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Ms. Sandra Roussel
Assistant Secretary, Regulatory Policy
Economic Division
Department of the Prime Minister and Cabinet

By email: deregulation@pmc.gov.au

Dear Sandra,

**Draft Regulator Performance Guide**

The Corporate Tax Association (**CTA**) welcomes the opportunity to make a submission in relation to the draft *Regulator Performance Guide* (**Guide**).

The CTA is the key representative body of large businesses in Australia on corporate tax issues. Further information about the CTA can be found on our website including a list of our 136 members.

The CTA fully supports the three best practice principles in the Guide which will underpin the new reporting framework. We applaud the decision to incorporate regulator performance reporting in the corporate plan and annual report and the removal of standalone performance reporting. We also welcome the Regulator Leadership Cohort and the Cohort's support of the Guide. We also note the need for refreshed Ministerial Statements of Expectations (**SOEs**) as mentioned in the Cohort's recent communique. We note that once finalised, the SOEs should be followed by renewed Statements of Intent by the regulators as soon as possible.

As keen observers of ATO performance, one of the most frustrating features of current performance reporting is it is contained in various sources with no clear line of sight originating from the Minister's Statement of Expectations to measurable KPIs. Currently, there is no single "source of the truth" and thus an apparent lack of single point accountability. Although regulators such as the ATO are generally transparent when the full field of reporting is reviewed, the patchwork of performance reporting leaves the impression of a lack of accountability and confusion over why, for example, the ATO's current 35 KPIs have been chosen or what is their relative weight. The new regulator framework should help in this regard, underpinned by the three guiding principles.

In what follows, rather than commenting on the generalities outlined in the principles, we have made some observations in relation to their operation as they relate to the ATO by way of example.

*Principle 1: Continuous improvement and building trust*

- *Trust is a two-way street*

Regulator trust is not solely about stakeholders feeling they can trust a regulator, but that the regulator can trust those that it regulates.

It almost goes without saying that the ATO is probably the regulator with the biggest reach and impact on the Australian community.

According to the latest 2020 annual report, there are over 11.5 million individual taxpayers, 4.2 million small businesses, 600,000 superannuation funds, 205,000 not for profit organisations, 180,000 private groups and 36,000 public and multinational groups. The ATO currently administers the collection of over $400 billion in taxation revenue, has operating expenses of around $3.8 billion and employs over 21,000 staff.

The ATO has been on a continual improvement drive for several years and has made some significant steps in its continuous improvement journey. Its work has been commendable in many respects, but more is needed to build trust. Community confidence in the ATO, as measured by the ATO, is at 66/100 for the 2020 year against a target of 65, which was the same level achieved in 2019. A rating of 69/100 was achieved in the later part of 2020, off the back of the delivery of the COVID-19 stimulus. Whilst the improvement is heartening, the question that arises is whether the self-assessed rating of 65/100 is in fact aspirational enough.[1]

- *Measure the total system cost of compliance to build trust*

From a continuous improvement lens, at the end of the day, a fundamental metric of a regulator such as the ATO must be a reduction in the cost of compliance/collection. The cost of the ATO collecting $100 of revenue has reduced over time (now at 66 cents per $100 collected), with net tax gaps reducing and currently at 6.9%. On its face, these hard metrics would indicate an improving level of efficiency in the ATO's operations, but they also reflect improved overall levels of voluntary taxpayer compliance. What such hard metrics do not reflect is the cost of compliance from a taxpayer's lens. The ATO do provide some data on the adjusted median cost to individual taxpayers of managing their tax affairs (which has remained steady over the last few years) but there is no information provided on the cost of compliance for other stakeholders in the system.[2]

In our view, it is entirely reasonable to expect a regulator to measure, and be accountable for, further improvements to easing the compliance burden imposed on all taxpayers to ensure compliance requirements are as efficient and effective as possible. Clear accountability to reduce the cost of managing tax affairs would build community trust in the regulator.

