



Australian Government
Inspector-General of Taxation

Review into the Australian Taxation Office's compliance approach to individual taxpayers – use of data matching

A report to the Assistant Treasurer

Inspector-General of Taxation

October 2013

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10 October 2013

Senator the Hon Arthur Sinodinos AO
Assistant Treasurer
Parliament House
Canberra ACT 2600

Dear Minister

**Review into the Australian Taxation Office's Compliance Approach to Individual Taxpayers –
use of Data Matching**

I am pleased to present you with my report of the above review which is one of three concurrent reviews examining aspects of the ATO's compliance approach to individual taxpayers.

This review arose out of taxpayer and tax agent concerns regarding the way in which the ATO collects data from third parties and uses them in its compliance activities.

The review found that the ATO's data matching program was generally effective in detecting instances of omitted income and that the ATO was undertaking work to enhance its processes, including manual reviews of certain cases before audits are commenced. However, I have identified a number improvement opportunities and have made thirteen recommendations in this regard. The ATO has agreed with all of the recommendations with a qualification in respect of one.

The recommendations, in the main, are aimed at improving the timeliness and effectiveness of data matching projects, including enhancing its associated evaluation processes, and its engagement with third party data providers, taxpayers and their agents.

I offer my thanks for the support and contribution of professional bodies, tax practitioners and individual taxpayers to this review. The willingness of many to provide their time, expertise and experience in preparing submissions and discussing issues with myself and my staff is greatly appreciated. I also thank the relevant ATO officers for their professional cooperation and assistance in this review.

Yours faithfully

Ali Noroozi
Inspector-General of Taxation

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EXECUTIVE SUMMARY

The Inspector-General of Taxation's (IGT) review into the ATO's use of data matching is one of three concurrent reviews examining aspects of the ATO's compliance approach to individual taxpayers.

The review arose out of stakeholder concerns regarding the ATO's collection and use of such data. Stakeholders expressed concerns that the data relied upon was inaccurate and that the ATO was not adequately refining such data before comparing them to the relevant information in taxpayers' returns. This had led to a perception that the data matching program was incorrectly identifying cases for audit and exposing taxpayers to higher compliance costs.

The ATO receives data from a number of sources including those that are required to be provided by law, collected by other government agencies, obtained through the ATO's access powers and provided by foreign revenue authorities. The ATO validates and refines such data before comparing them to taxpayers' reported information to identify potential discrepancies. The cases containing discrepancies, then, undergo a selection process to identify those suitable for audit.

Generally, the ATO's data matching program is effective in identifying instances of omitted income with a number of projects yielding high strike rates and revenue outcomes. Moreover, the IGT recognised the ATO's efforts to improve its processes through such initiatives as manual reviews of certain cases before audits are commenced. However, the IGT has identified a number of improvement opportunities, including a need for the ATO to formalise its data gathering and matching processes and to evaluate its projects to determine whether ongoing resource commitments are warranted.

In total, the IGT has made thirteen recommendations aimed at:

- improving timeliness and considering remission of the Shortfall Interest Charge (SIC) where delays occur;
- ensuring that the ATO evaluates the effectiveness of data matching projects including processes which lead to cases being selected for audit, identifying and implementing improvement strategies and, where appropriate, abandoning less effective projects;
- formalising the ATO's strategic enterprise approach to the collection and application of third party data;
- ensuring that taxpayers have a clear channel through which they can seek to address any inaccurate data used in pre-filled returns;
- improving general communication and enhancing engagement with taxpayers and tax agents;
- limiting the instances of notices of amended assessment issuing prematurely;
- raising awareness of its cost-effective administrative reversals process for challenging data matching decisions; and
- improving the ATO's reporting on data matching dispute statistics and using information from the latter to improve its processes in projects generating the highest levels of dispute.

The ATO has agreed with all recommendations made by the IGT with a qualification in respect of Recommendation 2.2. The ATO qualification notes that given the high volume and automated nature of data matching work, consideration of remission of the SIC will occur as requested by the taxpayer following issue of an amended assessment and not before.

CHAPTER 1 — BACKGROUND

CONDUCT OF THE REVIEW

1.1 This is the report of the Inspector-General of Taxation's (IGT) review into the Australian Taxation Office's (ATO) use of data matching. It is produced pursuant to section 10 of the *Inspector-General of Taxation Act 2003* (IGT Act 2003).

1.2 The review is one of three concurrent reviews examining aspects of the ATO's compliance approaches to individual taxpayers. The other reviews examine delay in refund processing arising out of the ATO's Income Tax Refund Integrity Program and its administration of the superannuation excess contributions tax.

1.3 This review was commenced pursuant to subsection 8(1) of the IGT Act 2003, following concerns raised with the IGT during consultation to develop his 2012-13 forward work program. In particular, stakeholders were concerned that the data used were inaccurate or incomplete and the ATO was not taking action to refine the data before seeking to compare it to information provided in individual income tax returns.

1.4 Moreover, submissions outlined concerns that the ATO appeared to be relying solely on the data, without further research, to take compliance action such as amending taxpayers' assessments. The communication between the ATO and taxpayers and their agents was claimed to be insufficient to enable taxpayers to understand and respond to the case against them. It was submitted that this adversely impacted both taxpayers and tax agents. At the very least, it has resulted in additional time and costs in challenging ATO decisions.

1.5 Terms of reference for this review were announced on 20 November 2012. A copy of the terms and the submission guidelines are reproduced in Appendix 1. In response, the IGT received submissions from a diverse stakeholder group including taxpayers, tax agents and their respective representative bodies as well as data management specialists. The IGT also met with interested stakeholders to better understand their experience or those of their clients in dealing with the ATO on this matter.

1.6 Stakeholders expressed particular dissatisfaction with the ATO's use of data matching in two areas, namely, the administration of Capital Gains Tax (CGT) and Foreign Source Income (FSI). Therefore, whilst, this review examines the ATO's use of data matching at a general level, CGT and FSI have been used as illustrative examples. Taxpayer experience in these areas have been used to identify issues and opportunities for improvement which may be applied more broadly.

1.7 The IGT review team liaised with ATO staff in the Data Matching and Compliance Strategies (DMCS) stream of the Micro Enterprises and Individuals (MEI) business line, who have primary responsibility for the management of the data matching program. In addition, the IGT examined case documents from the ATO's data matching case management system to understand taxpayer complaints in this area and analysed ATO statistics in relation to data matching across a number of different areas.

1.8 The IGT also worked progressively with ATO senior management to distil the areas for improvement and to agree on specific actions.

1.9 In accordance with section 25 of the IGT Act 2003, the Commissioner was provided with an opportunity to make submissions on any implied or actual criticisms in this report.

WHAT IS DATA MATCHING?

1.10 Each year, the ATO receives approximately 12.4 million income tax lodgements from individual taxpayers.¹ The ATO takes the approach that it is neither possible nor realistic to expect that all individual income tax returns be manually reviewed for correctness.

1.11 The ATO uses a range of techniques, including data matching, to assist in its verification of income tax returns lodged by individual taxpayers. The ATO's data matching activities broadly consist of automated processes and analytics which compare taxpayer-reported information against information obtained by the ATO from third parties. These activities are supplemented by manual intervention for further investigation or clarification of any discrepancies.²

1.12 The ATO has stated that:³

Data matching is a powerful administrative and law enforcement tool. It allows information from a variety of sources to be brought together, compiled and applied to a range of public policy purposes at vastly lower costs than manual methods.

In revenue collection agencies such as ours, it helps us to identify people who are not complying with their obligations, and to detect fraud on the Commonwealth.

1.13 It is useful to note that data matching is designed to enable the ATO to detect instances of omitted income in individual income tax returns. This operates in tandem with the ATO's Income Tax Refund Integrity Program⁴ and its High Risk Refunds⁵ program which utilise analytical models and expert business rules to detect instances of over-stated or potentially fraudulent claims for deductions, offsets and other credits.

1.14 An important difference between data matching and the refund analytical models is that the former operates in the post-issue environment whereas the latter are applied pre-issue with one exception. The exception is the pre-filling service, for individual income

1 Australian Taxation Office (ATO), *Compliance Program 2012-13* (2012), p. 10.

2 Ibid, pp 19-20; Office of the Privacy Commissioner, *The Use of Data Matching in Commonwealth Administration – Guidelines*, February 1998, p. 2.

3 ATO, Data matching – overview of our compliance approach (5 September 2012) <<http://www.ato.gov.au/General/How-we-check-compliance/In-detail/Data-matching/About-data-matching/Data-matching>>.

4 Inspector-General of Taxation (IGT), Review into the Compliance Approach to Individual Taxpayers – Income Tax Refund Integrity Program, September 2013.

5 Australian National Audit Office (ANAO), *Administration of High Risk Refunds in the Individuals and Micro Enterprises Market Segments*, Audit Report 12, 2007-08. Since 1 July 2013, the ATO has integrated all aspects of the High Risk Refunds program which relates to individual income tax risks into its Income Tax Refund Integrity Program.

tax returns, which operates pre-issue and which the ATO considers to have assisted in reducing the number of discrepancies identified post-issue.

1.15 Pre-issue compliance activity involves the ATO taking action to verify the details and amounts reported in an income tax return *before* a notice of assessment issues to the taxpayer. Post-issue compliance activity is compliance verification action taken *after* a notice of assessment has been issued to the taxpayer.

HISTORY AND DEVELOPMENT OF ATO DATA MATCHING

1.16 Data matching has been a part of Australian tax administration for many decades. In its earliest years, at the end of the 1930s and early 1940s, the ATO manually matched interest reported by banks against interest reported in individual income tax returns.

1.17 With advancements in technology and the introduction of self assessment, including the enactment of Tax File Number (TFN) legislation by Parliament in the 1970s and 1980s, the ATO has moved towards an automated system of data matching through its development and implementation of the Information Matching System (IMS).⁶

1.18 With progressive updates and technological developments, IMS evolved into the current suite of systems used by the ATO, generally referred to as the ATO matching system (ATOMS). ATOMS comprises a suite of other systems including the Information Matching Analysis and Selection (IMAS) system, Automated Document Dispatch (ADD), Compliance Online Enquiry and Amendment System (COEAS) and the Windows Case Actioning System (WinCAS). These systems perform different functions within the ATO's data matching program. Their functions may broadly be described as follows:⁷

- IMAS is the primary system for identifying discrepancies in legislative data reported by third parties, enabling the ATO to apply a range of business rules before selecting cases for action in ATOMS and uploading cases in to WinCAS for letter generation;
- WinCAS is the primary case actioning system for data matching cases and is also the repository of notes and other details regarding the actioning of cases, enabling the ATO to automatically finalise a case with no further action, progress automated amendments in appropriate cases and allow ATO officers to reverse any amendments (or adjustments); and
- COEAS provides an interface for ATO officers to view or edit legislative data provided by third parties, the details and amounts reported by taxpayers and any discrepancies between the two.

1.19 The ATO's enterprise data warehouse is the primary platform used to store all non-legislative data reported by third parties. From this system, the ATO applies a range of business rules to the data before selecting cases for audit in ATOMS and letters issued to taxpayers.⁸

6 ATO, Working for All Australians 1910-2010 (2010) p. 147.

7 ATO, 'Systems Actions', internal ATO document.

8 ATO, communication with the IGT, 30 August 2013.

1.20 In addition to the above systems, the ATO also utilises a 'Warning network' within WinCAS to generate advisory letters to taxpayers where data matching identifies small discrepancies which do not warrant compliance action. The ATO notes that such letters:⁹

... are not audit cases and will not amend. If a taxpayer remains discrepant in the following year an audit case may generate irrespective of the discrepancy amount.

1.21 The ATO explains that where this occurs, a note will appear on the WinCAS system to inform ATO officers that an advisory letter had issued to the taxpayer and the case was being progressed to audit due to the taxpayer's continuing non-compliance.¹⁰

SCOPE OF THE ATO'S DATA MATCHING ACTIVITIES

1.22 Data matching forms a significant part of the ATO's annual compliance program each year.¹¹ The ATO's data matching activities may be broadly grouped into two categories. These are:

- Business As Usual (BAU) data matching is an automated process in which individual income tax returns are matched against data obtained under legislation from such sources as employers and financial institutions to detect cases of potential underreported income or to verify taxpayers' entitlement to offsets or obligations such as the medicare levy surcharge; and
- specific, or special purpose, data matching projects in which different ATO business lines acquire and match external data with information on ATO databases to identify and address risks in certain areas.¹²

1.23 In recent years, with improved automated processes and systems, the volume of the ATO's data matching transactions has increased significantly. This growth is shown in Table 1 below.

Table 1: ATO data matching transactions

	2007–08	2008–09	2009–10	2010–11	2011–12
Transactions matched	408m	502m	516m	539m	649m

Source: Commissioner of Taxation Annual Report 2011–12

1.24 In relation to this growth, the ATO further explains that:¹³

In 2011–12, we completed almost 600,000 audits and reviews resulting in adjustments. Over 97 per cent of these related to the micro enterprises and individuals markets, which included work in data matching, omitted income from third party data, employer obligations, and income tax refund data.

9 Above n. 7.

10 Ibid.

11 ATO, *Compliance Program 2010–11* (2011) pp. 5, 19, 21; ATO, *Compliance Program 2011–12* (2012), pp. 3, 15, 18; ATO, *Compliance Program 2012–13* (2013) pp. 10 and 27.

12 Practice Statement CM PS 2004/17 *Data matching – special purpose acquisition data*, internal ATO document.

13 Commissioner of Taxation, *Annual Report 2011–12*, p. 94.

1.25 As the ATO's capability in data matching continues to develop, the scope of related activities, specifically special purpose data matching, has continued to expand, addressing an ever-widening range of areas and risks. A sample of special purpose data matching projects which were published in the Commonwealth Gazette in recent months includes projects targeting:¹⁴

- income derived from online sales;
- employers' lodgement and payment obligations;
- claims of dependent tax offsets; and
- contractor services to local councils and governments.

1.26 A complete list of the special purpose data matching projects which the ATO has announced or has completed in the past three financial years is contained in Appendix 3.

ATO RESOURCING AND BUDGET FOR DATA MATCHING ACTIVITIES

1.27 Data matching for the individual taxpayer market segment is managed by ATO staff within the DMCS stream of the MEI business line. Over the past four years, the ATO's budgeting for full time equivalent (FTE) staff in this area has increased, as has the expected outputs for cases to be actioned and taxation revenue to be raised. A summary of this is outlined in Table 2.

Table 2: DMCS budget, staffing and work projections

	2009-10	2010-11	2011-12	2012-13
Budget (\$)	10,641,365	17,034,164	19,400,000	29,783,000
Budgeted FTE	135	196.36	234.09	344.8
Budgeted FTE for audits	128.9	151	173.6	272.30
% of budgeted FTE for audits	95.5%	76.9%	74.1%	78.9%
Number of cases to be actioned	653,000	500,500	690,000	595,000
Amount of revenue to be raised (\$)	253,000,000	331,000,000	838,000,000	995,985,000

Source: DMCS stream plans 2009-10, 2010-11, 2011-12, 2012-13

1.28 It is important to appreciate that not all budgeted FTE staff are allocated to the management of audits and audits arising out of data matching. In reviewing the DMCS's stream plans for the 2009 to 2013 financial years (inclusive), the IGT has extracted and included the number of budgeted FTE staff expected to undertake audits.

1.29 It is also interesting to note that for the 2012-13 year, the ATO expects to action a lower number of cases than in the previous year but raise a higher level of revenue. This suggests that the data matching projects in 2012-13 will focus on risks relating to higher revenue impacts.

14 See for example: Commonwealth, *Government Notices Gazette*, GN4 2013 (30 January 2013); Commonwealth, *Government Notices Gazette*, GN 12 2013 (27 March 2013) and Commonwealth, *Government Notices Gazette*, GN 13 2013 (3 April 2013).

ATO reallocation of staff

1.30 The ATO has advised that in December 2011, the data matching section was asked to undertake projects in addition to its usual data matching program. This work necessitated the injection of 160 FTE staff who were due to begin work in early February 2012. A large portion of these new staff members had recently completed the ATO's Graduate Program and had not previously undertaken data matching work.¹⁵

1.31 The ATO acknowledges that the short lead time between announcement of the staffing changes and the data matching projects on which they were to work represented significant challenges in terms of training and development as well as accommodation issues. In addition, it was noted that some of the new staff were dissatisfied with the announced change. These new officers were allocated to CGT and the Offshore Voluntary Disclosure Initiative (OVDI) in FSI. The ATO concedes that this resulted in some of the negative feedback from taxpayers in these projects.¹⁶

1.32 In 2012, the ATO has advised that data matching continued to employ new staff, including those from the ATO Graduate Program. However, the ATO has advised that with the benefit of hindsight and learnings from the previous year, the DMCS management team was better placed to engage with incoming staff, consider issues of resource allocation and accommodation in a more timely manner.¹⁷ The Capability Support and Assurance team was to ensure a consistent approach in creating and maintaining procedures, skilling, quality assurance and stream communications. Additional resources were reassigned to refine existing training packages for staff that were temporarily allocated to the DMCS and to provide additional support to new case actioning teams.¹⁸

1.33 The ATO has advised that no significant short term staff injections are expected in 2013–14.

1.34 In addition to the ATO's existing business budget, the government announced as part of its Mid-Year Economic and Fiscal Outlook (MYEFO) for 2011–12, that it would provide additional funding for the ATO to increase its data matching resources through to 2014–15,¹⁹ as outlined in Table 3 below.

Table 3: Additional government funding for the ATO's data matching resources

Revenue (\$m)	2010–11	2011–12	2012–13	2013–14	2014–15
Australian Taxation Office	-	-	174.2	145.4	116.7
Related expense (\$m)					
Australian Taxation Office	-	-	17.0	20.4	20.3
Related capital (\$m)					
Australian Taxation Office	-	-	-	0.6	-

Source: MYEFO 2011–12

15 ATO, communication with the IGT, February 2013.

16 ATO/IGT workshop, 18 February 2013.

17 Ibid.

18 Above n. 15.

19 Commonwealth, *Mid-year Economic and Fiscal Outlook 2011–12* (29 November 2011) p. 176.

1.35 Further additional funding was announced in the MYEFO for 2012–13 to assist the ATO in expanding its data matching activities with a focus being the identification of lost superannuation.²⁰

1.36 In the 2013–14 Federal Budget, the government announced further funding to assist the ATO to enhance its data matching work. The additional funding, expected revenue and cash receipts are outlined in Table 4.

Table 4: Further government funding for new reporting systems

Revenue (\$m)	2012–13	2013–14	2014–15	2015–16	2016–17
Australian Taxation Office	-	-	115.1	242.7	252.4
Related expense (\$m)					
Australian Taxation Office	-	8.8	20.2	24.2	22.3
Related capital (\$m)					
Australian Taxation Office	-	1.6	0.6	-	-

Source: Budget 2013–14, Budget Paper No. 2

1.37 The government expects that the ATO would deliver \$610.2 million in additional revenue over three years from 2014–15 to 2016–17 (inclusive). In underlying cash terms, the ATO is expected to deliver \$431.7 million in receipts.²¹

1.38 As part of the Budget announcement, in addition to improving pre-filling, the government noted:²²

The measure will establish new and strengthen existing reporting systems for:

- taxable government grants and specified other government payments;
- sales of real property, shares (including options and warrants), and units in managed funds;
- sales through merchant debit and credit services;
- managed investment trust and partnership distributions, company dividend and interest payments; and
- transactions reported to the ATO by the Australian Transaction Reports and Analysis Centre.

1.39 In practical terms, it is expected that changes will be made to the current data reporting regimes in two broad areas. Namely, these will involve:²³

- aligning annual interest and investment reports with managed fund standard distribution statements, expanding information captured through the Australian Transaction Reports and Analysis Centre (AUSTRAC) as well as improving reporting of partnership distribution, company interest and dividend payment; and

20 Commonwealth, *Mid-year Economic and Fiscal Outlook 2012–13* (2012) p. 10.

21 Commonwealth, *Federal Budget 2013–14*, Budget Paper No. 2, p. 44.

22 Ibid.

23 ATO, communication with the IGT, 22 August 2013.

- introducing new reporting systems for taxable government payments and grants, sale of property, sale of shares and units in managed funds and sales histories reporting through merchant credit and debit card facilities.

1.40 The ATO has advised that any proposed legislative changes to effect the above measures are likely to commence operation from 1 July 2014 subject to relevant industry consultation.²⁴

1.41 As detailed in the following chapters of this report, the IGT observes that the above measures may address some of the concerns raised through submissions in this review. Specifically, the development of new reporting systems and the strengthening of existing ones in relation to real property, share disposals and AUSTRAC should result in more timely and accurate data being provided to the ATO.

DATA COLLECTION

1.42 To facilitate its data matching projects, the ATO relies upon information provided by third parties.

1.43 The ATO receives data from third parties under specific legislative obligations (legislative data) and other arrangements such as a memorandum of understanding or a demand under the access provisions available to the ATO under certain tax legislation (non-legislative or special purpose data). In the case of the latter, the access provisions do not empower the ATO to request any information not already in existence or to compel information providers to comply with specific formatting. As such, the application of such information in the ATO's non-legislative data matching projects may vary due to quality and integrity issues.

1.44 It should be noted that the ATO's exercise of its general access powers is not without controversy. As illustrated in *Australia and New Zealand Banking Group Limited v Konza*²⁵ and its subsequent Full Federal Court appeal,²⁶ concerns may arise for taxpayers in relation to both the subject and scope of the Commissioner's information requests.²⁷ In particular, it was argued in this case that complying with the notices for information from the Commissioner would have resulted in ANZ breaching common law and statutory secrecy and confidentiality requirements within Vanuatu.²⁸ Moreover, arguments were also raised regarding the breadth of the notices, applying to all customers who have or have had accounts with ANZ Vanuatu.²⁹

1.45 The ATO has advised the IGT that the above matter is unique for a number of reasons. Firstly, the data collection was initiated by the Large Business and International business line and not the DMCS. Secondly, the use of compulsory access powers is not often required within the DMCS context unless the data provider specifically requests that the ATO issue a formal notice. Thirdly, through negotiations between the DMCS and third party

24 Above n. 22.

25 *Australian and New Zealand Banking Group Limited v Konza* [2012] FCA 196.

