance report is not a jointly authored document between the ATO client engagement team and the taxpayer. However, a draft Executive Summary may be provided in some situations to provide an opportunity for taxpayers to assist in the clarification of factual matters or provision of additional supporting information.

### > **What can the taxpayer do if they disagree with something in the tax assurance report?**

Taxpayers should provide their feedback to the ATO client engagement team. Where the taxpayer provides additional evidence to update a finding made by the ATO client engagement team in the report, that new information will generally be carried forward to be considered and analysed in a future tax assurance report.

Feedback on the Top 100 Program, including the tax assurance report process and findings is most welcome and can be provided through existing channels including SES relationship managers or via email to [top100@ato.gov.au](mailto:top100@ato.gov.au).

### > **Who is the tax assurance report given to?**

We send the tax assurance report to the most senior tax personnel we engage with during the review; this will generally be the tax manager or head of tax.

### > **Will the ATO publish the tax assurance report?**

The ATO will not publish the tax assurance report as privacy and secrecy laws prevent the ATO from making the report publicly available.

> **How can taxpayers use the tax assurance report?**

The ATO encourages the tax team and its Board to discuss the outcomes reached, particularly where tax risks or areas for improvement have been identified and how they may be best addressed.

> **Will indirect taxes such as GST be incorporated into the tax assurance report?**

We expect to move towards an integrated tax assurance report for both income tax and indirect taxes over time.

## 3.5. Tax assurance report ratings

We provide a rating against each focus area, or the elements within the focus area. The ratings guide contained in the tax assurance report outlines the ratings and respective criteria we will consider.

- For some items a gradient sizing of icons is used, where the relative size of the icon indicates our view of the relative tax impact of the matter reviewed. This might be important where only a few items were assured, but those items were very significant in terms of tax impact. It might also be relevant where we are at an early stage with an issue (i.e. amber) but wish to convey that the amber item is a relatively small impact overall.

The ratings depend on the evidence received and analysis undertaken.

- The extent of evidence that is required will vary between taxpayers, and assurance items. We will have regard to public information, including any voluntary Tax Transparency Code disclosures.

The tax assurance report will outline the ratings reached, and provide explanation about the next steps required to reach higher levels of assurance (where necessary). It is expected that the ATO client engagement team will have discussed the expected ratings with the taxpayer so the tax assurance report contains no surprises.

Completion of the tax assurance report will not always align with completion of the PCR or ACA (although this is optimal), so the tax assurance outcomes may be discussed separately in certain cases.

> **How can a taxpayer discuss a rating if they don't agree with the ATO client engagement team?**

Taxpayers should discuss their concerns with the ATO client engagement team. ATO client engagement teams will explain the reason for the rating and the actions required for higher levels of assurance (higher ratings) to be achieved.<sup>3</sup> Furthermore, taxpayers can also discuss their concerns with their SES relationship manager.

## 3.6. Assurance outcomes

Our **overall level of assurance** is a holistic assessment of whether sufficient objective evidence has been obtained that would lead a reasonable person to conclude a taxpayer paid the right amount of Australian tax according to law. This is a matter for professional judgement in each case.

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<sup>3</sup> Taxpayers can also provide feedback on the Top 100 Program, including the tax assurance report process and findings by emailing [top100@ato.gov.au](mailto:top100@ato.gov.au)

We will work with taxpayers to ultimately achieve high levels of overall assurance over time, but this must necessarily require higher levels of evidence than the past as this is an objective standard that needs to be applied with rigour to ensure we can retain community confidence. The level of assurance required should reduce over time as we assure particular areas and transactions and further develop our understanding of a taxpayer's tax and tax risk profile.

We expect to reach high levels of assurance for most taxpayers over time.

> **Does a 'red flag' on one element preclude a 'high' overall level of assurance?**

Yes, in most cases a 'red flag' on one element will preclude a 'high' overall level of assurance. However it would still be possible to reach a medium level of assurance depending on the materiality and overall tax impact of the red flag issue, as well as the likely behavioural response of the particular taxpayer.

> **What can a taxpayer do if they disagree with the overall level of assurance?**

Taxpayers should discuss their concerns with the ATO client engagement team.<sup>4</sup> Taxpayers can also discuss their concerns with their SES relationship manager.