- *Collaborate with other regulators to build trust*

A key to building trust is also ensuring that regulators maintain a collaborative approach with other relevant regulators. Where regulators have scope to regulate the same areas,

[1] See Table 2.1 at page 36 at Commissioner of Taxation Annual Report 2019-20 (ato.gov.au)
[2] See Table 2.1 at page 37 at Commissioner of Taxation Annual Report 2019-20 (ato.gov.au)

we strongly support the need for regulators to identify areas of duplication and overlap and to seek to remove the duplication. An example of this is the dual administration of the Research and Development Tax Incentive by both the ATO and Industry Innovation and Science Australia which is currently the subject of two reviews – by the Australian National Audit Office and by the Board of Taxation. The CTA welcomes such reviews to address matters of duplication. Matters of duplication should not always require a formal review process. One way to ensure regulatory action to address duplication is to have as a key KPI the requirement for regulators to address matters of duplication between themselves.

*Principle 2: Risk-based and data driven*

A risk-based approach to regulation supported by sufficient data is strongly supported by the CTA. Such an approach to regulation, particularly for those regulators with access to numerous sources of data, is superior (and more cost effective) than a regulator seeking to attain assurance over the entities it regulates.

In recent times, the ATO has somewhat departed from a risked-based compliance model and embarked on an assurance-based approach for large corporates under its Top 100 and Top 1000 'Justified Trust' program. This has involved a significant investment by the community in the ATO and a significant investment by impacted taxpayers to assure the right amount of tax is paid. This investment in the ATO has been partially funded via $1 billion in tax taskforce funding which is planned to cease in 2023. We note it is not clear exactly what is the measure of success for this assurance-based program, other than "increase the proportion of the tax base where the ATO has justified trust to a level as high as practicable given the nature and complexity of the law and resources available".[3]

Whilst we recognise it is government policy to provide additional resources to the ATO to undertake this work, we note that tax risk (in terms of hypothetical tax not collected as measured by gross and net tax gaps) are lower in the large corporate market than in other areas of the tax system.[4] A question therefore arises as to whether devoting resources to assurance has come at the expense of devoting resources to risk. Specifically, in the case of the assurance-based approach with large businesses, in our view, there is a misalignment between the information collected to assure the base and the compliance burden imposed on taxpayers and the ATO.

*Principle 3: Collaboration and engagement*

Collaboration and engagement between regulators and their regulated entities are essential aspects of a well-performing regulator. As noted in the Guide, transparency of regulator activities and KPIs engenders community trust in their interactions with those regulators.

[3] See page 65 of the ATO 2020 Annual Report.

[4] For example tax gaps for small business for example are 12.4% gross and 11.5% net compared to 7.5% gross and 3.7% net for large business. See Annual tax gap refresh findings | Australian Taxation Office (ato.gov.au)

The ATO has extensive consultative networks and processes with its numerous stakeholders which, broadly, operate well. We would emphasise the need for regulators to genuinely engage with their stakeholders, listen and take on board constructive commentary and modify their regulatory behaviours in appropriate circumstances. Reporting on changes made in response to stakeholder feedback should be an element of this principle.

Transparency in guidance issued by the regulator and in decision-making is also vital in ensuring regulators are making clear to their stakeholders their reasoning for guidance issued or a decision made. This will demonstrate that the regulator has been collaborative with their stakeholders or in the case of making a decision about a regulated entity, that the regulated entity has been 'heard' by the regulator even in circumstances where ultimately the regulator's decision has not changed. This is an important principle in the Guide for regulators and should be upheld.

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Regulators play a vital role in the administration of good government. In this regard, the CTA is fully supportive of initiatives such as the Guide that aim to lift regulator performance, improve the capability of regulators, improve regulator culture and, hopefully, result in positively contributing to reducing the overall regulatory burden in the system.

Should you have any questions or wish to discuss any aspect of this submission or please do not hesitate to contact me directly on (03) 9600 4127 or 0402 471 973.

Yours sincerely,

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