26 *Australian and New Zealand Banking Group Limited v Konza* [2012] FCAFC 127.

27 Above n. 25 at [3] and [4]; *Ibid* at [9].

28 Above n. 25 at [3].

29 *Ibid* at [4] and [5].

data providers, the ATO notes that the levels of dispute and litigation highlighted above do not generally occur.

1.46 Acknowledging the ATO's advice in relation to this case, and noting that the Court dismissed the taxpayer's application and appeal in this matter, the case nonetheless serves to highlight concerns which may arise in the course of the ATO's data collection activities.

1.47 It is also important to recognise that the provision of data to the ATO, both legislative and non-legislative, imposes a compliance cost on these information providers. In respect of legislative data, costs manifest in a number of ways, including through implementation of specific systems to capture and report required information, formatting to meet the ATO's requirements or processes to meet legislative timeframes which may vary between industries and stakeholder groups. In relation to non-legislative data, the costs may include time and staffing resources required to extract, format and deliver the data.

1.48 To an extent, the ATO recognises the impost created for third party data providers, particularly those who provide data at the ATO's request rather than in accordance with business as usual taxation reporting requirements.³⁰ The ATO's internal practice statement, in relation to non-legislative data, contemplates reimbursement of expenses incurred by third party providers in certain circumstances.³¹ However, the IGT notes that such reimbursements are wholly discretionary and the practice statement does not outline any specific considerations or factors which would lead to reimbursement being provided to the third party provider.

1.49 The ATO has advised the IGT that the absence of specific directions and factors within the internal practice statement enables flexibility for it to consider each request for reimbursement on a case by case basis. It has further advised that under the leadership of the current Assistant Commissioner, the ATO has not refused any requests for reimbursement of extraction or formatting costs.³²

Legislative data

1.50 Legislative data is collected under specific legislative reporting requirements.³³ The ATO notes that:³⁴

This [data] forms the core of the ATO's corporate data holdings and includes return forms and schedules, Business Activity Statements, Payment Summaries including welfare payment details and annual investment income details provided by investment bodies.

1.51 When and how the data is provided is prescribed by legislation and the ATO is able to specify the fields and formats that it requires of the data being provided. In addition, such data is subject to TFN quotation rules which add an additional layer of quality and integrity. The TFN as an identifier also enables the ATO to readily match, with a high level of

30 ATO, *Access and Information Gathering Manual*, para. 1.8.19 [this manual is subject to revision. This reference is current as at 18 June 2013].

31 Above n. 12, para. 13.

32 Above n. 22.

33 See for example regulation 56 of the *Income Tax Regulations 1936* in relation to Annual Investment Income Reports.

34 Above n. 15.

certainty, the third party data against information in the income tax returns lodged by taxpayers.

1.52 The ATO, therefore, considers that the quality of legislative data is extremely high.³⁵

Non-legislative data

1.53 Non-legislative data is provided to the ATO in response to a request under its general access powers,³⁶ a memorandum of understanding between the ATO and the data provider or through formal information exchange programs, such as those the ATO maintains with foreign revenue authorities. Non-legislative data is acquired for a special purpose.

1.54 As such data is not provided under a specific legislative requirement, the ATO is reluctant to prescribe what data should be provided and how. Therefore, the quality and amount of the data is limited to that which has been collected and stored for the data provider's business purposes which may not necessarily align with those of the ATO. This requires the ATO to work closely with the information providers to ensure that data available are suitable for the ATO's purposes.

1.55 The ATO notes that the content and format of non-legislative data varies as between providers and industries. The ATO also acknowledges the varying quality and levels of completeness of such data.³⁷

1.56 In addition, and unlike legislative data, there are often no unique identifiers such as dates of birth, TFNs or Australian Business Numbers (ABN), thereby limiting the effectiveness of identity matches between the data and relevant taxpayers.

1.57 As reflected in the earlier discussion on government funding, the limitations on non-legislative data are well-recognised. In addition to providing more funding for enhancing the reporting of this type of data, the government is to also consult with key stakeholders, including the States and Territories, on the design of any new data gathering and reporting systems focusing on taxable government payments and grants, sale of property, sale of shares and units and sales histories from merchant credit and debit card facilities.³⁸

Capital gains tax and foreign source income data matching

1.58 As already indicated, most submissions to this review focused on specific non-legislative data matching projects in two areas, namely, CGT for the disposal of real property or shares and FSI. A brief outline of each of these areas is provided below.

35 Above n. 15.

36 For example, section 264 of the *Income Tax Assessment Act 1936* for income tax and section 353-10 of Schedule 1 to the *Taxation Administration Act 1953* for indirect taxes.

37 ATO, ATO Tax Practitioner Forum Minutes, August 2012, Item 5.

38 Above n. 21, p. 44; Above n. 22.

CGT data matching

1.59 CGT is tax paid on gains received following the disposal of a capital asset, such as real property (subject to certain exemptions) or shares owned by the taxpayer that is not otherwise income.³⁹ Capital gains are not taxed separately. They form a part of a taxpayer's assessable income which needs to be reported annually.

1.60 There is a risk that taxpayers may not have declared capital gains received during the year and, consequently, not fully reported the extent of their assessable income.

1.61 To address this risk in relation to real property and share disposals, the ATO obtains data from a range of state-based revenue offices, land titles registries and share trading registries and compare these data to taxpayers' returns to identify whether any disposals of capital assets occurred in the financial year and, if so, whether the income derived from such disposals was reported.

FSI data matching

1.62 The ATO notes in relation to FSI cases that 'Australian residents are taxed on their worldwide income. This means they must declare all income received from foreign sources in their income tax returns.'⁴⁰

1.63 The ATO has identified as a risk the potential for FSI to be undeclared or incorrectly treated by taxpayers as exempt.⁴¹

1.64 To address this risk, the ATO relies upon data such as those obtained from AUSTRAC,⁴² taxpayers' holdings in offshore bank accounts from financial institutions as well as financial information obtained from foreign revenue authorities through tax information exchange agreements, tax treaties and other information sharing arrangements.⁴³ These data are compared to taxpayers' returns to determine whether there may be any income received by taxpayers from foreign jurisdictions which need to be declared.

ATO DATA MANAGEMENT

How the ATO manages legislative data

1.65 Legislative data forms part of the ATO's corporate data holdings. As such, it is subject to privacy and secrecy rules contained in the relevant taxation legislation as well as other information management legislation which binds the ATO. Such legislation includes requirements under the *Privacy Act 1988* and Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (the TAA 1953).

39 ATO, Capital Gains Tax, 28 June 2013, < <http://www.ato.gov.au/General/Capital-gains-tax/> >.

40 ATO, Foreign Source Income case actioning procedures, 18 December 2012, internal ATO document.

41 Section 23AG of the *Income Tax Assessment Act 1997*.

42 Australian Transactions Reports and Analysis Centre <website, www.austrac.gov.au>.

43 ATO, International Tax Agreements, 7 January 2013, < <http://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/International-agreements/International-tax-agreements/> >.

1.66 In addition, the ATO has also developed a number of internal policies and controls in relation to maintaining and protecting confidential data and limiting access to such data only to staff with appropriate security clearance levels who require access in the course of their duties. ATO officers who have such access must personally keep that data confidential and must not use it for any other purpose.

How the ATO manages non-legislative or special purpose data

1.67 Non-legislative or special purpose data is collected by the ATO at the request of specific business lines to address potential risks within certain ATO products or market segments. The ATO's processes for collection and management of this data are governed by its internal Corporate Management Practice Statement CMPS 2004/17 *Special Purpose Acquisition Data*.

1.68 Specifically, paragraphs 11 to 13 of the updated CMPS 2004/17 states:⁴⁴

11. The ATO's policy on Data matching special purpose acquisition data is to ensure the acquisition and use of data complies with our legislative and other obligations, as detailed in the following points:

- The ATO voluntarily complies with the Office of the Australian Information Commissioner's The use of data matching in Commonwealth administration - Guidelines (February 1998). These Guidelines provide direction to ATO personnel for the acquisition, use, retention and destruction of data as well as reporting obligations.
- ATO personnel must adhere to taxation and other Commonwealth legislation that is for the protection of information obtained by ATO personnel in the course of their duties. This includes the Information Privacy Principles (IPPs) in section 14 of the Privacy Act 1988 that cover the collection, storage, use and disclosure of personal information.

12. The Special Purpose Data Steward must be consulted for all proposed collections of special purpose acquisition data and the Assistant Commissioner Data Matching Compliance Strategies must approve the data matching strategy before any contact is made with a data provider.

13. The ATO does not pay for data where the Commissioner's formal access powers have been exercised. However, in certain specific circumstances the ATO may reimburse data providers for expenses incurred in providing data in a format suitable for use by ATO systems.

1.69 The ATO has prescribed specific roles at a senior executive level both within the MEI and other business lines in relation to processes to be undertaken before special purpose data is requested, how it is managed in the ATO's data warehouse and who is responsible for matching the data against the ATO's identification system before applying it to taxpayer records.⁴⁵ A list of key roles and responsibilities in this process is contained in Appendix 4.

1.70 Generally, the process begins where an ATO business line identifies a need for data to assist in its active compliance work. Once a risk is identified, the DMCS stream requires business lines to consult with the ATO's Data Matching Steward to discuss the underlying risk sought to be treated and the proposed data to be used.⁴⁶ The Data Matching Steward position commenced operation within the ATO from 1 July 2013 and their role is to guide and assist the business line to explore the possibilities of using third party data to address the identified risk and potential sources of data which may be available.

44 Above n. 12, paras. 11 - 13.

45 Ibid.

46 Corporate Management Procedure and Instructions 2004/17/01, para. 6.

1.71 The Data Matching Steward specifically assists the business officer to prepare a brief for endorsement by a senior executive within the business line and formal approval by the Assistant Commissioner DMCS.⁴⁷ The brief outlines the compliance risk, strategy for acquiring and using the data and associated risks.

1.72 In addition to the Data Matching Steward, the ATO has advised the IGT that each business line has nominated information gathering advisors who can also assist and provide advice on different aspects of data access, validation and application to different risks.

1.73 Once the Data Matching Steward and the business line have reached a common understanding, the former refers the business line to an appropriate senior officer within the DMCS. The DMCS officer undertakes negotiations with the intended data supplier to discuss issues such as data format, quality, completeness, strengths, weaknesses as well as any industry issues and intelligence.⁴⁸ The DMCS officer obtains the data, either as a pilot or a complete set and undertakes a process to analyse it within the ATO's Data Warehouse.

1.74 The DMCS officer then considers and discusses the development of appropriate protocols in compliance with the *Data-Matching Program (Assistance and Tax) Act 1990* (the DMPAT Act 1990) Guidelines⁴⁹ or the Guidelines for the use of Data Matching in Commonwealth Administration⁵⁰ issued by the Australian Information Commissioner (AIC). The former are guidelines which bind all data matching projects under the DMPAT Act 1990 while the latter are voluntary guidelines for data matching projects not conducted under the DMPAT Act 1990. The ATO considers both sets of guidelines in the conduct of its data matching projects.⁵¹ These discussions are conducted between the DMCS officer, the Data Matching Steward and the business line representative.

1.75 Upon agreement of the approach and protocols, the business line completes the appropriate documentation which is referred to the relevant Deputy Commissioner for approval. Once these documents are approved and provided to the AIC, the DMCS makes the data available to the business line.⁵²

1.76 The business line uses the data and reports on the usage, outcomes and governance to the DMCS and Data Matching Steward. The DMCS and the Data Matching Steward use this information to report to the AIC on a periodic basis, or as requested.⁵³

1.77 While it is not presently reflected in the assurance process, the ATO has provided information to the IGT in relation to its pilot testing of new risks sought to be treated through data matching. Reports of the pilots assess the effectiveness of data matching in these areas and make recommendations as to whether a broader application is appropriate.⁵⁴

1.78 The ATO's broad assurance process for special purpose data is illustrated Figure 1 below.

47 Above n. 46, para. 7.

48 Ibid., para. 7.

49 Issued pursuant to section 12 of the *Data-Matching Program (Assistance and Tax) Act 1990*.

50 Office of the Australian Information Commissioner, Guidelines for the use of Data Matching in Commonwealth Administration, February 1998, <<http://www.oaic.gov.au/privacy/privacy-act/government-data-matching>>.

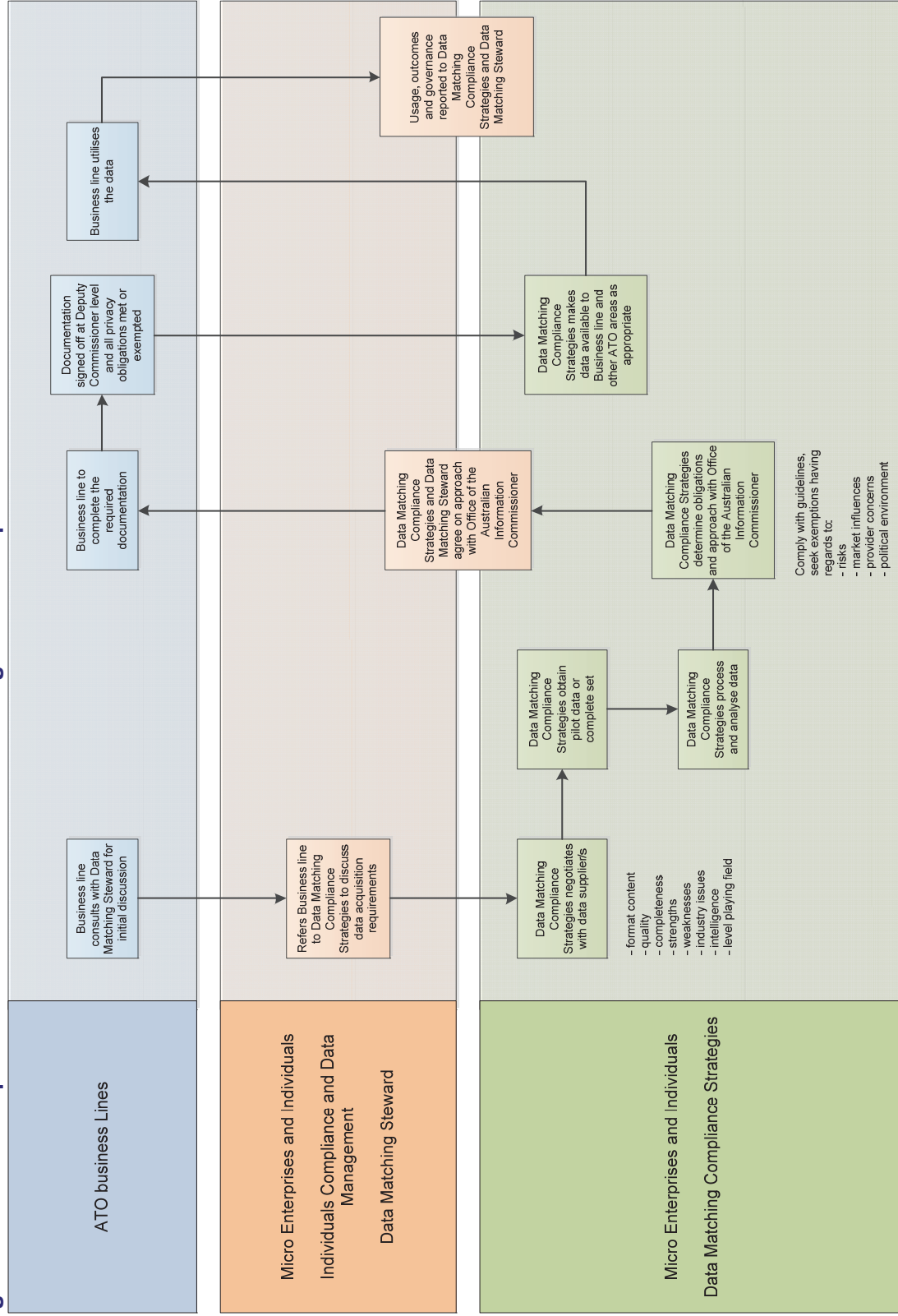
51 See for example, Office of the Australian Information Commissioner, *Annual Report 2011-12*, pp. 66, 68-72.

52 Above n. 46, paras. 8-10.

53 *Data-Matching Program (Assistance and Tax) Act 1990* Guidelines, section 8.

54 ATO, Shares final pilot report, 2013, internal ATO document; ATO, PTU final pilot report, 2013, internal ATO document.

Figure 1: Micro Enterprises and Individuals data matching assurance process



Source: adapted from ATO information

REVIEWS BY THE AUSTRALIAN NATIONAL AUDIT OFFICE

1.79 The ATO's use of data matching and analytics generally and its use of data matching in CGT compliance work have been the subject of separate reviews by the Australian National Audit Office (ANAO).

1.80 In its report, *Administration of Capital Gains Tax Compliance in the Individual Market Segments*,⁵⁵ the ANAO examined three key areas, namely, governance, identification and assessment of compliance risks and compliance activities with a focus on real property and share disposals.⁵⁶

1.81 Amongst other things, the ANAO's report observed the difficulties associated with the variation in data sets obtained from different state revenue offices and other state-based sources and the challenges the ATO faced in converting these into a useable format.⁵⁷ The ANAO made a number of recommendations, including the need for the ATO to provide feedback to state revenue offices on errors or defects in the data provided. An assessment was also made as to whether 'automated data matching and case actioning is the most appropriate strategy to achieve capital gains tax compliance in the individuals market segment.'⁵⁸

1.82 The ATO agreed with all of the recommendations made by the ANAO.

1.83 The ATO's use of data matching and analytics was explored more generally in the ANAO's 2008 report, *The Australian Taxation Office's Use of Data Matching and Analytics in Tax Administration*.⁵⁹

1.84 In that review, the ANAO examined certain key themes including the ATO's 'strategic goals and governance arrangements for data matching and analytics, its compliance with privacy requirements and whether the [ATO] is achieving intended results, which include revenue collection, optimised compliance and provision of improved services to taxpayers.'⁶⁰

1.85 As a general observation, the ANAO found that:⁶¹

The Tax Office is making use of its data matching and analytical capabilities in a more corporate and strategic way. This has contributed to the Tax Office reporting improved compliance, better services and the more efficient and effective use of resources. It has also enabled the Tax Office to better understand risks.

1.86 The ANAO made six recommendations which, in the main, were aimed at enhancing data matching in relation to all taxpayers rather than just individuals, increasing the use of pre-filling and improving corporate efficiencies through clarification of roles and

55 ANAO, *Administration of Capital Gains Tax Compliance in the Individual Market Segments*, 20 December 2006.

56 Ibid., p. 39; In 2003-04, the ANAO also undertook a review into the *Australian Taxation Office's Management and Use of Annual Investment Income Reports*, which contain data relevant for the identification of share disposals.

57 Ibid., pp. 52-57.

58 Ibid., pp. 57 and 59.

59 ANAO, *The Australian Taxation Office's Use of Data Matching and Analytics in Tax Administration*, 24 April 2008.

60 Ibid., p. 16.

61 Ibid., p. 17.

responsibilities and the development of a corporate plan for the collection and use of external data. The ATO agreed with all recommendations made by the ANAO.⁶²

STAKEHOLDER CONCERNS REGARDING THE ATO'S USE OF DATA MATCHING

1.87 Submissions received by the IGT have indicated that stakeholders generally do not take issue with the ATO's use of data matching in its compliance activities, particularly in relation to pre-filling of income tax returns. However, these submissions also raised some concerns regarding the ATO's processes generally and action taken once a potential discrepancy is identified. Broadly, these concerns include:

- a perception that the data used by the ATO is not reliable or current and the ATO is not taking sufficient action to refine the data before applying it to matching models;
- the ATO's data matching processes are not timely and the associated costs are disproportionate to the level of adjustments and level of revenue protected;
- the ATO is taking inappropriate action based on the data, such as issuing default assessments without providing taxpayers with sufficient opportunity to address its concerns; and
- the ATO is not properly communicating and engaging with taxpayers to ensure they understand the ATO's concerns and the reasons for any identified discrepancies.

IMPACT OF DATA MATCHING ON TAXPAYERS AND TAX AGENTS

1.88 While a number of taxpayers and tax agents have indicated their general support for the ATO's use of data matching, particularly in relation to assisting taxpayers to comply with their obligations through pre-filling of income tax returns, stakeholders have also submitted to the IGT that in some cases data matching has adversely impacted both taxpayers and tax agents.

1.89 In the case of taxpayers, these impacts have been expressed as:

- the lack of clarity by the ATO as to the purpose of data matching and nature of its inquiry has resulted in taxpayers taking unnecessary action;
- some taxpayers are experiencing stress and anxiety at what they perceive to be a heavy-handed approach by the ATO and the feeling that the ATO considers them to be fraudulent or incompetent in the management of their tax affairs despite good compliance histories; and
- in some cases, taxpayers accepted and paid the adjusted assessments without challenge as they perceived that the time and cost associated with challenging the adjustment would exceed the adjustment itself.

62 Above n. 59, pp. 28 and 29.

1.90 For tax agents, these impacts were expressed as the additional time and cost expended to deal with the ATO. These, in turn, have created difficulties for the tax agent who may be absorbing the cost of the dealing with the ATO or creating tensions with their clients who do not always accept that action taken by the agent was necessary.

1.91 Further tensions between tax agents and their clients may also arise where the ATO contacts taxpayers directly as this may lead to stress and anxiety on the part of the taxpayer. This has a flow on effect to the tax agent who must intervene and seek to assuage the taxpayer's concerns before responding and addressing the ATO's enquiries.

1.92 Similar impacts were submitted to the IGT in relation to his review into the ATO's Income Tax Refund Integrity Program.⁶³ As in that report, the IGT considers that the ATO should consult with the tax agent community and implement strategies to ensure that specific data matching correspondence is directed to the person designated by the taxpayer. The ATO has advised the IGT that its current processes are aimed at achieving this outcome, that is, correspondence is directed to the address on the taxpayer's most recent income tax return or as separately advised to the ATO. A further action that the ATO could explore is informing tax agents of data matching correspondence which may issue to their clients and on which their clients may be seeking advice or assistance.