## 3.7. Benefits of justified trust

For taxpayers who work with us to obtain justified trust, the benefits include:

- reduced compliance costs in future years where their arrangements remain largely unchanged
- their Board having confidence in their tax compliance
- greater certainty over their tax affairs
- 'lighter touch' approaches where we shift to more service focused approaches
- less intensive assurance-related engagements with us
- retained corporate knowledge through a permanent file for each taxpayer to help ensure a seamless transfer of knowledge where personnel changes occur within the ATO.

Where a high overall level of assurance (justified trust) is obtained, the ATO client engagement team is unlikely to contact the taxpayer again in relation to the income year(s) or BAS periods reviewed unless something new comes to our attention.

Obtaining justified trust allows us to focus our resources in the right areas and provides greater certainty for taxpayers in terms of what is on the horizon. This means that once justified trust is obtained, taxpayers should expect an increased focus on service and support from us, and less intensive assurance related engagements with us.

What our 'less intensity' approach looks like may vary between taxpayers but taxpayers can expect that our assurance related interactions will be less frequent and less in-depth where material changes have not arisen. This could involve reviewing only any significant transactions which arise in the year, or not reviewing the tax control framework or book to tax adjustments again for two years. Our focus will be on maintenance of the taxpayer's good standing rather than continual review.

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<sup>4</sup> Alternatively, taxpayers can send an email to [top100@ato.gov.au](mailto:top100@ato.gov.au)

## 3.8. Tax governance

One of the main differences in the ATO's engagement approach in applying the Justified Trust methodology compared with previous compliance approaches is an initial increased focus on tax governance. ATO client engagement teams will have detailed regard to the [tax risk management and governance review guide](#) during the justified trust engagement. The guide sets out best practice, but we recognise that it needs to be applied by ATO client engagement teams on a 'fit for purpose' basis and not seen as a check-list. Under the KTE approach from 2018, the ATO client engagement team will approach governance reviews from an income tax and indirect taxes perspective wherever possible, given that many of the board level and management level controls may be similar.

At present a 'stage 2' rating is considered a good rating for governance. ATO client engagement teams will work with taxpayers to reach an understanding of the operational effectiveness that would be required to be established in order to reach a stage 3 rating. A stage 3 rating would require evidence of operational effectiveness (established through testing).

Once a stage 3 rating for governance is reached, the ATO client engagement team will seek agreement with the taxpayer on how to monitor the maintenance of operational effectiveness moving forward.

### > **Is an external auditor required for testing the operational effectiveness of controls?**

An external auditor is not required for testing the operational effectiveness of controls. To reach a stage 3 rating for governance we require evidence of the testing of controls conducted with a suitable degree of independence. This does not require the appointment of an external auditor, but would require more than testing by the taxpayer's own tax team.

Testing by the internal audit function which is scoped and conducted in line with the tax risk management and governance review guide would indicate better practice in terms of testing the operational effectiveness of controls to manage tax risk.

### > **How often is testing of operational effectiveness required?**

Our tax risk management and governance review guide includes guidance on the frequency of control testing that can be applied to assess a tax governance framework.

## 3.9. How ATO client engagement teams will work with taxpayers

The Justified Trust methodology will be applied within our case products (generally PCRs and ACAs). Justified trust is an extension of our existing approaches but services under our case products will continue to be available.

There may be a period or areas of uncertainty for a taxpayer when they start the justified trust journey with the ATO. Taxpayers can expect ATO client engagement teams to work openly with them explaining the process throughout the journey. Taxpayers will be kept informed of progress over the course of the justified trust engagement, through the channels agreed to with the ATO client engagement team.

Initially, the justified trust engagement will require the provision of new types of information from taxpayers. The ATO acknowledges this important up-front investment from taxpayers. The ATO client engagement team will work with taxpayers to time information requests around other commercial pressures wherever possible.

- Taxpayers should take an upfront approach and disclose known risks/concerns to the ATO as they would under other engagement processes.

Before asking the taxpayer for information, the ATO client engagement team will check what is already available through existing channels, including other business areas of the ATO.

> **Will taxpayers know why the ATO client engagement team wants the information they are requesting?**

Taxpayers will know why the ATO client engagement team is requesting particular information. The ATO client engagement team will explain the reasons why particular information or source documents are being requested. If the taxpayer is unsure at any time, they should ask their client engagement team about the reasons for the request.