63 Above n. 4.

CHAPTER 2 – DATA ACCURACY, QUALITY AND REFINEMENT

ATO PROCESSES TO CLEANSE AND REFINE DATA

2.1 A number of submissions have raised concerns that the ATO does not appear to be sufficiently refining and cleansing data before comparing it against taxpayer information to identify any discrepancies. Submissions frequently singled out CGT on real property disposals as an example.

2.2 Specifically, stakeholders were concerned that the ATO did not seem to appreciate the differences in timing between execution of the contract and the property settlement date in relation to transactions involving disposal of real property. Where taxpayers had previously reported CGT in the year the contract was executed, they were concerned that the ATO was not properly investigating these before contacting them to assert that CGT had been omitted in the year of property settlement. Other stakeholders noted that the ATO did not seem to consider possible exemptions which may apply to CGT on real property, such as the main residence exemption.

2.3 As a result of this, stakeholders perceived that the ATO's data matching projects selected incorrect cases for review which in turn created additional compliance costs for taxpayers, their agents and the ATO.

2.4 Information provided by the ATO suggests that it does undertake validation checking and verification of both the legislative and non-legislative data and that it also undertakes a process to cleanse and refine such data before they are applied and compared to taxpayer-provided information.⁶⁴

2.5 Moreover, in 2012-13, the ATO adopted a process whereby all CGT and FSI discrepancy cases selected for audit were manually reviewed by an ATO officer before a discrepancy letter issued to the taxpayer. The purpose of the manual review was to confirm, amongst other things, the existence of the discrepancy which could not otherwise be explained or addressed through the ATO's corporate data holdings and an audit of the taxpayer's return was warranted. The ATO considers that these manual reviews should address some of the concerns outlined above, such as main residence exemptions not being identified or the ATO's system not recognising contract sale dates.⁶⁵

2.6 While the ATO does not envisage this process to be an ongoing part of its CGT and FSI data matching projects, it considers that learnings from the manual reviews would better inform its business rules and case selection processes to minimise the instance of false positives in these areas.⁶⁶

64 Above n. 15.

65 ATO, 'Case selection process overview', July 2012, internal ATO document; ATO, 'FSI AUSTRAC case selection process', July 2012, internal ATO document; ATO, 'FSI case selections fully discrepant DTA case pool', July 2012, internal ATO document; ATO, 'Example of manual checks on CGT cases before selection', February 2013, internal ATO document.

66 Above n. 22.

Validation checking of data

2.7 The ATO has advised that once data are received, it is subjected to a series of validation checks which are applied to ensure the integrity of the data to be used in matching activities. These checks are based on system rules in the ATO's information technology systems, and are designed to detect obvious errors and missing or duplicate records.⁶⁷ The range of validation checks applied by the ATO varies depending on the source and nature of the data.⁶⁸

2.8 While much of the validation checking is automated, the ATO has a number of business rules which identify instances of certain errors occurring frequently throughout a particular data set and removes these for manual review. Other rules exist to require manual review of errors which may not occur frequently but which the ATO considers warrants manual intervention. These errors include where the data set attributes a potentially excessive payment amount to the taxpayer.⁶⁹

2.9 As the ATO has no control over the format and content of non-legislative data, validation checks are not able to be applied to these data sets. Instead, the ATO undertakes a series of other checks to verify the integrity of the data and to identify missing or incomplete fields and suspicious amounts.

2.10 An example of non-legislative data to which the ATO is unable to apply validation checks is information received from AUSTRAC or foreign revenue authorities for FSI data matching. The reason noted for this is that the ATO is unable to specify the format in which data is provided and as such validation checking of these data sets are not possible.⁷⁰

2.11 In respect of AUSTRAC information, the IGT observes that while AUSTRAC was established, in large part, to assist the ATO in 'facilitating the administration or enforcement of a taxation law',⁷¹ it is also required to gather information to assist other federal government agencies. These agencies include the Australian Federal Police, the Australian Crime Commission, Customs and the Integrity Commissioner.⁷²

2.12 Given the range of agencies and functions which AUSTRAC information is required to service, the ATO is unable to unilaterally direct AUSTRAC as to the nature and format of information it gathers.

2.13 As a result of the comparatively lower quality and integrity of data matching in non-legislative cases, the limitations on validation checks creates a higher risk of taxpayers being incorrectly identified as having omitted income. In such cases, the ATO needs to adopt an approach which seeks to understand the reasons for discrepancies rather than make any assumptions of non-compliance. Concerns regarding the ATO's approach generally are discussed in Chapter 3.

67 Above n. 15.

68 Ibid.

69 ATO, 'AIIR Lodgment Summary and Automatch', internal ATO document, pp. 18 – 20.

70 Above n. 15.

71 Section 125 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

72 Explanatory Memorandum, House of Representatives, *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*, pp. 135-136.

Identity matching

2.14 Following validation of the data sets received by the ATO, the data is subjected to an identity matching system through the ATO's Client Identification Compliance (CIDC) system. The latter is an automated system which matches the details obtained from third parties against taxpayer details.⁷³

2.15 The primary identity matching indicators used by the ATO are the individual taxpayer's name, address lines, postcode, date of birth, TFN or ABN. The ATO notes that its identity matching systems look to identify exact matches as well as phonetic matches to account for issues such as variant spellings or minor data errors.⁷⁴ A confidence level is attached to each identity match. These may be high, medium or low. The ATO will also attach an 'unmatched' indicator where the data cannot be matched to any particular taxpayer.⁷⁵

2.16 The ATO has advised that only data which can be matched to taxpayers with a high level of confidence are progressed through for automated comparison against information reported by taxpayers without further verification.⁷⁶ The ATO also makes available appropriately identity-matched data for the purposes of pre-filling individual taxpayers' tax returns. The ATO notes that data which return a medium or low level confidence match, or are unmatched, may also be utilised in compliance activities where they have been manually reviewed and the quality of the match can be improved.⁷⁷

2.17 Identity matching can sometimes be problematic. The ATO has provided real property disposal data as an illustrative example of the importance of, and difficulties associated with, identity matching certain non-legislative data. While it is not the sole cause of low levels of data utility, the ATO notes that some state-based property disposal data lack sufficient identifiers, rendering only about 5 per cent of the data collected useful for its real property CGT data matching. The ATO contrasts this with Queensland's real property disposal data which contains vendor and purchaser date of birth which enable the ATO to more easily identify the parties to the transaction and, accordingly, to use about 80 per cent of the data obtained.⁷⁸

2.18 The remainder of this chapter discusses the ATO's data matching timeframes and the accuracy of data matching in identifying omitted income.

TIMEFRAMES FOR ATO DATA MATCHING PROCESSES

2.19 Submissions to the IGT expressed concern that delays in the commencement of data matching and contact with taxpayers where discrepancy exists will expose taxpayers to high costs either by way of general interest charge attaching to any amendments or penalties in certain cases. Moreover, such timing issues may also affect the taxpayer's ability to readily

73 ATO, 'An Executive Overview of ATO Identity Matching Software; ATO, Data Matching and Integrity, ATO Identity Matching Outcomes', internal ATO document.

74 Ibid.

75 Above n. 15.

76 Ibid.

77 Above n. 22.

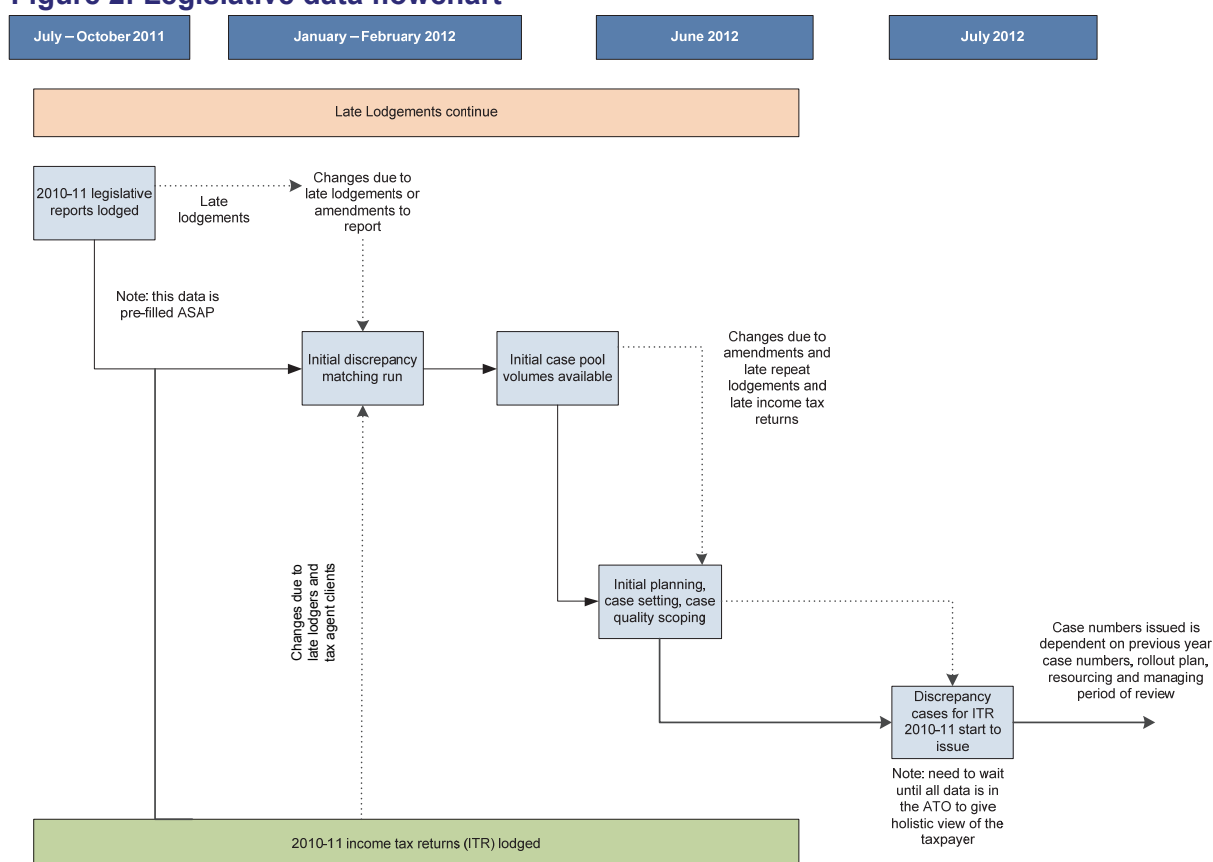
78 Above n. 16.

access information which may assist to substantiate claims made or address concerns raised by the ATO.

2.20 The IGT notes that by its nature, some delay in data matching is inevitable as it is largely dependent on both information being received from third parties as well as the taxpayers (or their agents) lodging income tax returns.

2.21 ATO information provided to the IGT suggests that, in general, discrepancy letters in relation to data matching for one financial year commence issuing in July of the following financial year. For example, as illustrated in Figure 2, letters in relation to identified 2010–11 discrepancies commenced issuing in July 2012 with exact case numbers being subject of an annual rollout plan that takes into account such factors as resourcing, minimum monetary thresholds and timing of periods of review.⁷⁹ The latter refers to the statutory period under which the ATO may legally amend an assessment where no fraud or evasion is present.⁸⁰

Figure 2: Legislative data flowchart



Source: adapted from ATO information

2.22 In relation to non-legislative data, the timeframes are not as established as those outlined above. The main reason for this is that there are no legislated deadlines for the provision of non-legislative data and as such, timeframes are largely dependent on a number of other factors, including its delivery date, destruction rules (that is, how long the ATO is able to keep the data), quality of the data and any work required to refine it. In addition, the

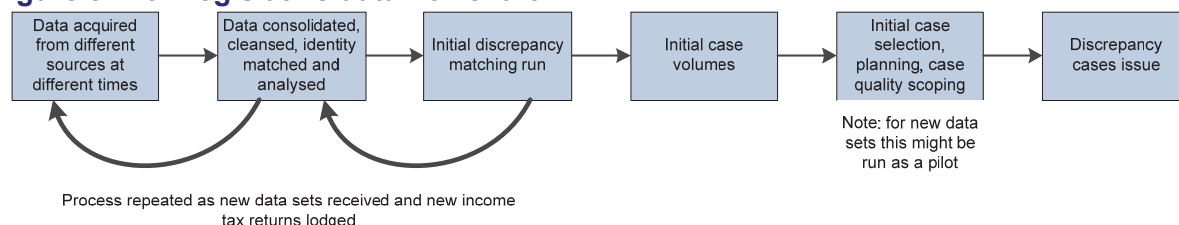
⁷⁹ ATO, communication with the IGT, 18 June 2013.

⁸⁰ Section 170 of the *Income Tax Assessment Act 1936*.

availability of resources within the ATO's data warehouse to maintain the collected data needs to be managed.

2.23 Figure 3, below, illustrates the general process adopted by the ATO in relation to non-legislative data matching.

Figure 3: Non-legislative data flowchart



Source: adapted from ATO information

2.24 To illustrate some of the differences in time frames for non-legislative data, the ATO has provided general details in relation to CGT and FSI data timeframes.

CGT data matching timeframes

2.25 The ATO receives CGT real property and share data from state revenue and land title offices, the Australian Securities Exchange and other share registries twice yearly with tranches received in August and February.⁸¹

2.26 The ATO notes that each new tranche of information is made available for data matching approximately three months after receipt, and the data matching itself is generally continuous as new data is rolled out and used on an ongoing basis to match against prior year lodgements.⁸²

FSI data matching timeframes

2.27 As noted earlier, the ATO's data collection for FSI data matching purposes originates from a number of sources. Each data source has its own limitations which impact on the focus and timeframes under which FSI data matching operates. For example, the ATO's data warehouse is only capable of storing up to three years' worth of AUSTRAC data and as such, the ATO currently maintains 2010, 2011 and 2012 data and is applying these to its matching projects.⁸³

2.28 FSI data is received from foreign tax authorities throughout the year and frequently relate to transactions which occurred two or three years prior. In addition, AUSTRAC provides data to the ATO on an annual basis. Following appropriate identity matching, this data is made available for the matching process at the request of the ATO's FSI case selection team. These requests are made in accordance with the relevant FSI business rules and

81 Above n. 15.

82 Ibid.

83 Ibid.

requirements and regard is had to the ATO's case actioning resources (that is, matching and selecting a manageable volume of cases).⁸⁴

IGT observations

2.29 The IGT considers that, ideally, the ATO should undertake legislative data matching within a year following lodgement of the original return and non-legislative data matching on three month cycles as data becomes available. However, there is some time lag between the ATO receiving data and when data matching processes are commenced. Such time lags are as a result of a number of extraneous factors, including legislative due dates for the lodgement of data, the ATO's negotiations with third party data providers to obtain data sets and the ATO's work to cleanse and refine data before any matching is commenced. The latter is particularly pertinent in relation to non-legislative data.

2.30 The IGT also notes that as the ATO maintains up to three years of past non-legislative data within its Data Warehouse, it is possible for the ATO to apply its data matching to verify past years' lodgements, possibly as far back as 2008–09. Moreover, as legislative data forms part of the ATO's corporate data holdings, it is possible for the ATO to compare these to taxpayer reported information going back even further. For example, if a taxpayer lodges their 2005–06 income tax return in 2012–13, it is possible for the ATO to compare the reported information with data from those years in appropriate cases.

2.31 In addition to the impact for taxpayers of having to obtain aged information, delays in the commencement of data matching may also impact on the ATO's compliance work in determining discrepancies and recovering any associated revenue.

2.32 While there may be benefits for taxpayers and the ATO to commence data matching on a more real time basis, this must be balanced against the need for the ATO to ensure, insofar as possible, the accuracy of the data on which it relies. One way in which the ATO could ensure more timely data matching would be to minimise the time taken to validate the data.

2.33 The ATO acknowledges the benefits of commencing data matching activities in a more timely manner but also notes that a number of factors are not within its control, such as legislative timeframes for data reporting or the quality and completeness of data which dictates the amount of work taken to cleanse and refine the data. Therefore, while the ATO accepts that in most cases, data matching may occur within twelve months following lodgement, it is not possible across all data matching projects and that improvements in timeframes may vary as between different data matching projects.

2.34 The IGT notes that the 2013–14 Budget measures should assist to ensure improved data gathering and reporting systems with unique identifiers which would assist in expediting the validation and identity matching processes for a number of reporting regimes. The IGT considers that the ATO could also take more steps to minimise the need for validation by, for example, working closely with third party data providers and focusing its information requests for smaller pools of information with higher levels of accuracy. The latter may also assist to limit the cost exposure for third party data providers.

84 Above n. 15.

RECOMMENDATION 2.1

The IGT recommends that the ATO minimise the time between data being received and when it may be compared to taxpayer information by regularly reviewing and improving its data validation and identity matching processes.

ATO Response

Agree.

Interest and penalties

2.35 As outlined above, one of the main concerns in relation to delays in data matching is where interest, namely shortfall interest charge (SIC), is imposed and backdated to the original lodgement dates. Where data matching occurs in a timely manner and in line with the ATO's expected timeframes, as discussed above, the imposition of SIC is more manageable. However, where the ATO applies its data matching to prior years, any interest on discrepancies imposed from the original due date for lodgement may create a more significant burden for affected taxpayers.

2.36 Where SIC is imposed, the ATO may choose to remit these in full prior to the finalisation of audit in appropriate circumstances.⁸⁵ Alternatively, where this does not occur, taxpayers are entitled to apply to the ATO for remission of those charges. The ATO's publicly-stated policy concerning the remission of SIC is outlined in the ATO's Law Administration Practice Statement PSLA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods* (PSLA 2006/8). This PSLA recognises that in some instances, delay on the part of the ATO may affect the level of interest accrued against a taxpayer and, as such, is a relevant consideration in relation to possible remission.⁸⁶ Specifically, paragraphs 49 to 51 of that PSLA state:⁸⁷

Delay in commencing audit

49. The allocation of the ATO's resources necessarily means that not all audits can start immediately following self-assessment by a taxpayer.

50. As a rule of thumb it could be expected that an audit will commence within a period equivalent to 50% of the relevant period of review. However cases may commence at a later time, for example, where information is provided to the ATO from an external source at a later time. Where there has been an unreasonable delay in the ATO allocating a case for audit, remission of interest charges to the base rate may be appropriate for the period of such delay.

51. Where there is an unlimited period to amend an assessment it would normally be appropriate when considering remission to adopt the standard period of review applicable to the year being adjusted.

85 Commonwealth Ombudsman, *Submission to the Joint Committee of Public Accounts and Audit Annual Hearing with Commissioner of Taxation*, September 2012, p. 5.

86 Law Administration Practice Statement PSLA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods*, paras. 43 – 80.

87 Ibid., paras. 49 – 51.

2.37 The PSLA further outlines a number of different circumstances in which delay on the part of the ATO or the taxpayer may lead to full or partial remissions of SIC⁸⁸ and those circumstances in which it would not.⁸⁹

2.38 While it is not immediately apparent on the face of PSLA 2006/8, internal instructions to MEI staff considering SIC remissions indicate that unreasonable delays in relation to data matching may be considered as factors for remission. Specifically, notes accompanying the instructions state:⁹⁰

Tax officers should also consider remission when circumstances justifying remission are readily apparent (these may not be readily apparent in automatic amendment and data matching cases), or where there may be unreasonable delays in issuing amended assessments.

...

[Tax officers] should consider whether there were unreasonable delays in all cases where it is readily apparent. Do not broaden the scope of the request to matters which the taxpayer has not contended.

2.39 However, it is unclear in the data matching context what the ATO considers to be an unreasonable delay and whether such delay is 'readily apparent'. Moreover, the internal instructions do not explicitly direct ATO officers to consider whether there was an unreasonable delay in the commencement of data matching activities which may warrant SIC remission, in line with PSLA 2006/8.⁹¹

2.40 In respect of the imposition of penalties, the IGT notes that, by and large, the ATO adopts a position of not imposing penalties on data matching cases, as outlined in its discrepancy letters (for bank interest, CGT, FSI and other data matching projects more generally). These letters each contained a variation of the advice that:⁹²

We will not be applying a penalty

If we need to adjust your tax return, we will not apply a penalty. However, if all of your interest income is not included in any future tax return, a penalty will be considered.

2.41 As with SIC, where taxpayers are levied with penalties as a result of data matching activities, they may seek to exercise their right to apply for remission. The ATO has published two practice statements in relation to the remission of penalties. Specifically, these are Law Administration Practice Statement PSLA 2012/4 *Administration of penalties for making false or misleading statements that do not result in shortfall amounts* and Law Administration Practice Statement PSLA 2012/5 *Administration of penalties for making false or misleading statements that result in shortfall amounts*. As noted above, the imposition of penalties in data matching cases should be rare, particularly those penalties which turn on culpability.

2.42 However, penalties may apply where data matching identifies income which ought to have been reported but no tax return has been lodged. For example, where the taxpayer

88 Ibid., paras. 58 – 60, 62.

89 Ibid., paras 64 and 74.

90 ATO, 'Shortfall Interest Charge – Decision Making Tool', internal ATO document, steps D and G, p. 1.

91 Above n. 86, para. 50.

92 ATO, Interest advisory letter, BAU.

has disposed of real property which may result in CGT being reportable but has not lodged their tax return for that financial year, the ATO may issue a lodgement reminder which raises the possibility of penalties and interest being imposed. An example of such a letter states:⁹³

Where we make a default assessment, you may be required to pay tax and may also be liable for:

- a minimum penalty of 75 per cent of any tax raised from the assessment
- a penalty for failing to lodge your form on time, and
- interest charges on any tax you owe.

IGT observations

2.43 The imposition of penalties and interest operates to serve a number of different purposes. In the main, these are designed to deter non-compliant behaviour and encourage compliance with tax lodgement and payment rules. Moreover, the imposition of interest seeks to ensure that taxpayers who do not pay their tax obligations on time do not get an unfair advantage over taxpayers who do and that the revenue is compensated appropriately for any late payments.

2.44 The IGT acknowledges the ATO's advice that in data matching cases, it generally does not impose culpability penalties. However, in respect of SIC which may automatically accrue on adjustments and backdated to original due dates, the IGT is concerned that the level of interest accrued may be unnecessarily punitive where data matching activities involve returns lodged up to three previous years.

2.45 While taxpayers have a right to seek remission of SIC, such applications have associated cost and timing implications. This may be exacerbated where factors the ATO considers relevant to the remission of SIC are unclear, such as delays in the commencement of data matching activities. As outlined earlier, the ATO's binding instruction on SIC remission, namely PSLA 2006/8, when read together with the ATO's internal SIC remission guidelines appears to consider delay in the commencement of audits as a relevant factor.

2.46 However, as the internal guidelines are not public documents, taxpayers or their advisers reviewing PSLA 2006/8 in isolation may not necessarily appreciate that delay in the commencement of data matching may be raised as a relevant factor for the ATO's consideration.

2.47 Accordingly, the IGT considers that there would be benefit in the ATO confirming that data matching audits are analogous to other active compliance activities and update PSLA 2006/8 to clearly state that delay in the commencement of data matching activities is a relevant factor when considering the remission of SIC. To further reinforce this in practice, the ATO should also clarify this position in its internal SIC remission guidelines.

93 ATO, CGT Lodgement reminder letter.

RECOMMENDATION 2.2

The IGT recommends that the ATO:

- (a) *update PSLA 2006/8 to reflect that, consistent with other active compliance activities, delay in commencement of data matching activities is a relevant factor when considering remission of SIC; and*
- (b) *clarify its internal SIC remission guidelines to require ATO officers to consider any delay in the commencement of data matching activities and whether remission is warranted on such grounds.*

ATO response

Agree with a qualification

The ATO agrees with the recommendation however is flagging that given the high volume of transactions undertaken through an automated process, consideration of the remission of the Shortfall Interest Charge (SIC) will occur as requested by the taxpayer post issue of the amended assessment.

ACCURACY OF DATA MATCHING IN DETECTING OMITTED INCOME

2.48 After the data has been subjected to both validation and identity checking, an initial comparison is made to determine the population of taxpayer returns with potential discrepancies. This original population may be significant for both legislative and non-legislative data matching as it includes all cases in which the data matching identifies a discrepancy of \$1 or more.

2.49 In respect of legislative data matching, the data in Table 6 indicates that in 2011–12, the ATO identified 413,705 and 1,069,855 potential discrepancies relating to salary/wage and interest/dividends respectively. Similarly, non-legislative data matching projects can also involve significant numbers of potential discrepancies. As outlined in Table 7 and Table 8, the ATO identified 1,411,028 potential discrepancies in CGT from the sale of real property in 2011–12 and 1,957,447 in FSI from AUSTRAC for the 2010–11 and 2011–12 financial years.

2.50 Following the initial matching, the ATO compares the above discrepancies against its corporate data holdings to identify any information the ATO already holds that may assist to exclude verified cases from further checking. In addition to this, the ATO also employs a number of business rules to further exclude cases which are unsuitable for audit, unable to be the subject of audit or uneconomical to pursue. In respect of the latter category, the ATO may issue an advisory letter to taxpayers to inform them that a discrepancy has been identified and to exercise caution in lodging their tax returns for future years.⁹⁴

94 Above n. 22.

2.51 Each data matching project has its own selection and exclusion rules based on the risk sought to be addressed by the ATO.⁹⁵ By way of illustration, the ATO's current real property CGT business rules exclude for audit those cases in which:⁹⁶

- the statutory period for review has expired;
- the potential revenue gain is below a certain threshold amount;
- the taxpayer is entitled to a low income tax offset or senior Australian tax offset rendering the potential revenue gain below a certain threshold amount;
- the main residence exemption applies;
- the taxpayer is insolvent; or
- the taxpayer is the subject of current prosecutorial action, their return has been suspended or cancelled or the address of the property is unable to be located.

2.52 Where the results of the application of the above rules are uncertain, manual intervention by ATO officers is required to determine whether a matter should be progressed to audit.⁹⁷

2.53 In selecting cases for audit, the ATO also has regard to its own resourcing in terms of staffing (including the capability of staff at particular levels) and the numbers of cases which it considers can be completed in a timely manner. Moreover, the ATO also considers whether discrepancies may be addressed through other information available on the ATO's systems as this has a direct bearing on the numbers of matters needing to be manually reviewed.⁹⁸

2.54 To illustrate the differences between initially identified potential discrepancies and the numbers of cases ultimately selected for audit, the ATO has provided a sample comprising legislative and non-legislative data matching projects (Table 5).

Table 5: Sample of discrepant case pools and finalised cases

	Legislative data matching - Investment (interest and dividends)	Non legislative data matching – Capital gains tax from the sale of property (individuals)	Non legislative data matching – Foreign Source Income from Double Tax Agreement data)
Case actioning year	2012	2012	2012
Tax return year	2011	2008	2007, 2008 & 2009
Number of returns identified with potential discrepancies ⁹⁹ <i>Discrepancies are based on raw data matching processes.</i>	1,069,855	492,093	74,904
Discrepant case pool identified from raw data matching processes ¹⁰⁰	168,322	1,412	5,236

95 Above n. 15.

96 ATO, 'Information Matching System, Business Requirements and Rules, CGT', internal ATO document, pp. 3–4.

97 Above n. 96.

98 Above n. 16.

99 The ATO has advised that this raw data matching process includes label to label discrepancies where the discrepancy value is equal to or greater than \$1. At this stage, business rules have not been applied.

<i>After the application of business rules</i>			
Discrepant returns selected for data matching audits ¹⁰¹ <i>After scoping, sampling and data integrity checks</i>	N/A	1,301	3,608
Finalised cases	167,655	1,301	3,608
Active cases	667	0	0
Percentage of case pool finalised	99.60%	100%	100%

Source: ATO

2.55 In addition to the sample above, the ATO has also provided statistics across a range of other data matching activities to show the numbers of potential discrepancies from raw data matches and the number of audits actually completed in certain years. These provide for a more granular examination of the rates of completed audits across a broad sample of projects and are outlined in Tables 6, 7 and 8 below. The ATO has advised that as case selection is refreshed throughout the year, cases completed in a particular year may include those selected from the previous year.

2.56 As shown in Table 6, in approximately half of the projects sampled, the proportion of data matching cases completed is less than 10 per cent of the total potential discrepancies identified. It should be noted that the total potential discrepancies includes very small amounts that would not justify an audit.

2.57 The data matching projects in relation to 'salary and wage', 'Australian Government pension and allowances' and 'employee share schemes' resulted in 6 per cent of total discrepancies being audited. Of greatest concern is the data matching in relation to 'Australian annuities and superannuation income streams' which reported that only about 0.19 per cent of total potential discrepancies were audited.

2.58 In respect of the remaining data matching projects, there were higher rates of cases being completed, with 11 per cent of 'lump sum payments' and 16 per cent of 'investment income' cases being completed. The highest rates of case completion are attributable to the data matching projects in relation to 'Allowances' and 'Australian Government Allowances and payments', reporting 23 per cent and 26 per cent of cases being completed, respectively.

Table 6: ATO legislative data matching – quantity of cases actioned

Subject of data matching	Case actioning years	Number of returns identified with potential discrepancies	Number of data matching cases completed	Percentage of cases completed
Legislative Data Matching				
Salary and wage				
PAYG data is matched to the salary and wage income label on the individual income tax return to check that the taxpayer has returned all of their employment income and claimed the correct tax withheld amounts.	2012	413,705	23,885	6%
	2011	459,982	17,519	4%
	2010	653,700	13,385	2 %

100 The ATO has advised that at this stage, the impact of rebates, offsets, potential tax free thresholds and other rules have been applied.

101 This refers to the ATO's manual review processes of CGT and FSI cases before selecting cases for audit.

Subject of data matching	Case actioning years	Number of returns identified with potential discrepancies	Number of data matching cases completed	Percentage of cases completed
Legislative Data Matching				
Lump sum payments PAYG data is matched to the lump sum payments label on the individual income tax return to check that the taxpayer has returned all of their lump sum payment income and claimed the correct tax withheld amounts.	2012	14,292	1,546	11%
	2011	22,485	2,211	10%
	2010	24,315	1,908	8%
Allowances PAYG data is matched to the allowance income label on the individual income tax return to check that the taxpayer has returned all of their allowance income and claimed the correct tax withheld amounts.	2012	152,977	35,679	23%
	2011	302,926	40,862	13%
	2010	373,855	24,003	6%
Australian Government Allowances and payments Welfare data is matched to taxpayer returns to check that the taxpayer has returned all of their Australian Government Allowances and payments income.	2012	129,845	34,079	26%
	2011	189,413	28,920	15%
	2010	176,222	33,189	19%
Australian Government pension and allowances Welfare data is matched to taxpayer returns to check that the taxpayer has returned all of their Australian Government pension and allowances income.	2012	185,273	11,137	6%
	2011	211,885	1,040	0%
	2010	191,327	7,125	4%
Australian annuities and superannuation income streams PAYG data is matched to the Australian annuities and superannuation income streams label on the individual income tax return to check that the taxpayer has returned all of their annuities and superannuation income and claimed the correct tax withheld amounts.	2012	32,686	64	0.19%
	2011	65,852	434	1%
	2010	88,050	652	1%
Investment income Interest and dividend data is matched to the gross interest and dividend income labels on the individual income tax return to check that the taxpayer has returned all of their investment income.	2012	1,069,855	167,655	16%
	2011	814,579	190,944	23%
	2010	804,808	121,954	15%
Employee share schemes Div83A Employee share scheme data is matched to the employee share scheme income labels on the individual income tax return to check that the taxpayer has returned all of their employee share scheme income and claimed the correct tax withheld amounts.	2012	154,905	8,607	6%
	2011	N/A	N/A	N/A
	2010	N/A	N/A	N/A

Source: ATO

2.59 The statistics in Tables 7 and 8 outline potential discrepancies and case completion rates for CGT and FSI. As in the case of legislative data, the ATO has also advised that the number of cases completed are not analogous to the number of cases selected for audit.

2.60 Tables 7 and 8 show that the population of cases which were completed generally represents an even smaller fraction of total discrepancies when compared with those for legislative data matching. In respect of CGT, all but one of the data matching projects reported case completion rates of less than 1 per cent with only real property CGT for micro enterprises reporting that 7 per cent of potential discrepancies were completed by way of audit.

2.61 Similarly, in respect of FSI, two of the five sampled projects (FSI AUSTRAC and FSI – Non Lodgers) reported that less than 1 per cent of potential discrepancies were actioned with the remaining three projects reporting case completion rates of less than 10 per cent.

2.62 It should be noted that in relation to the OVDI data matching project, the ATO lists a 100 per cent case actioning pool because it made contact by way of initial correspondence with all 9,582 taxpayers within that population. However, the actual proportion of cases completed following this initial contact was 82.5 per cent. The ATO has advised that as this was a specific project to follow up on correspondence that had previously been issued, ATO officers had been directed to specifically action all cases within this pool.

Table 7: ATO non-legislative data matching, CGT – quantity of cases actioned

Subject of data matching	Case actioning years	Number of returns identified with potential discrepancies	Number of data matching cases completed	Percentage of cases completed
Non-Legislative Data Matching, CGT				
Capital gains tax – from the sale of property Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not returned the capital gains.	2012	1,411,028	2,860	0.20%
	2011	Pilot only	418	N/A
	2010	Pilot only	158	N/A
Capital gains tax – from the sale of property – non lodger Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not lodged a tax return where it appears that they have an obligation to do so.	2012	280,411	544	0.19%
Capital gains tax – from the sale of property Micro taxpayers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property which and has not returned the capital gains.	2012	354,102	3,686	7%
Capital gains tax – from the sale of property Micro taxpayers – non lodgers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property and has not lodged a tax return where it appears that they have an obligation to do so.	2012	55,636	174	0.31%
Capital gains tax – from the sale of shares Share transaction data provided by share registries is augmented with data from the Australian Security Exchange to identify potential capital gain events from the disposal of shares. This income is then matched to the capital gains tax labels to check that the taxpayer has returned all of their capital gains income from the disposal of shares.	2012	Pilot conducted on single buy single sell	373	N/A

Source: ATO

Table 8: ATO non-legislative data matching, FSI – quantity of cases actioned

Subject of data matching	Case actioning years	Number of returns identified with potential discrepancies	Number of data matching cases completed	Percentage of cases completed
Non-Legislative Data Matching, FSI				
Foreign source income – from Double Tax Agreement data Automated exchange data received from treaty parties is matched to the foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income and claimed the correct tax offset.	2012	74,904	3,608	5%
	2011	72,656	5,463	8%
Foreign source income – AUSTRAC Incoming amounts listed in AUSTRAC are matched against foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income.	2012	1,957,447	1,746	0.09%
	2011		3,875	0.19%
Foreign source income – Mislabelling Individual income tax returns are identified where a taxpayer has returned an amount of foreign source income at a non-assessable label on and no amount at the assessable label. These returns are checked to ensure that the taxpayer has returned all of their foreign source income	2012	156,433	5,164	3%
Foreign source income – Offshore Voluntary Disclosure Initiative (OVDI) Follow up work in relation to non-responses to the Offshore Disclosure project. The Offshore Disclosure project identified that these received incoming amounts via AUSTRAC. Where no response was received to the initial voluntary disclosure letter a data matching letter was issued.	2012	9,582	7,909	100% of taxpayers were contacted under this project 82.5% of cases actioned following this initial contact
Foreign source income – non lodgers Automated exchange data received from treaty parties and incoming amounts listed in AUSTRAC are used to identify resident taxpayers that appear to have a requirement to lodge a return due to the amount of foreign source income they have received.	2012	16,927	15	0.09%

Source: ATO

IGT observations

2.63 The IGT acknowledges that the number of cases completed in a particular year do not equate to those selected for audit. However, the IGT also notes from the sample in Table 5, that the levels of cases selected for audit represent only a small fraction of the potential discrepancies from raw data matches. The low level of cases actually selected for audit may be reflective of a number of different factors.

2.64 Firstly, through the use of its business rules, the ATO is able to reject cases which do not yield a revenue gain, are below pre-set thresholds for particular projects, do not pose a sufficiently high level of risk or do not otherwise warrant an audit.

2.65 Secondly, it may suggest that tax returns initially identified as containing discrepancies are later found to be not so. This may be due to discrepancies being explained or verified through data matching with other information held by the ATO. In the case of CGT and FSI more recently, it may also be due to the ATO's more rigorous manual reviews of these discrepancies before selecting cases for audit.

2.66 Thirdly, it may indicate that the third party data obtained and relied upon by the ATO only identifies instances of discrepancies which are ultimately not suitable for audit. This suggests some scope for the ATO to better refine its data requests to obtain more focused information to assist in its data matching.

2.67 Fourthly, where business rules and other review processes reduce the numbers of cases suitable for audit, it may suggest that the risk areas on which the ATO is focusing its efforts and resources need to be reconsidered. Where, for example, in the case of 'Australian annuities and superannuation income streams', the case completion rate over three years has not exceeded 1 per cent, it is important to question whether ongoing examination and commitment of resources is warranted.

2.68 The IGT notes that risks may change over time and the ATO needs to be responsive in its evaluation of risk areas warranting examination. Such an examination should consider the nature of the risk being investigated, the data on which the ATO relies and strategies which the ATO could employ to request and make use of more and better data to address the risk in question.

2.69 Through discussions with the IGT, the ATO has indicated that it is mindful of the need to ensure that its data matching projects are effective and generate a return on investment. It notes that with the benefit of experience over many years in relation to its data matching program, its case selection is designed to canvass a broad mix of projects and risk areas which it expects will yield the highest return on its staff and resource commitments.

2.70 The ATO's rollout plans for data matching case selection record both expected and actual number of cases selected and completed each week. Through these plans, the ATO is able to assess its return on investment through measuring staff costs and other incidental expenses against revenue expected to be raised.¹⁰²

2.71 The progress of data matching case completion is monitored by senior directors within the DMCS on a weekly basis. These directors assess expected and actual case selection and completion for particular projects. This assessment involves consideration of such factors as whether certain projects are progressing more efficiently, whether thresholds may be lowered to action more cases, resources deployed to other projects which are not performing to expected timeframes or commencing audits relating to the following year's data matching cases.¹⁰³

2.72 Whilst the weekly discussions amongst the senior directors provide a timely view of the ATO's progress, it does not appear that the ATO consolidates this intelligence to examine and analyse longer term trends and impacts.

102 Above n. 22.

103 Ibid.

2.73 The IGT believes that there is room for improvement in assessing the longer term effectiveness of data matching projects. For example, during the course of this review, the IGT has not seen formalised assessment processes which may determine, amongst other things, whether a particular data matching project should continue if the levels of cases being identified for audit are low and the levels of revenue being protected are disproportionate to the cost of the project.

2.74 The IGT considers that it is important for the ATO to undertake formal evaluations of this kind, particularly where certain projects are not performing as expected or appear to be declining in their effectiveness. Such evaluations would, for example, enable the ATO to redirect its resources to projects with better yields or seek further liaison with third party providers or legislative change to obtain better data.

RECOMMENDATION 2.3

The IGT recommends that the ATO:

- (a) formalise and improve its current processes for determining the reasons for compliance action being only undertaken in a very small number of cases where potential discrepancies have been identified between third party information and those contained in corresponding tax returns;*
- (b) following the above investigation, seek to improve the effectiveness of the relevant data matching projects through, for example, improving the quality and utility of third party data; and*
- (c) where (b) is not possible, consider abandoning the relevant data matching projects and redirecting those resources to other data matching projects that are likely to yield better results.*

ATO response

Agree

The ATO agrees with this recommendation. Awareness of, and adaption to new opportunities will help keep our data matching efforts relevant and effective.

STRIKE RATES OF ATO DATA MATCHING ACTIVITIES

2.75 A key measure of the success of the ATO's data matching activities is the 'strike rate'. That is, the number of cases selected for audit, in which the ATO identifies instances of omitted or underreported income and makes an adjustment, as measured against the population of cases selected for audit.¹⁰⁴

104 Manish Gupta and Vishnuprasad Nagadevara, 'Audit selection strategy for improving tax compliance – application of data mining techniques' in Ashok Agarwal and V. Venkata Ramana (eds), *Foundations of E-government* (2007) p. 383.

2.76 A sample of strike rates, and corresponding false positive rates,¹⁰⁵ for legislative data matching activities is presented in Table 9, below. It should be noted that this data does not take into account any adjustments later reversed on review. Rates of adjustments and reversals are discussed in Chapter 4.

2.77 As indicated in the table below, the ATO's legislative data matching, with a few exceptions, results in very high strike rates. This is most evident in relation to the 'Allowances' and 'Australian Government Allowances and Payments' data matching projects which, in 2011–12, reported strike rates of 98 per cent and 99 per cent respectively.

2.78 Of the remaining data matching projects, 'Investment Income' and 'Employee Share Scheme' also experienced very high strike rates of 94 per cent and 95 per cent respectively in 2011–12. A lower, though still considerable, strike rate was reported in relation to the ATO's 'Salary and wage' and 'Lump sum payments' projects.

2.79 While the sample of legislative data matching activities generally reported high strike rates, this was not a consistent outcome. In relation to those projects which data matched 'Australian Government pension and allowances' and 'Australian annuities and superannuation income streams', the strike rates were considerably lower than those discussed above (68 per cent and 31 per cent, respectively).

2.80 Moreover, an examination of these strike rates over a three year period shows significant decline in the strike rates. Specifically, the strike rate for 'Australian Annuities and superannuation income streams' fell from 94 per cent in 2009–10 to 73 per cent in 2010–11 to the 31 per cent discussed above. The 'Australian government pension and allowance' project experienced a small reduction in the strike rate from 2009–10 (96 per cent) to 2010–11 (93 per cent) followed by a decrease to the previously mentioned 68 per cent.

2.81 The ATO has advised that in relation to the superannuation income streams data matching project, the significant decline in strike rate was attributable to a the lack of manual reviewing of cases before selection for audit after 2009–10.

Table 9: Legislative data matching – strike rates

Subject of data matching	Case actioning years	Number of data matching cases completed	Number of adjustments	Strike rate (percentage of cases with adjustment)	Number of cases requiring no further action (no adjustment required)	Rate of no further action
Legislative Data Matching						
Salary and wage PAYG data is matched to the salary and wage income label on the individual income tax return to check that the taxpayer has returned all of their employment income and claimed the correct tax withheld amounts.	2012	23,885	21,347	89%	2,538	11%
	2011	17,519	14,871	85%	2,648	15%
	2010	13,385	10,519	79%	2,866	21%
Lump sum payments PAYG data is matched to the	2012	1,546	1,253	81%	293	19%

105 Ibid. A false positive occurs where data matching identifies a particular case as potentially having omitted income which is later shown to not be true.

Subject of data matching	Case actioning years	Number of data matching cases completed	Number of adjustments	Strike rate (percentage of cases with adjustment)	Number of cases requiring no further action (no adjustment required)	Rate of no further action
Legislative Data Matching						
lump sum payments label on the individual income tax return to check that the taxpayer has returned all of their lump sum payment income and claimed the correct tax withheld amounts.	2011	2,211	1,329	60%	882	40%
	2010	1,908	1,829	96%	79	4%
Allowances PAYG data is matched to the allowance income label on the individual income tax return to check that the taxpayer has returned all of their allowance income and claimed the correct tax withheld amounts.	2012	35,679	34,834	98%	845	2%
	2011	40,862	39,636	97%	1,226	3%
	2010	24,003	22,678	94%	1,325	6%
Australian Government Allowances and payments Welfare data is matched to taxpayer returns to check that the taxpayer has returned all of their Australian Government Allowances and payments income.	2012	34,079	33,612	99%	467	1%
	2011	28,920	28,631	99%	289	1%
	2010	33,189	32,696	99%	493	1 %
Australian Government pension and allowances Welfare data is matched to taxpayer returns to check that the taxpayer has returned all of their Australian Government pension and allowances income.	2012	11,137	7,534	68%	3,603	32%
	2011	1,040	965	93%	75	7%
	2010	7,125	6,809	96%	316	4%
Australian annuities and superannuation income streams PAYG data is matched to the Australian annuities and superannuation income streams label on the individual income tax return to check that the taxpayer has returned all of their annuities and superannuation income and claimed the correct tax withheld amounts.	2012	64	20	31%	44	69%
	2011	434	317	73%	117	27%
	2010	652	616	94%	36	6%
Investment income Interest and dividend data is matched to the gross interest and dividend income labels on the individual income tax return to check that the taxpayer has returned all of their investment income.	2012	167,655	158,381	94%	9,274	6%
	2011	190,944	181,158	95%	9,786	5%
	2010	121,954	110,609	91%	11,345	9%
Employee share schemes Div83A Employee share scheme data is matched to the employee share scheme income labels on the individual income tax return to check that the taxpayer has returned all of their employee share scheme income and claimed the correct tax withheld amounts.	2012	8,607	8,193	95%	414	5%
	2011	N/A	N/A	N/A	N/A	N/A
	2010	N/A	N/A	N/A	N/A	N/A

Source: ATO

2.82 The ATO's non-legislative data matching projects generally experience lower strike rates when compared with legislative data matching. As observed in Table 10 which provides a sample of strike rates from different data matching projects concerning CGT, only two projects yielded strike rates which are comparable to those reported for legislative data matching. These are the 'CGT for the sale of real property non-lodgers' and 'CGT from the sale of shares.'