> **Will the ATO make use of information already provided to the office?**

We will use information already held by the ATO wherever possible, including information provided under early pre-lodgment compliance reviews, other products or to different work areas within the office.

# 4. Bringing it to life: case studies

## Case Study 1

### > Context

XYZ Ltd (XYZ) is a Public and Multinational business which has an open, transparent and co-operative approach to their tax obligations. The taxpayer's business creates a significant fuel tax credit entitlement for eligible fuel used by the business.

XYZ's tax team purposefully engages with the ATO during the income tax pre-lodgment compliance reviews (PCR) and GST and excise engagements. This includes the timely provision of information.

XYZ's tax team also provides the ATO with a business update, walkthrough of their lodged returns and GST integrity of business systems (IBS) issues annually.

A tax assurance report (TAR) for income tax has recently been finalised and shared with the taxpayer for the 2016 income tax year. The TAR communicated an overall medium level of assurance for the business. The future assurance plan in the TAR flagged some further assurance work is required on the focus areas of Tax Governance and Significant/New transactions.

### > Risk Differentiation Framework (RDF) moderation

As a result of the 2017 RDF moderation process, XYZ was rated across each tax as follows:

- GST                      Key taxpayer
- Fuel tax credit      Key taxpayer (*note fuel tax credit is managed by the Excise team*)
- Income tax            Key taxpayer

### > Key Taxpayer Engagement approach and client experience

Applying the Key Taxpayer Engagement (KTE) approach, excise will take the lead in this case given the significant fuel tax credit. Given all three taxes have been rated as Key Taxpayer, the ATO would be looking to support and maintain the open, transparent and co-operative approach adopted by the taxpayer to their tax obligations. The level of services offered by the ATO would have regard to this relationship.

As the lead team, excise would organise to form the virtual whole of tax (WOT) team across the three taxes (income tax, GST and excise). The WOT team will discuss and document their proposed KTE plan (the plan) which would then be shared and discussed with the taxpayer. The plan will take into account the progress towards achieving justified trust across all the taxes. A key element of the plan is that where practical, the WOT team will consolidate requests for information in order to streamline their engagement.

Given the taxpayer's transparency and willingness to work with the ATO there would be an expectation that obtaining a high overall level of assurance (justified trust) could be achieved in a shorter period of time. Achieving justified trust will result in a lower level of intensity for the ATO and taxpayer. This would mean our assurance interactions would be less frequent and less in depth where no material changes have arisen.

In this scenario, every attempt would be made to resolve issues as they arise and before lodgment where possible. For example, resolving income tax issues inside of the PCR. However, it is acknowledged that there may be occasions where the ATO and the taxpayer may disagree on an issue. In such situations we would look to the most appropriate resolution pathway to provide certainty and resolution for both the ATO and the taxpayer.

This may include using techniques such as Private Rulings and, where appropriate, Alternative Dispute Resolution.

As a result of the positive, open and transparent relationship with the taxpayer, the WOT team may offer the following service to the taxpayer to support and enhance their current and future client experience:

- The allocation of a relationship manager(s) and access to the Large Service Team (in addition to having a lead relationship manager appointed)
- Access to subject matter experts, for example in respect of fuel tax credit matters or the Significant/New Transactions where a medium level of assurance was attained
- Receiving administrative certainty from the ATO for transactions or issues where a private binding ruling may not be practical
- The potential to enter into an Annual Compliance Arrangement (ACA).

## Case Study 2

### > Context

WXW Ltd (WXW) is a Public and Multinational Business which has been involved in complex arrangements giving rise to significant income tax risks on which the ATO has issued a taxpayer alert and public guidance.

WXW's tax team purposefully engages with the ATO during the income tax pre-lodgment compliance review (PCR) and GST and excise engagements.

WXW's tax team also provides the ATO with a business update, walk-through of their lodged returns and GST integrity of business systems (IBS) issues annually.

A tax assurance report (TAR) for income tax has recently been finalised and shared with the taxpayer for the 2016 income tax year. The TAR communicated an overall low level of assurance for the business. The complex arrangements giving rise to income tax risk were specifically flagged in the TAR as an area where the ATO has concerns of potential non-compliance with the income tax law. The future assurance plan in the TAR shows that more assurance work is required on the focus areas of Tax Governance, significant income tax risks subject to a taxpayer alert and public guidance and Significant/New transactions.