2.83 The remaining CGT data projects all reported strike rates of 60 per cent or lower in 2011-12, with the lowest being in relation to CGT for the sale of real property by micro enterprise taxpayers (31 per cent).

2.84 As the majority of this sample involves CGT data matching projects which only commenced in 2011-12, a three year comparison is not possible. The only exception to this is the data matching project concerning CGT from the sale of real property by individual taxpayers. Over a three year period, the strike rate for this project has dropped considerably from 91 per cent in 2009-10 to 69 per cent in 2010-11 and 52 per cent in 2011-12.

Table 10: Non-legislative data matching, CGT – strike rates

Subject of data matching	Case actioning years	Number of data matching cases completed	Number of adjustments	Strike rate (percentage of cases with adjustment)	Number of cases requiring no further action (no adjustment required)	Rate of no further action (percentage of cases with no adjustment)
Non-Legislative Data Matching, CGT						
Capital gains tax – from the sale of property Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not returned the capital gains.	2012	2,860	1,475	52%	1,385	48%
	2011	418	288	69%	130	31%
	2010	158	143	91%	15	9%
Capital gains tax – from the sale of property – non lodger Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not lodged a tax return where it appears that they have an obligation to do so.	2012	544	508	93%	36	7%
Capital gains tax – from the sale of property Micro taxpayers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property which and has not returned the capital gains.	2012	3,686	1,159	31%	2,527	69%

Subject of data matching	Case actioning years	Number of data matching cases completed	Number of adjustments	Strike rate (percentage of cases with adjustment)	Number of cases requiring no further action (no adjustment required)	Rate of no further action (percentage of cases with no adjustment)
Non-Legislative Data Matching, CGT						
Capital gains tax – from the sale of property Micro taxpayers – non lodgers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property and has not lodged a tax return where it appears that they have an obligation to do so.	2012	174	105	60%	69	40%
Capital gains tax – from the sale of shares Share transaction data provided by share registries is augmented with data from the Australian Security Exchange to identify potential capital gain events from the disposal of shares. This income is then matched to the capital gains tax labels to check that the taxpayer has returned all of their capital gains income from the disposal of shares.	2012	373	368	99%	5	1%

Source: ATO

2.85 Similar to the CGT data matching projects, those concerning FSI also report less consistent strike rates when compared with legislative data matching activities. These strike rates are outlined in Table 11 below.

2.86 The highest strike rates were reported in relation to the non-lodgement project which produced a 100 per cent strike rate from a case pool of 15. The data matching of double tax agreement information, AUSTRAC information and mislabelled information yielded 88 per cent, 73 per cent and 54 per cent strike rates respectively.

2.87 The lowest strike rate observed in the same sample related to the ATO's OVDI which took place at the end of 2011 and in early 2012. The project involved ATO officers making contact with taxpayers who had previously received letters from the ATO inviting them to make voluntary disclosures in relation to offshore holdings. This project only yielded a strike rate of 54 per cent.

Table 11: Non-legislative data matching, FSI – strike rates

Subject of data matching	Case actioning years	Number of data matching cases completed	Number of adjustments	Strike rate (percentage of cases with adjustment)	Number of cases requiring no further action (no adjustment required)	Rate of no further action (percentage of cases with no adjustment)
Non-Legislative Data Matching, FSI						
Foreign source income – from Double Tax Agreement data Automated exchange data received from treaty parties is matched to the foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income and claimed the correct tax offset.	2012	3,608	3,171	88%	437	12%
	2011	5463	4,862	89%	601	11%
Foreign source income – AUSTRAC Incoming amounts listed in AUSTRAC are matched against foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income.	2012	1,746	1,274	73%	472	27%
	2011	3,875	3,333	86%	543	14%
Foreign source income – Mislabelling Individual income tax returns are identified where a taxpayer has returned an amount of foreign source income at a non-assessable label on and no amount at the assessable label. These returns are checked to ensure that the taxpayer has returned all of their foreign source income	2012	5,164	4,125	80%	1,039	20%
Foreign source income – Offshore Voluntary Disclosure Initiative (OVDI) Follow up work in relation to non-responses to the Offshore Disclosure project. The Offshore Disclosure project identified that these received incoming amounts via AUSTRAC. Where no response was received to the initial voluntary disclosure letter a data matching letter was issued.	2012	7,909 Letters were issued to all 9,582 taxpayers	4,267	54%	3,642	46%
Foreign source income – non lodgers Automated exchange data received from treaty parties and incoming amounts listed in AUSTRAC are used to	2012	15	15	100%	0	0%

Subject of data matching	Case actioning years	Number of data matching cases completed	Number of adjustments	Strike rate (percentage of cases with adjustment)	Number of cases requiring no further action (no adjustment required)	Rate of no further action (percentage of cases with no adjustment)
Non-Legislative Data Matching, FSI						
identify resident taxpayers that appear to have a requirement to lodge a return due to the amount of foreign source income they have received.						

Source: ATO

2.88 The ATO has acknowledged the declining strike rates experienced in both the CGT and FSI data matching projects, particularly in 2011-12. In the case of FSI, the strike rates continued to decline in 2012-13. However, the ATO has advised that since the introduction of manual reviews for both FSI and CGT audit case selection, it has seen an improvement in strike rates in 2012-13 and 2013-14 year to date. These improved strike rates, together with other global strike rates for the data matching program generally, are outlined in Table 12.

Table 12: Global strike rates for data matching program

	2009-10	2010-11	2011-12	2012-13	2013-14 YTD
Legislative	92%	95%	93%	93%	91%
Legislative - Other¹⁰⁶	56%	53%	82%	73%	85%
Non-Legislative - CGT	91%	69%	47%	63%	78%
Non-Legislative - FSI	N/A	88%	70%	55%	81%
Non-Legislative - Other¹⁰⁷	60%	73%	88%	84%	94%
Overall Strike Rate	92%	91%	90%	79%	89%

Source: ATO

IGT observations

2.89 Based on the statistics provided by the ATO in Table 9, Table 10 and Table 11, the IGT notes that, with a few exceptions, the ATO's initial strike rates for both legislative and non-legislative data matching projects are high. The statistics in Table 12 demonstrate that data matching, generally, yields positive outcomes and strike rates. Notwithstanding, the declines prior to 2011-12 in relation to CGT, and 2012-13 for FSI, the strike rates for both appear to have improved in the 2013-14 year to date.

2.90 It is clear from a comparison of the two types of data matching that non-legislative data matching generally results in lower strike rates than legislative data. Moreover, and as discussed earlier, the proportions of cases actually actioned from non-legislative data are a smaller fraction of the total number of potential discrepancies identified. This suggests that non-legislative data obtained by the ATO does not contain all of the information needed by the ATO to address the risks it has identified.

106 These projects include those relating to Medicare Levy exemption, Employee Share Schemes and Partnerships, Trust Distributions and Unit Trust Distributions.

107 These relate to non-legislative projects other than CGT and FSI, such as dependent spouse offset and education tax refund.

2.91 Where the ATO actions cases with a lower strike, this has the potential to impose additional compliance costs on otherwise compliant taxpayers who are required to engage tax agents or otherwise spend time responding to ATO enquiries. Moreover, where the ATO requests large amounts of information which are ultimately not used, this creates costs for the third party providers and administrative costs for the ATO.

2.92 The ATO may address these issues by examining whether there are strategies to reduce the amount of information it seeks from third parties or improving its data validation strategies to make greater use of the data it receives. However, there may be an inherent difficulty in the ATO seeking to request less but more focused information. The ATO only identifies the risk which it seeks to treat but is unable to specifically identify the taxpayers from whom data should be sought. The role of the Data Matching Steward, discussed above, is to develop a strategic approach to the collection and application of data in active compliance activities, assist the business lines to identify the best sources of data and how these may be requested while minimising the impact on those third parties. There is a risk that, if the ATO sought more specific and targeted information, those third party providers would be required to spend more time and costs in responding to the ATO's request.

2.93 The IGT notes that the 2013–14 Budget Measures should assist the ATO in engaging with certain third parties (such as State land titles offices and AUSTRAC) to develop systems to capture more specific and targeted information. While the extent and details of these measures are not yet public, this move provides the ATO with an ideal opportunity to reassess and improve its current data matching framework.

2.94 As the ATO moves to expand its data matching function, it should take this opportunity to strengthen its organisational capability to enhance its administration of data matching generally. In doing so, the ATO should develop a strategic enterprise approach to the collection and application of third party data in its future data matching activities, including the use of manual reviews for audit selection in relation to new risks or new data sources. In the interim, there is scope for the ATO to engage with existing third party providers to examine ways in which information requests may be better targeted to ensure that more relevant information is obtained.

2.95 In addition to this, and having regard to the decreasing trend both in legislative and non-legislative data matching strike rates, the ATO should continuously review and evaluate the effectiveness of its data matching projects.

2.96 Information provided by the ATO suggests that it does undertake some evaluation and assessment of its data matching programs. These include assessments as part of the ATO's Integrated Quality Framework (IQF), a high level assessment of a sample of completed cases against nine standard criteria,¹⁰⁸ as well as formal evaluations required under the AIC's data matching guidelines.¹⁰⁹

2.97 The IGT notes, however, that these evaluations do not specifically address issues concerning the strike rates for different data matching projects and the causes of variances in these strike rates. Whilst the ATO does not undertake formal evaluations of its data matching

108 See for example, ATO, 'Micro Enterprises and Individuals Data Matching and Compliance Integrated Quality Framework May-June Report' August 2012, internal ATO document.

109 See for example, ATO, 'Data Matching Program Evaluation' 19 April 2012, internal ATO document.

projects, as stated earlier, its senior directors within the DMCS meet on a weekly basis to review and discuss progress in different data matching projects.

2.98 As the data matching program continues to expand, the IGT considers that the ATO needs to identify the areas in which its data matching work is effective and those in which it is less effective. This information would enable the ATO to improve its processes to minimise the occurrences of taxpayers being incorrectly identified through data matching, thereby limiting compliance costs and reducing the resource impacts on the ATO.

RECOMMENDATION 2.4

The IGT recommends that the ATO:

- (a) formalise a strategic enterprise approach to the collection and application of third party data used in its data matching activities. Such an approach should include:
 - (i) undertaking pilots and/or manual reviews for audit selection where new data sources are being used or new risks sought to be treated; and*
 - (ii) consulting with third party data providers regarding their 'natural business systems' and any necessary changes to these systems or processes to accommodate ATO needs and undertaking a cost-benefit analysis to determine whether the ATO can reimburse or subsidise any of their associated costs.**
- (b) consolidate its evaluations of data matching projects to capture observations made during those projects to determine:
 - (i) any material changes in the effectiveness of the project to accurately identify taxpayers who had omitted or underreported their income;*
 - (ii) the underlying causes for the variation in the data matching project's effectiveness; and*
 - (iii) use this information to enhance similar data matching projects for future years, or to redeploy staff to focus on other data matching projects representing higher risks.**

ATO response

Agree

The ATO agrees to formalise our strategic enterprise approach to the collection and application of third party data used in our data matching activities and consolidate our evaluations to capture observations made during those projects.

ACCURACY OF DATA MATCHING USED IN PRE-FILLING

2.99 Data collected by the ATO is not only used in data matching to detect omitted or underreported income. The ATO also applies its corporate data holdings to pre-fill electronic

income tax returns where appropriately identity-matched to specific taxpayers. The ATO notes the following benefits of pre-filling for both taxpayers and for itself:¹¹⁰

The benefits for you

- Pre-filling makes doing your *e-tax* tax return easier and more accurate.
- Pre-filling downloads information to partially complete your *e-tax* return for you, ready for you to review.
- Most information goes directly to the correct items on your *e-tax* return, so you don't have to work out where to put it.
- Other useful information is downloaded into a summary for you to review to help remind you about amounts you might need to declare or claim on your *e-tax* tax return.
- Provided you resolve any discrepancies between your records and what is pre-filled, you know the income on your *e-tax* return matches what we have on our records.
- You have the convenience of access to the pre-filling service 24 hours a day, seven days a week (during the period *e-tax* is available).
- You can identify lost or forgotten records, such as lost bank statements and payment summaries sent to previous addresses.
- If all your information does not download you can simply add in any missing details or register for the alerts service in *e-tax* and we will let you know when your information is available.

The benefits for us

- There will be fewer discrepancies for us to follow up because the information is correctly entered on your *e-tax* return.
- There will be fewer amendments for us to process because you can confirm that the information you have and the information from third-party providers is correct.

2.100 Taxpayers and tax agents have welcomed the ATO's use of corporate data to assist taxpayers in the completion of their income tax returns. However, and notwithstanding this support, some tax agents have expressed concern that taxpayers sometimes take the pre-filled information as being complete and accurate without further checking to assure themselves. The reasons for such inaccuracy or incompleteness include:

- general delays in some entities reporting to the ATO or where information has not been received within statutory timeframes for lodgement;
- the ATO is unable to accurately identity match the information which has been reported to a particular taxpayer;

110 ATO, Pre-filling services – etax, 12 August 2013, < <http://www.ato.gov.au/Individuals/Lodging-your-tax-return/In-detail/e-tax/Pre-filling-service---e-tax/?default=&page=8> >.

- the ATO's identity matching has allocated certain data to a particular taxpayer inaccurately; or
- the ATO has returned data sets to the information providers owing to errors or other inaccuracies which have been observed.

2.101 Another reason for incomplete or inaccurate pre-filled data is that the ATO does not apply stringent validation to these data sets before making them available for pre-filling.¹¹¹ In part, this turns on the need for the ATO to make such data available as soon as possible during Tax Time so that taxpayers may make use of it in lodging their income tax returns.

2.102 Moreover, the ATO has indicated that data sets which are made available for pre-filling purposes are usually legislatively based which outline specific reporting requirements. In addition, the ATO considers that the integrity of such data sets is high owing to the many years of interaction between the data providers and the ATO.¹¹²

2.103 The ATO has advised that where it has received data which it considers less reliable, it only makes these available to tax agents via the Tax Agent Portal for pre-filling purposes. In addition to this, where the ATO identifies issues with existing pre-filled data sets, it will withdraw these from pre-filling, publish details of the issues on its website¹¹³ and request updated data sets from the third party provider.¹¹⁴

IGT observations

2.104 Where taxpayers accept pre-filled data as complete and accurate, they may not actively review their records to ensure correct figures have been pre-filled so as to reduce the likelihood that a discrepancy will arise during post-issue data matching activities.

2.105 However, the ATO website does caveat that 'pre-filling does not alter your current responsibilities to provide a complete and accurate income tax return' and 'all you have to do is check the pre-filled information and add any missing details.'¹¹⁵ These references are slight when compared to the other references suggesting that pre-filling enhances the accuracy of taxpayers' returns which may in turn lead taxpayers to accepting pre-filled data without further checking. Similar warnings are given to taxpayers when using the *e-tax* software.

2.106 The IGT acknowledges that the taxpayer bears the onus of confirming the veracity of any information reported in their tax return. However, it is important to note that this is not always easily accomplished. The ATO recognises that, on some occasions, pre-filled information may contain errors or may not accurately reflect the taxpayer's circumstances. In

111 ATO, Communication with the IGT, 22 July 2013.

112 Ibid.

113 ATO, Pre-filling known issues, 19 July 2013, <http://www.ato.gov.au/Individuals/Lodging-your-tax-return/In-detail/e-tax/Pre-filling-service---e-tax/?default=&page=21#Known_issues>.

114 Above n. 111.

115 Above n. 110.

such situations, the ATO has outlined on its website a number of different steps the taxpayer may wish to take. These include:¹¹⁶

- checking the pre-filled information against the taxpayer's own records and statements;
- referring to the ATO's 'known issues' webpage for information on steps which may be taken in respect of specific issues;¹¹⁷
- addressing any perceived inaccuracies with the information provider; and
- amending the pre-filled information before lodging the income tax return.

2.107 Stakeholders have indicated to the IGT some of the difficulties associated with trying to confirm the accuracy of ATO data. In one case, a taxpayer queried the amount of bank interest which had been pre-filled in their income tax return. The pre-fill report provided only three digits of the relevant bank accounts. The taxpayer made enquiries with the bank but was advised that unless more complete account numbers were provided, the bank was unable to assist. When the taxpayer requested more detailed account information from the ATO, the ATO advised that owing to secrecy and privacy requirements, the ATO was unable to provide the requested details. This is so as the taxpayer had advised the ATO the account did not belong to them.

2.108 Such a situation places the taxpayer in a difficult position. The taxpayer is not being able to clarify the reasons why these amounts had been pre-filled on their account and to have the data corrected accordingly. This leads to two undesirable options. The taxpayer may either accept the incorrect pre-filled data, or reject it with the associated risk that a discrepancy may be identified when the ATO commences its data matching.

2.109 The ATO also recognises this risk. Its website cautions taxpayers that:¹¹⁸

Avoid an audit - resolve discrepancies before you lodge

If you amend the pre-filled information on your *e-tax* return, it is important to resolve any discrepancies you identify with the organisation that provided that information to us before you lodge.

This is because we routinely do information matching to identify discrepancies between the information on a lodged tax return and the information provided to us by external information providers.

When a discrepancy is identified, we will seek clarification from you.

2.110 The ATO's internal instructions to its staff provide an escalation process to manage cases in which the taxpayer claims that the pre-filled data does not belong to them.

116 ATO, What if pre-filled information is wrong, 12 August 2013, <http://www.ato.gov.au/Individuals/Lodging-your-tax-return/In-detail/e-tax/Pre-filling-service---e-tax/?default=&page=7#What_if_the_pre-filled_information_is_wrong>.

117 Above n. 113.

118 Above n. 116.

Specifically in relation to bank interest and ownership of bank accounts, the internal instructions note:¹¹⁹

There have been occasions where the customer claims to have no knowledge of the account information reported. The customer should follow this up with the financial institution that reported the information to us to clarify ownership of the account. If the customer insists that the account does not belong to them, escalate the enquiry.

2.111 The ATO has advised that these matters are escalated to the Third Party Data Management team for investigation. It has also further advised that where taxpayers are able to satisfy proof of identity, the ATO officer is to provide full details of relevant data to the taxpayer so that they may make appropriate enquiries with the information provider. Where proof of identity is not satisfied, the ATO considers that it is precluded from disclosing any further specific information by existing secrecy and privacy laws.

2.112 The IGT considers that where these escalated cases are actioned in accordance with the ATO's internal guidelines, situations such as those outlined above should generally be avoided. However, problems such as the one raised above only arise if processes are not followed and taxpayers are not provided with sufficient information.

2.113 In order to minimise the uncertainty for taxpayers who contact the ATO in relation to pre-filling issues, the ATO should widely communicate its processes for managing these enquiries. Moreover, it is essential that the ATO reinforce these procedures with its staff, across all relevant areas, to ensure that such enquiries are effectively managed and, in appropriate cases, assisting taxpayers to resolve any inaccuracies or incompleteness in pre-filled data in a timely and cost-effective manner.

RECOMMENDATION 2.5

The IGT recommends that the ATO:

- (a) widely communicate a streamlined process through which taxpayers and tax agents may clarify or correct pre-filled data which is incomplete or inaccurate; and*
- (b) periodically reinforce instructions and escalation processes for ATO staff to manage these enquiries and, where appropriate, assist taxpayers to resolve them in a timely manner.*

ATO response

Agree

119 ATO information provided on 27 June 2013.

CHAPTER 3 – COMMUNICATION AND ENGAGEMENT

3.1 Data matching has been, and continues to be, a significant part of the ATO's annual compliance program.¹²⁰ Notwithstanding this, details about the ATO's work and approach in this area are limited. On the ATO's updated website, the IGT was only able to locate general references to data matching, as follows:¹²¹

Matching data from many sources

Matching external data with our own helps us to ensure that people and businesses comply with income tax, superannuation, goods and services tax and fringe benefits tax obligations. It also helps us to detect fraud against the Commonwealth.

Our data-matching programs make it possible for us to:

- detect people and businesses operating outside the tax system
- ensure that people and businesses required to lodge returns do so
- check that income and capital gains are declared correctly
- check claims for GST and fuel tax credits
- recover debt.

Data matching allows information from a variety of sources to be brought together, compiled electronically, then used for a range of public policy purposes. Strong laws protect your privacy in these processes.

We compare externally sourced data with information we already hold, such as that provided in tax returns or business activity statements. For example, we check whether taxpayers have declared their bank interest in their returns. We also cross-reference Centrelink payments with tax returns.

If we check your information it does not mean we think you're dishonest in your tax affairs, it is simply part of our largely automated bulk checking processes.

We do expect to find discrepancies at times and when we do, we take follow-up action.

3.2 Other channels through which the ATO outlines its data matching activities, such as the ATO's annual Compliance Program (now Compliance in Focus),¹²² its newly published Annual Plan¹²³ and notices published in the Government Notices Gazette, outline what the ATO intends to do but not how it proposes to do it. In particular, very little has been published on how the ATO engages with third party data providers to obtain and validate

120 ATO, *Compliance in Focus 2013–14*, pp. 11, 16, 19 and 27; ATO, *Annual Plan 2013–14*, pp. 6, 10 and 11.

121 ATO, Matching data from many sources, 31 May 2013, <http://www.ato.gov.au/General/How-we-check-compliance/Matching-data-from-many-sources/?anchor=P161_12742#P161_12742>; see also, ATO, Prepare and Lodge – Data Matching, 28 June 2013, <<http://www.ato.gov.au/Tax-professionals/Prepare-and-lodge/Tax-Time-2013/Before-you-lodge/Data-matching/>>.

122 ATO, *Compliance in Focus*, above n. 120.

123 ATO, *Annual Plan*, above n. 120.

data before comparing them to taxpayer-provided information. This may be contributing to the perception of taxpayers and their advisors that the ATO does little to validate third party data as discussed earlier in Chapter 2.

3.3 Accordingly, the IGT considers that there is a benefit in the ATO providing public information about its data matching processes, including those steps taken to refine and validate third party data before comparing them with information contained in corresponding tax returns. This should provide greater community confidence in the ATO's data matching activities.

RECOMMENDATION 3.1

The IGT recommends that the ATO publicly release information on the processes involved in its data matching activities, particularly those relating to refining and validating of third party data before comparing them to taxpayer provided information.

ATO response

Agree

NOTIFYING THE TAXPAYER OF POTENTIAL DISCREPANCIES

3.4 Where a discrepancy is identified between the validated third party data and that reported by the taxpayer, the ATO's system issues a discrepancy letter. The ATO's high level process for notification of a discrepancy is illustrated in Figure 4.

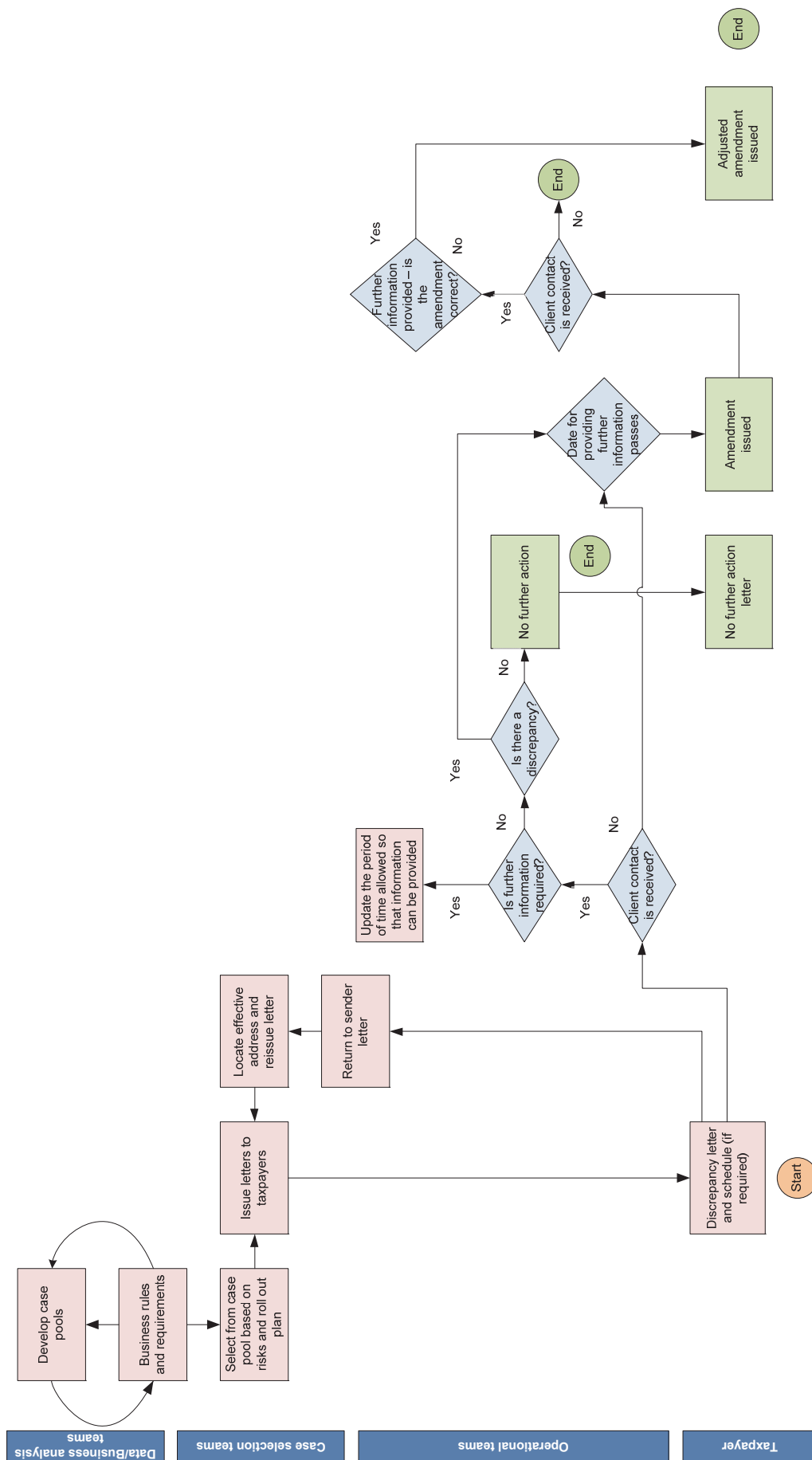
3.5 The discrepancy letter is the primary means through which the ATO initiates contact with taxpayers or their agents. Generally, these letters seek to inform the taxpayer that the ATO has identified a discrepancy between data it holds and information lodged by the taxpayer. The letter requests that the taxpayer contact the ATO within 28 days (or a longer period where the taxpayer is residing overseas or multiple years are subject of review) if they disagree with the potential discrepancy identified in the letter or take no action if they agree with the discrepancy identified. The letter advises that an amended notice of assessment will be issued to the taxpayer if the taxpayer does not contact the ATO.

3.6 Where contact occurs between the ATO and the taxpayer or their agent, the ATO officer reviews the discrepancy and may seek an explanation or further documentation from the taxpayer to address the discrepancy. If the taxpayer is able to substantiate the reported income, the case is finalised with no further action, otherwise, the ATO officer amends the taxpayer's notice of assessment to the extent that the discrepancy remains.

3.7 In submissions to the IGT, concerns were raised in relation to the tone and content of the letters used by the ATO which may be causing confusion for taxpayers. Moreover, in discussions with the ATO, issues relating to the rate of non-response by taxpayers were also raised. These issues are discussed below.

Figure 4: Discrepancy letter – High level business process

28 days



Source: adapted from ATO information

Tone and content of the ATO's discrepancy letters

3.8 Submissions to the IGT have suggested that the tone and content of the ATO's discrepancy letters may be inappropriate. The letters are said to appear accusatory and that the ATO has already formed an opinion regarding the taxpayer's affairs without considering other possible explanations for the perceived discrepancy.

3.9 Stakeholders are also of the view that the letters lack sufficient information to enable taxpayers to understand the ATO's concerns and to allow for comparison against their own records.

3.10 The ATO has provided to the IGT copies of the discrepancy letters used across a range of BAU data matching activities, as well as those used in the CGT and FSI data matching projects.

3.11 Whilst the specific wording of discrepancy letters vary depending on the items subject to audit, the general approach seems to be to:

- identify the matched item;
- note that a discrepancy has been detected; and
- seek the taxpayer's assistance in clarifying the correct amounts for these items.¹²⁴

3.12 In addition, each of the discrepancy letters contains a schedule outlining payment details including the source, the payer and the amount of the payment reported to the ATO by the third party data provider. The ATO also includes details of relevant bank accounts to which the payments have been made and whether the accounts were individually or jointly held.¹²⁵

3.13 Taxpayers are reasonably informed about any potential discrepancies where the letter contains data fields which enable taxpayers or their agents to directly compare what they have reported and what the ATO has identified. Where such information is not provided in the letter, submissions have indicated that it becomes more problematic for taxpayers to ascertain the ATO's concerns and may lead to perceptions that the ATO is being unnecessarily accusatory in its enquiries. This is exacerbated in cases where the ATO is making enquiries in relation to previous years where taxpayers may not have the relevant information readily at hand.

3.14 In relation to the discrepancy letters used in CGT and FSI cases, the ATO has received some feedback from members of professional bodies on the content and details contained in these letters. In relation to CGT letters issued, feedback to the ATO has indicated that:¹²⁶

... the ATO is making certain assumptions about CGT disposals and acting quickly to inform taxpayers they are aware of the disposals or what is believed to be the CGT liability without

124 ATO, Interest advisory letter.

125 Ibid.

126 Above n. 37.

fully informing themselves, with information available to the ATO, about the proper circumstances of the sale.

3.15 Other feedback has been provided to the ATO that on occasions, the ATO's correspondence has been contradictory and has created confusion for taxpayers. The example provided relates to FSI letters in which the ATO was advised that:¹²⁷

Some members have received letters from the ATO stating at the first instance that the ATO has received information from AUSTRAC that money has been transferred from a foreign country bank account to the client's bank account. The letter requests clients check to see if all foreign income has been properly declared and if so, no further action is required.

Clients duly check, and in the cases reported by members, either the money was not assessable income (for example, reimbursement for expenses incurred, a gift or inheritance) or was properly declared. Accordingly, no further action is taken by the client.

A subsequent letter is then received stating no response has been received and therefore the money transferred will be regarded as 'assessable income' and the client's income tax return will be amended accordingly.

3.16 The ATO notes that this experience most likely related to its following up of the OVDI in which letters were originally sent to the taxpayers to afford them an opportunity to self-assess their FSI reporting. While the letters required no action at the time, the ATO subsequently undertook data matching activities with respect to these taxpayers' records to identify possible instances of unreported FSI and contacted taxpayers again to outline the identified discrepancy.

Rate of taxpayer response to ATO discrepancy letters

3.17 In discussions with the IGT, the ATO has indicated that about 50 per cent of taxpayers do not respond to the ATO's initial discrepancy letters. In the 2012-13 financial year, the ATO has noted that the overall taxpayer response rate has declined to about 37 per cent. This rate varies when considering specific legislative and non-legislative projects. In relation to interest and employee share scheme cases, the ATO notes a response rate of 33 per cent compared with 81 and 82 per cent for CGT and FSI cases, respectively.¹²⁸

3.18 It is curious that such a large proportion of taxpayers do not respond to the ATO's enquiries. As discussed earlier, a consequence of not responding to the initial discrepancy letter is that the taxpayer's tax return is adjusted and a notice of amended assessment issued.

3.19 The ATO, however, has suggested that this may be indicative of taxpayers agreeing with the ATO's data matched figures and, hence, they do not dispute the proposed adjustments.¹²⁹ While taxpayer agreement with the ATO's data matched figures may be one reason for the low response rate, there may be other reasons. For example, taxpayers may have considered that the time and cost associated with contacting the ATO was not proportionate to the proposed adjustment, they may not have received the discrepancy letter

127 Above n. 37, Item 6.

128 Above n. 22; ATO, communication with the IGT, 27 August 2013.

129 Above n. 16.

or not clearly understood what the letter was requesting of them. If a significant portion of such taxpayers do not respond for those latter reasons, there is clearly cause for concern.

IGT observations

3.20 The ATO's discrepancy letter is the first contact between the ATO and taxpayers in data matching cases. Accordingly it sets the tone for the taxpayer/ATO relationship and future interactions.

3.21 Where the discrepancy letters include relevant data fields which enable taxpayers to easily understand the data matching information and to compare these against their own records, the taxpayer is likely to appreciate the ATO's concerns and the basis for any proposed adjustments. Moreover, it may also increase confidence in the ATO's data matching activities. However, it is not always possible for the ATO to present all such information, for example, in the real property CGT letters, the ATO can only estimate the cost base of the disposed property.¹³⁰ In such circumstances, the ATO may be using the discrepancy letters to elicit further clarifying details from the taxpayer.

3.22 In some cases, although the ATO's discrepancy letters attempt to present the information on which it relies, it may give the appearance that the ATO has already formed a view regarding the nature of the transaction and the tax effect on the taxpayer. By way of example, the ATO's CGT letter notes:¹³¹

We are writing because information reported to us by State and Territory property authorities indicates you disposed of a property in the <year> financial year.

3.23 Such a statement may convey a sense of finality to the taxpayer. This is especially so when it is coupled with the schedule attached to the discrepancy containing a table purporting to be the adjustment to the taxpayer's tax return.¹³²

3.24 Moreover, the IGT notes that in some letters, the ATO outlines the possibility that amended assessments may issue notwithstanding that the taxpayer tried to provide more information. Specifically, these note:¹³³

If you write to us or fax us within 28 days, our policy is to contact you before we issue an amended assessment. If you receive an amended assessment before we have contacted you, we will review the amended assessment against the information you provided in your original response. Where appropriate, we will contact you before making any further adjustments to your tax return.

3.25 The IGT has been advised that the intent behind this statement is to alert taxpayers to the fact that on occasions, information may not be received by the ATO at the time that assessments are due to be issued and any amendments made would be reviewed in light of new information received.

130 ATO, CGT Revised Letter Template, 2013.

131 ATO, CGT Disposal of Property Letter.

132 Ibid.

133 ATO, FSI Mislabeled Single Year.

3.26 Notwithstanding this intent, it is possible that the statement could create some confusion for taxpayers who may be led to believe that the amendments will issue regardless of whether information is provided or not. Such an interpretation may impact on the taxpayer's willingness to engage with the ATO and may lead to perceptions of the ATO having already reached a conclusion.

3.27 The IGT is of the view that, to the extent possible, the ATO should seek to ensure that it conveys its position in a concise and clear manner which does not appear to construe guilt or finality as to the taxpayer's position. One way of facilitating this is for the ATO to more effectively user test proposed correspondence before implementing it for general use.

3.28 The ATO also acknowledges the need for its correspondence to clearly and concisely convey to taxpayers any discrepancies identified through data matching and impact on their tax returns. To this end and in response to the IGT's current review, the ATO has adopted an ongoing program to user-test all of its data matching correspondence, beginning with those used in CGT, FSI and interest data matching cases.¹³⁴

3.29 In conducting this user-testing, the ATO utilises a simulation centre to assess the usability and comprehensiveness of a range of its correspondence by presenting it to a range of taxpayers and tax agents for comment. The simulation centre then collates the feedback and makes recommendations for improving the documents used by the ATO. The IGT notes, however, that not all correspondence have been subject to this testing.

3.30 In the review into the ATO's Income Tax Refund Integrity Program,¹³⁵ which operates within the same market segment, the IGT noted the recent observations made by the Commonwealth Ombudsman regarding the ATO's communication with individual taxpayers and the opportunities which exist for the ATO to enhance its understanding of the 'behavioural' responses to its communications.¹³⁶

3.31 The IGT also noted that applied research emerging from the United Kingdom through the Behavioural Insights Team within the UK Cabinet Office supports such an approach. The research notes:¹³⁷

... that even relatively minor changes to processes, forms and language can have a significant, positive impact on behaviour. Evidence also suggests that the effectiveness of interventions depends heavily on the context and setting, and that – in some instances – interventions in one domain might not be as effective when translated into other areas.

3.32 Accordingly, the Behavioural Insights Team's research notes that:¹³⁸

Central to this is the development of randomised controlled trials (RCTs), which are considered to be the gold standard of research trials.

134 ATO, Usability Testing Report – foreign source income and capital gains tax letters, Micro Enterprises and Individuals, 25 June 2013, p. 3.

135 Above n. 4.

136 Joint Parliamentary Committee of Public Accounts and Audit, *Ninth Biannual Hearing with the Commissioner of Taxation*, Official Committee, Hansard, 23 September 2011, p. 15.

137 UK Cabinet Office Behavioural Insights Team, *Applying behavioural insights to reduce fraud, error and debt*, p. 21.

138 Ibid.

This involves dividing the study population into two or more groups and randomly assigning individuals to each of these groups. By giving the intervention (for example the modified letter, the changed process, the new text message) to one of these groups while continuing to treat the other group as business per usual, we can determine the difference in effectiveness of each of the interventions. The key ingredient to this approach is the randomisation of individuals to groups, which enables us to assume that any difference in outcomes is attributed to the intervention rather than other factors.

3.33 Given the ATO's ongoing program to user-test data matching correspondence, the IGT considers that there may be significant benefit in the ATO having regard to the above applied behavioural insights research. Such a process should specifically consider whether the proposed letters will generate the intended taxpayer response by reference to matters including the level of content, detail and direction to taxpayers. It should also seek to minimise compliance costs arising for taxpayers, tax agents and the ATO by reducing unnecessary action.

3.34 The IGT considers that the above proposed action would also be beneficial to better understand the reason for taxpayers not responding to ATO discrepancy letters and taking appropriate action to remedy the situation.

ATO OFFICER RESEARCH

3.35 A concern related to the tone and content of initial discrepancy letters which has emerged from the submissions, is the view that the ATO does not appear to be undertaking additional research of its own systems to understand the reason for the discrepancy prior to contacting taxpayers. This is so, even where stakeholders perceive that often information available to the ATO on its own systems may be sufficient to answer its queries. For example, the ATO may be able to verify whether a property was the taxpayer's main residence prior to its disposal or whether the discrepancy identified had been the subject of audit in prior years. The ATO has also received similar feedback through its ATO Tax Practitioner Forum.¹³⁹

3.36 The perception is likely a result of taxpayers believing that the ATO manually reviews all discrepancies prior to issuing discrepancy letters. This is not the case. As outlined in Chapter 2, the ATO matches potential discrepancy cases against its corporate data holdings to exclude any cases verified through this process from audit. This process is automated with the exception of complex discrepancy matters as well as CGT and FSI cases discussed earlier.

3.37 As such, most 'research' which is undertaken prior to discrepancy letters issuing is done automatically through ATO systems. In relation to discrepancies which are manually reviewed, for example real property CGT, an ATO officer may compare the details of the property identified as having been disposed against taxpayer's past addresses on the ATO's system to determine whether a main residence exemption may apply.

3.38 The IGT's review of the ATO's discrepancy letters indicates that prior research is presented in one of three ways. Firstly, in some discrepancy letters, the ATO alerts taxpayers

139 Above n. 15

that this automated verification has been undertaken prior to the discrepancy letter issuing to the taxpayer. This is most notable in the letters regarding CGT and the disposal of real property, which state:¹⁴⁰

When disposing of a capital gains tax asset such as property, you need to consider your capital gains tax obligations. Generally, your main residence is exempt from capital gains tax. This exemption is called the main residence exemption. For your information, included is a fact sheet about the main residence exemption.

We have been unable to confirm that the property disposed of was your main residence. Therefore you do not appear to be entitled to the main residence exemption. [emphasis added]

3.39 Secondly, some discrepancy letters do not make reference to any additional research or verification the ATO may have undertaken. Instead, these letters note that the identified discrepancy may have occurred for a number of reasons and inviting taxpayers to assist the ATO in clarifying this.¹⁴¹

The attached schedule shows amounts from the disposal of shares acquired through an employee share scheme that we have matched against your 2008 tax return. As the total amount matched appears to exceed the amount shown at item **18 Capital gains** on your tax return, we seek your assistance to resolve this discrepancy.

There might be several reasons for the apparent discrepancy. We ask that you review the information in the schedule against your records to help us clarify your correct capital gains tax obligations.

3.40 A number of other letters do not make any reference to additional research or checks and only point out that a discrepancy has been detected and taxpayers need to check their records. By way of example, the FSI letter notes:

We are writing to you about foreign source income for the <year> financial year. We have received information from foreign revenue authorities and Australian Transaction Reports and Analysis Centre which indicates you may not have included all of your foreign source income in your year tax return.

As an Australian resident, you are taxed on your worldwide income. This means you need to declare all assessable and exempt income you receive from foreign sources in your tax return. Assessable foreign income includes most pensions and annuities, including income such as interest, dividends, royalties, rent, capital gains and personal services income.¹⁴²

IGT observations

3.41 As discussed above, the ATO's initial discrepancy letter may in some cases lead taxpayers to the view that the ATO has reached a final conclusion in relation to their tax liability. This sense of finality may be exacerbated where the ATO's discrepancy letters do not sufficiently outline the nature of any research undertaken by the ATO prior to it contacting taxpayers.

140 Above n. 131.

141 ATO, CGT Employee Share Scheme letter.

142 ATO, FSI DTA AUSTRAC letter.

3.42 While some of the discrepancy letters do make general reference to additional automated research, the majority of letters are silent on the point. The IGT appreciates that not all areas of the tax law have statutory exemptions which may require further research on the part of the ATO officer beyond what is detected in the data matching. However, where the ATO does not make any comment on further research or checks it has taken, or reasons why additional research has not been undertaken, taxpayers and their agents may assume that the ATO has chosen not to, rather than there not being any further internal checks the ATO can undertake.

3.43 Moreover, in relation to those letters which do make a statement in relation to additional research or verification steps taken by the ATO, it may not always be enough to merely state that some research or cross-checking had been undertaken. There is a benefit in the ATO expanding upon and illustrating the nature of checks which have been undertaken prior to the issuing of discrepancy letters. This would not only increase confidence of taxpayers in the system, but would also better enable taxpayers or their agents to direct the ATO as to areas which may be explored to address the ATO's concerns.

RECOMMENDATION 3.2

The IGT recommends that the ATO:

- (a) improve the effectiveness of data matching correspondence to generate the intended behavioural response by, for example, conveying more details regarding any research that it has undertaken to resolve the discrepancies before contacting the taxpayer; and*
- (b) use randomised controlled trials to evaluate the effectiveness of such correspondence.*

ATO response

Agree

The ATO will continue to explore opportunities to improve our letters through the use of behavioural economic principles in our correspondence.

FURTHER ENGAGEMENT WITH TAXPAYERS AND THEIR ADVISERS

3.44 Some stakeholders have noted that, following the receipt of the discrepancy letter, the engagement with the ATO has been successful with the ATO accepting appropriate explanations and managing the case in a timely manner. In other instances, submissions have expressed concern including the number of different ATO officers dealing with the matter, the officers being unaware of their circumstances and the absence of opportunities to meet with the ATO officers to discuss the issues.

3.45 In relation to the first issue, IGT understands that in areas of high volume and low value cases, it may be desirable to not allocate cases to specific officers. This design seeks to enable taxpayers and their agents to contact the ATO at any time convenient to them and to be able to discuss their case with the ATO officer who answers the call. However, such a structure necessarily requires that all ATO officers dealing with these matters to be wholly

aware of the history of the case so that interactions between the taxpayer, their agent and the ATO progress smoothly.