### > Risk Differentiation Framework (RDF) moderation

As a result of the 2017 RDF moderation process, WXW was rated across each tax as follows:

- GST                      Key taxpayer
- Excise                    Key taxpayer
- Income tax              Key taxpayer with significant concerns

### > Key Taxpayer Engagement approach and client experience

Applying the Key Taxpayer Engagement (KTE) approach, income tax will take the lead in this case given the income tax risk which is present. The ATO would take the opportunity to leverage off the purposeful engagement which exists across all three taxes (income tax, GST and excise).

As the lead team, income tax would organise to form the virtual whole of tax (WOT) team across the three taxes. The WOT team will discuss and document their proposed KTE plan (the plan) which would then be shared and discussed with the taxpayer. Actioning the presence of income tax risk will be a key priority in the plan for the WOT team. The plan will

also take into account the progress towards achieving justified trust across all the taxes. A key element of the plan is that, where practical, the WOT team will consolidate requests for information in order to streamline their engagement.

Every attempt would be made to resolve issues as they arise and before lodgment where possible. For example, resolving income tax issues inside of the PCR. However, it is acknowledged that there may be occasions where the ATO and the taxpayer may disagree on an issue. We would look to the most appropriate resolution pathway which can provide certainty and resolution for both the ATO and the taxpayer. In this particular scenario, this may include Alternative Dispute Resolution or an audit if resolution through the PCR process or other means was not appropriate. The plan would ensure that the WOT team will regularly engage with the taxpayer and keep them informed on the resolution of the income tax risks.

Achieving an overall high level of assurance (justified trust) would require the resolution of the income tax risks.

In this particular scenario, the WOT team may offer the following services to the taxpayer to support and enhance their current and future client experience:

- The allocation of a relationship manager(s) and access to the Large Service Team (in addition to having a lead relationship manager appointed)
- Opportunities to work collaboratively with the ATO to resolve differences in views (such as Alternative Dispute Resolution).

## Case Study 3

### > Context

DEF Inc. (DEF) is a Public and Multinational Business which is foreign owned. DEF is involved in complex arrangements which give rise to significant tax risks for income tax and GST purposes. With assistance from their financial advisors, the taxpayer has entered into an arrangement that results in no supply for GST purposes being made by DEF. The taxpayer is also involved in various tax planning opportunities which also potentially invoke the general anti-avoidance rules and multinational anti-avoidance law.

There is a general lack of transparency and openness by the taxpayer in their dealings with the ATO and they frequently do not respond to informal requests for information.

Based on the engagements with the taxpayer, the ATO has significant concerns with the taxpayer's tax governance framework. The ATO cannot understand and explain the various streams of economic activity connected to Australia and why accounting and tax results vary.

### > Risk Differentiation Framework (RDF) moderation

As a result of the 2017 RDF moderation process, DEF was rated across each tax as follows:

- GST Higher Risk
- Excise Key taxpayer
- Income tax Key taxpayer with significant concerns

### > Engagement approach and client experience

Applying the Key Taxpayer Engagement (KTE) approach, GST will take the lead in this case given the Higher Risk rating.

As the lead team, GST would form the virtual Whole of Tax (WOT) team across the three taxes (income tax, GST and excise). The WOT team will discuss and document their proposed KTE plan (the plan) which would then be shared and discussed with the taxpayer.

Addressing the identified risks for GST and income tax will be the key priority for the ATO. The ATO will take firm action in its approach. This firm action may include audits involving the use of formal information gathering powers from the commencement of the audit. With the intensive nature of the audit processes, the current application of the Justified Trust methodology through the PCR processes would be prioritised as a secondary work-stream (but where practical, would be run in parallel with the audit processes).

Given the general lack of transparency and openness by the taxpayer in their dealings with the ATO, and the tax risks being actioned, it would be expected that achieving justified trust will require substantial and intense verification.

The WOT team will have discussed the retention of a relationship manager for excise. They highlighted the general importance of retaining a relationship manager for Excise to facilitate the ongoing compliance and relationship with that tax. But they also noted that the taxpayer's behaviour and choices in relation to tax governance and accounting practices raise potential concerns for the correct reporting of excise which require the relationship manager to maintain close monitoring of excise lodgments.