3.46 The primary means through which ATO officers apprise themselves of the history of discussions between taxpayers and the ATO is through reviewing relevant file notes. The quality and consistency of the ATO's file noting system is therefore critical. Continuous conversations between the taxpayer and multiple ATO officers must be file noted clearly and with sufficient detail to enable any other ATO officer to appreciate the history and developments of a case and what action is required to finalise it.

3.47 The ATO internal instructions to its staff require that ATO officers record the following details in its file notes:¹⁴³

All notes must be detailed, including specific information about:

- the topic of the phone call or correspondence
- the full name of any third party contact (that is, tax agent or authorised contact)
- any specific information provided in relation to the taxpayer including
- any research or steps taken to verify information provided
- who you have sort advice from (TTA, TL etc) and what that advice was [sic]
- what systems you used to establish your decision or researched data
- your response to the query detailing the reasons for that response
- any escalations made to technical advisors
- Siebel activity ID of inbound correspondence or phone call
- the date the correspondence was received or date and time of the phone call
- if a letter is sent for approval, the Siebel activity ID
- record only the last four digits of bank account numbers.

3.48 The ATO's internal IQF evaluation of a sample of data matching cases for the 2011–12 financial year indicates a portion of these cases failed to adhere to existing processes for appropriate file notes. Specifically, the ATO identified insufficient file noting in six per cent of closed cases and nine per cent of open cases.¹⁴⁴ While the percentages of these cases appear to be generally low, when extrapolated to the numbers of data matching cases, the quantity of affected taxpayers may be significant.

3.49 Following the release of the IQF evaluation, the ATO issued a suite of facilitator-led training materials focusing on quality file-noting in compliance activities. The training

143 ATO, CGT Case Actioning Procedures, internal ATO document; ATO, FSI Case Actioning Procedures, internal ATO document.

144 ATO, *Micro Enterprises and Individuals Data Matching and Compliance Strategies Integrated Quality Framework May-June Report*, August 2012, p. 8.

reinforces the need for ATO officers to maintain file notes of all transactions with taxpayers and their representatives, in a form suitable to be made public if required.¹⁴⁵ The ATO has advised the IGT that this training was mandatory for all active compliance staff within the ATO.¹⁴⁶

3.50 In a subsequent IQF evaluation of data matching cases, the ATO noted that it did not encounter some of the issues which commonly arose in the past, such as inadequate notes. The report states that file notes in the cases examined were of a generally high standard, suggesting that learnings and trainings arising out of earlier evaluations had effectively flowed through to current case management.¹⁴⁷

3.51 In respect of opportunities for face to face meetings with appropriate ATO officers, the IGT appreciates that in high volume, low value work areas, it is not always possible to accommodate face to face meetings or extended ongoing discussions to address specific data matching matters as this may result in unnecessary delays.

3.52 In his review into the ATO's use of early and alternative dispute resolution (the ADR review) the IGT noted:¹⁴⁸

... that the ATO and taxpayers should work towards building and maintaining a kind of engagement which minimises the occurrence of disputes by developing a clear understanding of each other's position on the facts, evidence and findings of fact. An outcome of such a process may be the development of clear points of agreement or disagreement (as the case may be) and, in the latter case, an understanding of the reasons for such disagreement.

3.53 In the same report, the IGT also recognised the difficulties faced by the ATO in relation to high volume cases, including those arising out of data matching. While it is not possible for the ATO to engage in face to face meetings and extended ongoing discussions with every taxpayer involved in these cases, it is also important to recognise that not all taxpayers will request that the ATO do so.

3.54 Moreover, where face to face meetings cannot be accommodated, the ATO's processes and correspondence encourage engagement and dialogue through telephone, written correspondence and facsimile. The IGT considers that effective engagement through these channels on the part of both the ATO and the taxpayer would do much to assist in resolving matters of concern. As technology evolves, it may be that other channels may also provide more effective pathways for dialogue and issues resolution.

REQUESTING TAXPAYER INFORMATION

3.55 The ATO's data matching systems only identify possible discrepancies needing to be verified by ATO officers. As such, it relies on explanations and information from

145 ATO, Quality Notes for Compliance Learner Workbook, September 2012, internal ATO document.

146 ATO, communication with the IGT on 26 August 2013.

147 ATO, *Micro Enterprises and Individuals Data Matching and Compliance Strategies Integrated Quality Framework May-June Report*, August 2012, p. 8.

148 IGT, *Review into the Australian Taxation Office's use of early and Alternative Dispute Resolution*, July 2012, p. 25.

taxpayers to address the concerns. All versions of the ATO's initial discrepancy letters outline this process, as illustrated in the extract below from a CGT letter.¹⁴⁹

If you believe you are entitled to the main residence exemption and we should not amend your tax return or you do not accept the information in the schedule, you need to contact us within 28 days from the date of this letter. We will then let you know if you need to provide any supporting information.

3.56 Accordingly, the letter contemplates the possibility of 'contact' with ATO officers to discuss the reasons for the potential discrepancy and provide an opportunity for the ATO to request additional information. Such a discussion is helpful to ensure that taxpayers do not engage in information-gathering where it may not be necessary. However, the language of the letter may be confusing for some taxpayers.

3.57 In submissions stakeholders raised concerns regarding the ways in which the ATO requests taxpayer information in data matching cases. The main concerns were that:

- the information request is not sufficiently clear and reasons are not provided for the relevance of such information;
- there are limited opportunities to engage with the ATO on information requests; and
- in some cases the ATO is refusing to reduce its information requests to writing despite the taxpayer asking them to do so.

3.58 Each of these points is considered below.

Ensuring taxpayers understand what is sought and why

3.59 In the ADR review, the IGT made a number of observations in relation to the importance of providing the appropriate information to address the ATO's concerns and the need for the ATO to ensure that taxpayers understood the reasons why the information is requested.¹⁵⁰

3.60 The IGT notes that the ATO's preference for telephone contact in relation to data matching should enable a dialogue to commence between the ATO and the taxpayer. Such dialogue provides an opportunity for the ATO to convey the nature of the discrepancy detected and what information the taxpayer could provide to address these concerns.¹⁵¹

3.61 The IGT's examination of the ATO's procedures, in relation to CGT and FSI data matching, suggests that staff are instructed to address taxpayer queries regarding the nature and extent of the discrepancy and the reasons for the ATO inquiry. Outlined below is an extract of instructions and details provided to staff in responding to certain FSI queries.¹⁵²

149 Above n. 131.

150 Above n. 148, pp. 28-32.

151 Above n. 143.

152 ATO, FSI Case Actioning Procedures, above n. 143.

Request further details on the transactions

The taxpayer or tax agent may request further information to assist with the identification of the source of the foreign income ...

The additional information is limited to what is displayed in Austrac and the information each relevant revenue authority provided to us under the double taxation agreement (DTA).

It should be noted that DTA countries report income in terms of their own fiscal years some of which are different to Australian this may in some instances cause income declaration in an incorrect financial year.

If necessary, the taxpayer or tax agent should contact the payer for verification and/or provide a copy of the tax return lodged with that revenue authority. This may involve them requesting an extension of time to respond as they may have to seek information and/or evidence from overseas.

3.62 The instructions also outline other possible explanations for discrepancies and the type of information which may be used to substantiate the discrepancy. For example, in relation to the overseas transfer into Australia of the taxpayer's own money, the instructions outline the following:¹⁵³

Transfer of savings

It is usually quite straight forward where the taxpayer has transferred funds from an overseas bank account to an Australian bank account. In this case usually the taxpayer has worked/lived in the foreign country, built-up savings and then migrated to Australia.

Confirm using AUSTRAC information the money was transferred from an overseas account in the taxpayer's name.

If you are unsure whether the funds transferred are genuine savings you can request available documentation such as:

- bank statements showing the money was in the account for the full financial year
- copies of a visa
- employment contracts
- citizenship documentation.

The overseas bank statements for the full financial year should confirm the bank account number reported in AUSTRAC. Also, the following information may help with interpreting the statements:

- If the amount shown on the bank statement is less than what was in the account at the start of the financial year, this could be due to everyday expenses.

153 Ibid.

- If the amount is slightly higher than the original amount shown it could be due to receiving interest which should be returned in their ITR if earned while an Australian resident.
- If the amount shown is significantly more than the money transferred it is probably not the same funds.

3.63 Similar instructions and guidance are available on the ATO's intranet in relation to other data matching projects, both legislative and non-legislative.¹⁵⁴

IGT observations

3.64 The IGT considers that the above guidance should provide ATO officers with a basis for meaningful dialogue. However, the guidance should only be considered to be a starting point for discussions between the ATO and taxpayers and not a definitive set of scripting to which ATO officers are bound.

3.65 When communicating with taxpayers on data matching cases, ATO officers need to be mindful of the varying degrees of tax technical proficiency possessed by individual taxpayers. They should clearly and concisely communicate the reasons for any information requested and why it is relevant to the audit. Instructions to this effect need to be included in the ATO's internal guidelines and be periodically reinforced in communication to relevant staff.

3.66 It should also be noted that, currently, the internal ATO case actioning instructions to staff make no mention of ATO officers considering information other than those in the taxpayer's possession or otherwise obtainable by the taxpayer. For example, while the instructions direct ATO officers to consider requesting certain documents (such as copies of visas, employment contracts and citizenship certificates) to confirm a taxpayer's overseas residency, these instructions do not allude to the existence of information maintained by the Department of Immigration and Citizenship (DIAC) which may be available to the ATO upon request.

3.67 As discussed earlier, during the current review, the ATO implemented a manual checking process for FSI and CGT cases before selecting them for audit. As part of the ATO's FSI manual checking, instructions have been put in place for officers to consider DIAC information to determine the residency status of taxpayers.¹⁵⁵ In addition, the ATO has advised the IGT that during data matching audits, ATO officers are able to request information from other government agencies, such as DIAC, on a case-by-case basis. However, the instances in which such a request would be appropriate and how to make the request are not presently contained in case actioning instructions.

3.68 The efficient use of data held by other government agencies may be facilitated by the ATO instructing its staff as to the appropriate circumstances in which such data may be used and how the information may be requested.

¹⁵⁴ Above n. 15.

¹⁵⁵ ATO, Case selection process overview, July 2012, internal ATO document, p. 1; ATO, FSI AUSTRAC case selection process, July 2012, internal ATO document, p. 3; FSI case selections fully discrepant DTA case pool, July 2012, internal ATO document, p. 1.

RECOMMENDATION 3.3

The IGT recommends that the ATO update its internal instructions to staff involved in data matching activities to:

- (a) reinforce that ATO officers should ensure taxpayers understand the information being sought and how that information is relevant to the investigation;*
- (b) identify potential sources of data held by other government agencies (such as DIAC) which may assist the ATO in its data matching audit activities; and*
- (c) outline the circumstances in which it would be appropriate to make information requests from other government agencies and the procedures that should be followed in making such requests.*

ATO response

Agree

Opportunities to engage with the ATO

3.69 The text of the ATO's discrepancy letter invites the taxpayer to contact the ATO for a discussion of the potential discrepancies. The telephone discussions can be a less formal, time efficient and useful way of ensuring that taxpayers understand the ATO's concerns and any actions required on their part to finalise the matter.

3.70 However, in some instances, telephone contact alone may not be sufficient to enable taxpayers to understand the ATO's request and to provide appropriate information. It may also be helpful to supplement the telephone discussion with a meeting in certain cases. It is difficult to be prescriptive about when a meeting would be necessary as each case turns on its particular circumstances. However, the ATO should be open to such an option in appropriate cases and when requested by the taxpayer.

3.71 It should also be noted that when engaging with taxpayers, the ATO should ensure that its officers appreciate the difficulties that some taxpayers may have in providing the information requested as the latter may be held in overseas jurisdictions or the passage of time or the complexity of the information presents a major challenge. Furthermore, some taxpayers may need to provide an explanation or otherwise elaborate upon the information provided. Sufficient opportunity to engage in these types of discussions would ensure that the ATO receives appropriate information to address its concerns.

Confirming information requests in writing

3.72 Submissions to the IGT have indicated that in some cases, ATO officers have not agreed to taxpayer requests for matters to be put in writing. The ATO has advised that while

it prefers informal telephone engagement in these cases, it is not the ATO's policy to refuse to reduce matters to writing in appropriate cases and where requested by the taxpayer.¹⁵⁶

3.73 Notwithstanding that this may be the ATO's policy, the IGT notes the internal ATO procedures reviewed by the IGT do not make any reference to requesting information in writing. The IGT notes that not all taxpayers will require written requests and that the absence of specific instruction does not necessarily mean that ATO officers will refuse to do so.

3.74 To ensure that the ATO's policy on written information requests is understood, the IGT considers that it would be appropriate for the ATO to communicate to its staff that information requests may be provided in writing in appropriate cases, such as where the request is lengthy or complex or where requested by taxpayers or tax agents.

RECOMMENDATION 3.4

The IGT recommends that the ATO update its current data matching procedures to emphasise that ATO officers may make information requests in writing where:

- (a) specifically requested to do so by taxpayers or their agents; or*
- (b) the information is lengthy or complex.*

ATO response

Agree

The ATO will update our procedures and internal instructions to staff involved in data matching activities.

CONSIDERING TAXPAYER-PROVIDED INFORMATION AND COMMUNICATING ADJUSTMENT DECISIONS TO TAXPAYERS

3.75 The ATO's current data matching process only issues finalisation letters where cases selected for audit result in no further action. An example of a CGT finalisation letter in which no further action was required is outlined below:¹⁵⁷

We have completed our audit of capital gains on shares you may have sold during the year ended 30 June <year>. Based on the information you/your tax agent provided regarding your shares, we will not be taking any further action on this matter.

Please note that completion of this audit does not prevent us from initiating further action if warranted.

3.76 Where a data matching audit results in an adjustment being made to the taxpayer's return, the ATO has advised that no finalisation letter issues to the taxpayer. In these cases, the ATO notes that notification of the adjustment is reflected in the taxpayer's amended

156 ATO/IGT meeting, 24 January 2013; Above n. 16.

157 ATO, CGT No Further Action letter.

notice of assessment.¹⁵⁸ The ATO expects that, prior to any adjustment being made, its staff have communicated with taxpayers and their agents about the proposed adjustments and how any information provided by the taxpayer has impacted the proposed adjustment.¹⁵⁹ Similarly, the ATO's case actioning procedures require its staff to communicate the outcome of the case to taxpayers and their agents and 'provide appropriate education to ensure the mistake does not reoccur.'¹⁶⁰ An ad hoc finalisation letter may be provided if requested by the taxpayer.¹⁶¹

3.77 The ATO believes that where there has been engagement and dialogue between taxpayers, their agents and the ATO throughout the audit process, the taxpayer is likely to be in a better position to understand the ATO's concerns and reasons for the decision thereby removing the need for additional correspondence.

3.78 However, as the data matching process is generally automated, amended assessments may issue directly to taxpayers where there has been no contact with the ATO. In these cases, taxpayers will receive a notice of amended assessment without any accompanying letter to explain the amendment.

3.79 In addition to the potential for creating confusion for taxpayers regarding reasons why adjustments may have been made, the absence of a finalisation letter may also give the appearance that ATO officers are not considering taxpayer-provided information or other information the ATO may have considered in arriving at its final position. Such concerns align with similar submissions made in relation to the IGT's review of the ATO's income tax refund integrity program, another area which deals with 'high volume, low value' cases.

3.80 The IGT notes that ATO officers are required to consider all information, both internally held by the ATO and that provided by taxpayers, to determine whether an adjustment is required to the taxpayer's return.¹⁶²

IGT observations

3.81 The IGT considers that it is important for ATO officers to communicate to taxpayers how information which they have provided is being considered and its likely impact on any proposed adjustments. This level of understanding is critical in enabling taxpayers to understand whether there is any further information which the taxpayer may provide to assist the ATO in its inquiry or to determine whether in the taxpayer's view, the ATO officer has erred in their decision. As acknowledged by the ATO, it is also a useful way of seeking to ensure that the taxpayer does not make a similar mistake in the future.

3.82 In some instances, taxpayers may not understand the ATO's position and the reasons why any adjustments have been made to their return. They may therefore seek to engage professional advisers to assist them. The absence of written reasons for decisions may make it difficult for these taxpayers to effectively to instruct their advisers.

158 Above n. 16.

159 See for example, ATO, CGT (Property) case actioning procedures, above n. 143, telephone enquiry, item 5.

160 See for example: ATO Above n. 143, actioning correspondence, item 5.

161 See for example: section 28 of the *Administrative Appeals Tribunal Act 1975*.

162 Above n. 15; ATO, FSI case actioning procedures, Above n. 143.

3.83 As stated earlier, there are some circumstances where amended assessments may issue without any verbal communication between the ATO and taxpayers. The ATO considers that, in such cases, the information contained in its initial discrepancy letter when read together with the amended notice of assessment should enable taxpayers and their agents to appreciate what adjustments have been made and the reasons for those adjustments. However, this may not be possible where taxpayers do not receive or understand the discrepancy letter or where they are unrepresented or do not possess sufficient tax knowledge.

3.84 Ideally, the IGT considers that where the ATO makes a decision which varies a taxpayer's liability, the ATO should provide a finalisation letter with reasons for its decision to accompany the notice of amended assessment. The issuing of such a letter with reasons for decisions would serve a number of important purposes including:

- enabling taxpayers to understand the reasons for an adjustment, forming a view as to the correctness of the decision and determining whether to challenge the decision;
- improving confidence in the system and maintaining a good relationship with taxpayers; and
- minimise the risk of similar mistakes occurring in future.

3.85 The ATO has advised that the requirement to issue finalisation letters for all cases where adjustments are made would require a significant increase in workload. The ATO considers that these additional resources, together with current limitations on its information technology systems, would create inefficiencies within the data matching program without a significant corresponding benefit to the community.

3.86 The IGT appreciates the ATO's concerns relating to increase workload not being commensurate to the benefits flowing to taxpayers. However, pursuant to the principle of natural justice, taxpayers are entitled to a full explanation regarding any adverse decision which affects their rights and liabilities. Furthermore, there may be costs savings in the longer term as appropriate finalisation letters may result in better informed taxpayers who may not make reoccurring mistakes in subsequent years.

3.87 In balancing the administrative costs for the ATO and taxpayers' rights, the IGT is of the view that the ATO should at the very least ensure that taxpayers are aware that they can request a full written explanation for any adverse data matching adjustments made.

RECOMMENDATION 3.5

The IGT recommends that the ATO widely communicate to the public, through such channels as its website, the initial discrepancy letter to taxpayers and tax agents and its consultative forums, that taxpayers may request a full written explanation regarding any adverse adjustments made to taxpayers' liabilities at the conclusion of data matching activities.

ATO response

Agree

ACTION UNDERTAKEN BY THE ATO FROM DATA MATCHING

3.88 The discrepancy letters generally allow taxpayers a period of 28 days in which to reply to the ATO. However, stakeholders have expressed concern that 28 days is not sufficient time in many cases¹⁶³ and have particularly voiced their dissatisfaction at amended assessments issuing prematurely.

3.89 The ATO has advised that extensions of time for the provision of information may be granted at the taxpayer's request. However, submissions to this review have recounted circumstances in which the ATO has issued amended assessments before the expiry of the extension periods. The ATO notes that such situations may occur as a result of extensions of time not being properly entered on its WinCAS system.

3.90 Similar concerns were also raised in relation to amended assessments issuing in instances where taxpayers were actively engaging with the ATO to resolve issues. In one case, the taxpayer noted that despite being subject of ATO data matching activities on the same issue over two years and engaging with the ATO to address the matter in each year, an amended assessment issued prematurely which took many months to reverse.

IGT observations

3.91 The circumstances in which amended assessments issue prematurely should be minimised. It potentially creates confusion and stress for taxpayers who feel that they have done the right thing but the ATO has disregarded their efforts and the information which they have provided.

3.92 Moreover, where taxpayers are concerned about the nature of the assessment, they may progress matters through an adviser for the purposes of an objection or challenge against the amendment. Such a course of action is undesirable and results in unnecessary time and cost being expended.

3.93 The ATO should seek to understand the underlying causes for amended assessments issuing prematurely and prevent their occurrence. One way in which the ATO could prevent this is to require ATO staff to contact taxpayers, with whom previous contact has been made, and verify whether information has been, or will be, sent in response to the ATO's request. To avoid circumstances where cases may become protracted, ATO officers may also use this conversation to emphasise the urgency of the information requested and the need to finalise matters such that further contact and extensions may not be possible.

163 Tax practitioner submission to ATO South East Queensland Regional Tax Practitioner Working Group, July 2012, p. 4.

RECOMMENDATION 3.6

The IGT recommends that the ATO identify the causes of amended assessments issuing prematurely and to prevent the occurrence of such events by, for example:

- (a) clearly communicating the channels through which taxpayers should direct their responses to ATO enquiries;*
- (b) where prior communication has been established, instructing staff to contact taxpayers to verify whether the taxpayer has sent or is sending the required information before cases are finalised; and*
- (c) developing systems-based rules to ensure that taxpayer correspondence records are checked before amended assessments are issued.*

ATO response

Agree

The ATO will update internal instructions to staff involved in data matching activities to reinforce existing processes.

CHAPTER 4 – ADJUSTMENTS AND DISPUTATION

PROPORTIONALITY OF DATA MATCHING

4.1 Stakeholders have expressed a view in submissions that the ATO's data matching activities and the corresponding cost to taxpayers and tax agents in managing these cases are disproportionate to the level of revenue protected.

4.2 The ATO has noted the high success rates of its data matching activities. In 2012, the ATO reported, as part of its Health of the System Assessment, that data matching activities had raised \$915m - a return of some \$5.9m per full time equivalent staff member. It noted further that this result is more than double those of the prior two years.¹⁶⁴ While this is helpful in providing an overall picture of the outcomes of data matching, it does not assist in determining the proportionality of action taken by the ATO and the corresponding cost to taxpayers.

4.3 An examination of the outcomes and level of revenue raised in relation to particular data matching projects provides greater insight on the proportionality and effectiveness of specific projects. Tables 13, 14 and 15, below, outline a sample of different legislative and non-legislative data matching projects, the numbers of adjustments and total and average amounts of adjustments.

4.4 As illustrated in Table 13, the ATO's legislative data matching projects results in a high quantity of adjustments with generally lower revenue values. For example, the ATO's 'Investment Income' data matching project resulted in 158,381 adjustments averaging \$532.07 in 2011-12. Similarly, those projects targeting 'Allowances' (34,834 adjustments averaging \$624.38) and 'Australian Government Allowances and Payments' (33,612 adjustments averaging \$565.82) also reported high quantities of adjustments with low level quantum in 2011-12.

4.5 There are two exceptions to the high quantity low quantum adjustment nature of legislative data matching projects. These are the 'lump sum payments' project which in 2011-12 made adjustments in 1,253 cases averaging \$3,131.64 and the 'employee share schemes' project which made 8,193 adjustments averaging \$5,646.32.

4.6 In addition to illustrating the generally low quantum of adjustments in relation to legislative data matching, the information contained in Table 13 also shows that a general declining trend in the quantum of adjustments made over the three years between 2009-10 and 2011-12. With the exception of the 'Australian Government Allowances and Payments' and 'Lump Sum Payments' projects, all other projects within the sample demonstrated a reduction in the quantum of adjustments. No comparative data is available for 'Employee Share Schemes' which only commenced in the 2011-12 financial year.

164 ATO, *Individuals Market Segment Health of the System Assessment*, 13 September 2012, internal ATO document, p. 5.

Table 13: Legislative data matching – Adjustments

Subject of data matching	Case actioning years	Number of adjustments	Amount of adjustments (Total liabilities raised)	Average amount of adjustments (total liabilities/number of adjustments)
Legislative Data Matching				
Salary and wage PAYG data is matched to the salary and wage income label on the individual income tax return to check that the taxpayer has returned all of their employment income and claimed the correct tax withheld amounts.	2012	21,347	\$22,563,985	\$1,057.00
	2011	14,871	\$18,149,706	\$1,220.47
	2010	10,519	\$19,645,255	\$1,867.59
Lump sum payments PAYG data is matched to the lump sum payments label on the individual income tax return to check that the taxpayer has returned all of their lump sum payment income and claimed the correct tax withheld amounts.	2012	1,253	\$3,923,954	\$3,131.64
	2011	1,329	\$1,478,905	\$1,112.79
	2010	1,829	\$2,723,227	\$1,488.91
Allowances PAYG data is matched to the allowance income label on the individual income tax return to check that the taxpayer has returned all of their allowance income and claimed the correct tax withheld amounts.	2012	34,834	\$21,749,965	\$624.38
	2011	39,636	\$31,232,137	\$787.97
	2010	22,678	\$23,211,383	\$1,023.51
Australian Government Allowances and payments Welfare data is matched to taxpayer returns to check that the taxpayer has returned all of their Australian Government Allowances and payments income.	2012	33,612	\$19,018,478	\$565.82
	2011	28,631	\$15,878,900	\$554.60
	2010	32,696	\$17,396,618	\$532.07
Australian Government pension and allowances Welfare data is matched to taxpayer returns to check that the taxpayer has returned all of their Australian Government pension and allowances income.	2012	7,534	\$2,771,117	\$367.81
	2011	965	\$1,660,507	\$1,720.73
	2010	6,809	\$3,392,068	\$498.17
Australian annuities and superannuation income streams PAYG data is matched to the Australian annuities and superannuation income streams label on the individual income tax return to check that the taxpayer has returned all of their annuities and superannuation income and claimed the correct tax withheld amounts.	2012	20	\$33,864	\$1,693.20
	2011	317	\$1,177,551	\$3,714.67
	2010	616	\$1,330,785	\$2,160.36
Investment income Interest and dividend data is matched to the gross interest and dividend income labels on the individual income tax return to check that the taxpayer has returned all of their investment income.	2012	158,381	\$84,270,941	\$532.07
	2011	181,158	\$106,634,003	\$587.13
	2010	110,609	\$83,920,708	\$758.71
Employee share schemes Div83A Employee share scheme data is matched to the employee share scheme income labels on the individual income tax return to check that the taxpayer has returned all of their employee share scheme income and claimed the correct tax withheld amounts.	2012	8,193	\$46,260,302	\$5,646.32
	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A

Source: ATO

4.7 In contrast to the outcomes of legislative data matching, the results of the CGT and FSI non-legislative data matching projects, as outlined in Tables 14 and 15, are markedly different. There are fewer adjustment cases but a higher quantum of revenue adjustments.

4.8 As illustrated in Table 14, all but one of the ATO's sampled CGT data matching projects resulted in adjustments exceeding \$10,000. The only exception to this was the data matching project concerning the CGT from the disposal of shares. The highest average adjustment (\$48,873.48) was reported in relation to taxpayers who had not lodged tax returns despite having disposed of real property in the financial year.

4.9 As many of the CGT data matching projects only commenced in 2011–12, a trend analysis of the quantum of adjustments is not possible, save in relation to the first-listed project concerning CGT arising out of real property disposals. For this project, the ATO's data illustrates a significant increase in the both the quantity and quantum of adjustments from 2009–10.

Table 14: Non-legislative data matching, CGT – Adjustments

Subject of data matching	Case actioning years	Number of adjustments	Amount of adjustments (Total liabilities raised)	Average amount of adjustments (total liabilities/number of adjustments)
Non-Legislative Data Matching, CGT				
Capital gains tax – from the sale of property Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not returned the capital gains.	2012	1,475	\$27,792,303	\$18,842.23
	2011	288	\$6,361,990	\$22,090.24
	2010	143	\$196,746	\$1,375.84
Capital gains tax – from the sale of property – non lodger Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not lodged a tax return where it appears that they have an obligation to do so.	2012	508	\$24,827,729	\$48,873.48
Capital gains tax – from the sale of property Micro taxpayers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property which and has not returned the capital gains.	2012	1,159	\$37,940,059	\$32,735.16
Capital gains tax – from the sale of property Micro taxpayers – non lodgers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property and has not lodged a tax return where it appears that they have an obligation to do so.	2012	105	\$1,863,180	\$17,744.57
Capital gains tax – from the sale of shares Share transaction data provided by share registries is augmented with data from the Australian Security Exchange to identify potential capital gain events from the disposal of shares. This income is then matched to the capital gains tax labels to check that the taxpayer has returned all of their capital gains income from the disposal of shares.	2012	368	\$706,681	\$1,920.32

Source: ATO

4.10 The statistics in relation to the quantity and quantum of adjustments for the ATO's FSI data matching bear similar characteristics to those in relation to CGT, although the quantum involved is not as consistently high. As outlined in Table 15, the ATO's project to

identify non-lodgers and its OVDI generated significant levels of adjustments of \$208,970.26 and \$75,693.32, respectively.

4.11 The FSI data matching based on AUSTRAC information yielded \$22,160.79 in average adjustments in 2011–12 while data matching to identify mislabelling or those based on double tax agreement data were generally lower (\$3,353.09 and 1,014.26, respectively).

Table 15: Non-legislative data matching, FSI – Adjustments

Subject of data matching	Case actioning years	Number of adjustments	Amount of adjustments (Total liabilities raised)	Average amount of adjustments (total liabilities/number of adjustments)
Non-Legislative Data Matching, FSI				
Foreign source income – from Double Tax Agreement data Automated exchange data received from treaty parties is matched to the foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income and claimed the correct tax offset.	2012	3,171	\$3,216,238	\$1,014.26
	2011	4,862	\$11,470,324	\$2,359.18
Foreign source income – AUSTRAC Incoming amounts listed in AUSTRAC are matched against foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income.	2012	1,274	\$28,232,847	\$22,160.79
	2011	3,333	\$44,982,977	\$13,496.24
Foreign source income – Mislabelling Individual income tax returns are identified where a taxpayer has returned an amount of foreign source income at a non-assessable label on and no amount at the assessable label. These returns are checked to ensure that the taxpayer has returned all of their foreign source income	2012	4,125	\$13,831,498	\$3,353.09
Foreign source income – Offshore Voluntary Disclosure Initiative (OVDI) Follow up work in relation to non-responses to the Offshore Disclosure project. The Offshore Disclosure project identified that these received incoming amounts via AUSTRAC. Where no response was received to the initial voluntary disclosure letter a data matching letter was issued.	2012	4,267	\$322,983,397	\$75,693.32
Foreign source income – non lodgers Automated exchange data received from treaty parties and incoming amounts listed in AUSTRAC are used to identify resident taxpayers that appear have a requirement to lodge a return due to the amount of foreign source income they have received.	2012	15	\$3,134,554	\$208,970.26

Source: ATO

IGT observations

4.12 At a macro level, it is clear that the ATO's data matching activities have captured high levels of omitted income. From the data contained in Tables 13, 14 and 15, it appears to be most effective where it seeks to target taxpayers who have not lodged a return but have earned assessable income during the relevant financial year.

4.13 In examining whether the ATO's data matching activities are proportionate to the risks posed, it is important to appreciate that taxpayers' perceptions are based on their particular circumstances. For example, a \$500 adjustment may not be significant from a particular taxpayer's perspective but, as seen in Table 13 in the case of legislative data, the ATO may argue that in aggregate, that is, a total of similar adjustments for a large number of taxpayers, it can represent significant government revenue.

4.14 However, Table 11 also shows that there is a downward trend in the amount of the adjustments. The ATO, therefore, needs to monitor the situation and ensure that the cost of its data matching activities both for itself and the taxpayer is commensurate to the additional revenue collected.

4.15 In contrast to legislative data, Tables 14 and 15 illustrate that for CGT and FSI there are far less adjustments but the quantum of the adjustment are comparatively higher. At present there is a lack of data to establish any emerging trends but a focus on non-lodgers seems to produce the best results.

ADMINISTRATIVE REVERSALS – ADJUSTMENTS WITHOUT OBJECTION

4.16 The ATO has advised that the primary means of correcting an adjustment arising out of data matching is through what is referred to as an 'administrative reversal'. An administrative reversal does not require a formal objection to be lodged with the ATO. Rather, it is a process through which the ATO reverses the adjustment or reduces it to the extent that the taxpayer provides evidence showing that the adjustment is excessive or otherwise incorrect. Therefore, this constitutes a further amendment to the amendment made earlier by the ATO as a result of the data matching.

Initiating the reversals process

4.17 The administrative reversals process represents an opportunity for the ATO and the taxpayer to address disputes arising out of data matching decisions in a timely and cost-effective manner, avoiding the costs associated with and the formality of the objections process.

4.18 Submissions to the IGT have indicated that on some occasions, taxpayers have had difficulty initiating the reversals process where ATO officers have appeared unwilling or unable to appropriately escalate such matters.

4.19 In a case study brought to the IGT's attention, the taxpayers were the subject of FSI data matching. The ATO issued information requests to the taxpayers' agents who sought extensions of time owing to the age and complexity of the information. Notwithstanding the grant of extensions for the provision of information, adjustments were made and notices of amended assessments were issued to the taxpayer before expiry of the extension. When the taxpayers' agents sought to address the issue with the ATO officer, they were advised that there was nothing the officer could do. Other examples raised with the IGT include minor CGT adjustments which could have been escalated for reversal consideration but where the taxpayer was instead advised by the ATO officer to lodge an objection.

4.20 These case studies appear to be at odds with the intended operation of administrative reversals. Where an otherwise straightforward process is difficult to access,

this has the potential to increase taxpayer and tax agent time and costs. It can also lead to increased frustration, stress and diminished confidence in the process more generally.

4.21 One way to ensure that the administrative reversals process is used in appropriate circumstances is to raise awareness of its availability including how this process can be initiated. There is little publicly available information which outlines the ATO's use of the reversals process.¹⁶⁵ The lack of information and community awareness of the ATO's administrative reversals process may potentially create a situation where taxpayers unnecessarily incur time and costs to lodge objections against ATO decisions where a reversal could have otherwise been effected in a more timely and cost-efficient manner.

4.22 During this review, as part of its user-testing of correspondence in data matching cases, the ATO has now included an additional paragraph in its initial discrepancy letter to outline the taxpayer's right to seek review of amendments in addition to their objection rights. The paragraph states:¹⁶⁶

Your right to request a review of our decision

If you receive an amended assessment and you believe the information used is incorrect, you can request a review of the amended assessment. In reviewing our decision, we will consider any additional information not available to us at the time of our amendment.

Your objection rights would not be affected by any such review. To request a review, please contact us as detailed below.

4.23 In addition to raising awareness of these processes, it is imperative that all ATO officers who interact with taxpayers and tax agents are fully aware of escalation processes where a reversal is sought or where it is otherwise appropriate.

4.24 The ATO acknowledges this and has advised that since 1 July 2012, all calls made to the ATO general call centre in relation to data matching cases are required to be transferred to officers within the DMCS. This, however, depends in part on taxpayers correctly identifying that their cases relate to data matching which may not always occur. The IGT considers that improved call centre scripting to prompt ATO officers to identify data matching cases and to escalate these effectively would better streamline the process.

4.25 The ATO has also advised the IGT that it has processes in place to ensure that objections which relate to questions of fact in data matching (and therefore more appropriately considered as a reversal) are referred back to the data matching teams for consideration along these lines.¹⁶⁷ While this process is important to ensure that disputes in relation to data matching adjustments are not unnecessarily formalised, it may create some confusion for taxpayers and lead to taxpayers incurring costs in engaging tax advisers to assist in preparing formal objections which are ultimately resolved by way of a reversal. Moreover, it also appears to create unnecessary reverse workflows within the ATO itself.

165 ATO, Guide to correcting mistakes and disputing decisions, 18 July 2013, <<http://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/>>.

166 See for example: ATO, FSI letter template, 2013.

167 Above n. 16

RECOMMENDATION 4.1

The IGT recommends that the ATO:

- (a) actively raise awareness of the administrative reversals process in data matching cases, including how taxpayers can initiate this process, for example through tax agent seminars and communiqués;*
- (b) improve ATO call centre scripting to prompt ATO officers to identify cases of data matching and to escalate these to the DMCS team appropriately; and*
- (c) periodically reinforce guidance and instruction to staff in relation to escalating cases for reversal consideration when requested by taxpayers, or where the ATO officer otherwise identifies that it would be appropriate to do so.*

ATO response

Agree

The ATO will update public documents, such as the website, to provide information on the administrative reversals process for data matching cases.

The ATO will also update its internal instructions and guidance to staff involved in data matching activities, including call centre staff.

OUTCOMES OF INTERNAL AND EXTERNAL REVIEW OF DATA MATCHING DECISIONS

4.26 ATO decisions under data matching may be challenged through internal review, such as the administrative reversals process or objections,¹⁶⁸ or through external review such as the appeals processes in the Administrative Appeals Tribunal or the Federal Court of Australia.¹⁶⁹

4.27 Examining the outcomes of these internal and external reviews, provides some insight into the sustainability of adjustment decisions made by the ATO. However, it is important to note that as data matching is a largely automated process, adjustments may be triggered by non-response on the part of the taxpayer rather than manual review and decisions by ATO officers. As such, the rate of reversals should not be taken to be wholly reflective of ATO manual decision-making.

Administrative reversals

4.28 The ATO has provided the IGT with global reversal figures of \$16,570,803 in 2009-10, \$13,503,000 in 2010-11 and \$22,993,056 in 2011-12 in relation to its legislative data matching activities. It notes that until 2012-13, all reversals were only reported globally and as such it is not attributable to any particular data matching project.¹⁷⁰ When compared with

168 Part IVC of the *Taxation Administration Act 1953*.

169 Ibid.

170 Above n. 15.

the global adjustment figures, the IGT notes that the reversals are a relatively small fraction. This is outlined in Table 16 below.

Table 16: Legislative data - global adjustments and reversals

	2009–10	2010–11	2011–12
Global adjustments	\$225,765,642	\$242,335,182	\$299,657,139
Global reversals	\$16,570,803	\$13,503,000	\$22,993,056
Rate of reversals	7.3%	5.6%	7.7%

Source: ATO

4.29 Across all years provided, the rate of reversals as against adjustments has remained largely consistent with 7.3 per cent in 2009–10, 5.6 per cent in 2010–11 and 7.7 per cent in 2011–12. This consistency is indicative of the ongoing and business as usual nature of the ATO's legislative data matching activities. Moreover, it is also indicative of the consistency of quality of the data sets which are used by the ATO in these activities.

4.30 In respect of the non-legislative CGT and FSI projects, as outlined in Table 17 and Table 18, the ATO's statistics in 2011–12 are more specific, detailing the quantity and quantum of reversals in specific years. This illustrates some of the improvements made by the ATO to its record-keeping and reporting on reversal rates. However, these statistics are still limited, as illustrated by the ATO's inability to report on reversals in certain years or in respect of certain projects.

4.31 The statistics in Table 17 outline high levels of reversals being requested in relation to CGT on real property disposals for individual and micro enterprise taxpayers. In respect of CGT on real property disposals for individual taxpayers, the ATO reported that 19.6 per cent of affected taxpayers requested a reversal, with 33.39 per cent of total adjustments being reversed. The statistics also indicate that 40 per cent of affected micro taxpayers sought reversals with 52.87 per cent of adjustments reversed. The rates of reversals in relation to the sale of shares were considerably lower, with 2.17 per cent of affected taxpayers seeking reversals and only 0.03 per cent of adjustments being reversed.

Table 17: Non-legislative data matching, CGT – reversals

Subject of data matching	Case actioning years	Number of adjustments	Amount of adjustments (Total liabilities raised)	Number of adjustments reversed	Amount of Reversals	Proportion of adjustments reversed (Proportion of taxpayers seeking reversals in parentheses)
Non-Legislative Data Matching, CGT						
Capital gains tax – from the sale of property Property disposal data from state and territory revenue offices is matched to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not returned the capital gains.	2012	1,475	\$27,792,303	289	-\$9,253,564	33.39% (19.6%)
	2011	288	\$6,361,990	N/A	N/A	N/A
	2010	143	\$196,746	N/A	N/A	N/A
Capital gains tax – from the sale of property – non lodger Property disposal data from state and territory revenue offices is matched	2012	508	\$24,827,729	N/A	N/A	N/A

Subject of data matching	Case actioning years	Number of adjustments	Amount of adjustments (Total liabilities raised)	Number of adjustments reversed	Amount of Reversals	Proportion of adjustments reversed (Proportion of taxpayers seeking reversals in parentheses)
Non-Legislative Data Matching, CGT						
to taxpayers to identify where a taxpayer has disposed of a property which does not appear to be their main residence and has not lodged a tax return where it appears that they have an obligation to do so.						
Capital gains tax – from the sale of property Micro taxpayers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property which and has not returned the capital gains.	2012	1,159	\$37,940,059	464	-\$20,057,729	52.87% (40.0%)
Capital gains tax – from the sale of property Micro taxpayers – non lodgers Property disposal data from state and territory revenue offices is matched to taxpayers in the micro market to identify where a taxpayer has disposed of a property and has not lodged a tax return where it appears that they have an obligation to do so.	2012	105	\$1,863,180	N/A	N/A	N/A
Capital gains tax – from the sale of shares Share transaction data provided by share registries is augmented with data from the Australian Security Exchange to identify potential capital gain events from the disposal of shares. This income is then matched to the capital gains tax labels to check that the taxpayer has returned all of their capital gains income from the disposal of shares.	2012	368	\$706,681	8	-\$227	0.03% (2.17%)

Source: ATO

4.32 In respect of FSI data matching projects, outlined in Table 18, the highest proportion of affected taxpayer seeking reversals occurred in relation to the OVDI (20.9 per cent) with the remaining projects showing only low levels of reversal requests (4.98 per cent for doubt tax agreement, 3.85 per cent for AUSTRAC and 5.99 per cent for mislabelling).

4.33 However, the quantum of actual adjustments appears to be higher for the FSI data matching. The statistics show that the highest levels of reversals related to projects for identifying mislabelling (42.07 per cent) and the OVDI (25.5 per cent). Of the remainder, the FSI projects based on double tax agreement data and AUSTRAC information reported reversal rates of 16.05 per cent and 9.17 per cent, respectively.

Table 18: Non-legislative data matching, FSI – reversals

Subject of data matching	Case actioning years	Number of adjustments	Amount of adjustments (Total liabilities raised)	Number of adjustments reversed	Amount of Reversals	Proportion of adjustments reversed (Proportion of taxpayers seeking reversals in parentheses)
Non-Legislative Data Matching, FSI						
Foreign source income – from Double Tax Agreement data Automated exchange data received from treaty parties is matched to the foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income and claimed the correct tax offset.	2012	3,171	\$3,216,238	158	-\$516,471	16.05% (4.98%)
	2011	4,862	\$11,470,324	N/A	N/A	N/A
Foreign source income – AUSTRAC Incoming amounts listed in AUSTRAC are matched against foreign source income label on the individual income tax return to check that the taxpayer has returned all of their foreign source income.	2012	1,274	\$28,232,847	49	-\$2,590,510	9.17% (3.85%)
	2011	3,333	\$44,982,977	N/A	N/A	N/A
Foreign source income – Mislabelling Individual income tax returns are identified where a taxpayer has returned an amount of foreign source income at a non-assessable label on and no amount at the assessable label. These returns are checked to ensure that the taxpayer has returned all of their foreign source income	2012	4,125	\$13,831,498	247	-\$5,819,165	42.07% (5.99%)
Foreign source income – Offshore Voluntary Disclosure Initiative (OVDI) Follow up work in relation to non-responses to the Offshore Disclosure project. The Offshore Disclosure project identified that these received incoming amounts via AUSTRAC. Where no response was received to the initial voluntary disclosure letter a data matching letter was issued.	2012	4,267	\$322,983,397	892	-\$75,988,108	25.5 % (20.9%)
Foreign source income – non lodgers Automated exchange data	2012	15	\$3,134,554	N/A	N/A	N/A

received from treaty parties and incoming amounts listed in AUSTRAC are used to identify resident taxpayers that appear have a requirement to lodge a return due to the amount of foreign source income they have received.						
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Source: ATO

IGT observations

4.34 The ATO's reporting on reversals is limited and does not lend itself to in-depth analysis of trends and reasons for taxpayers challenging ATO decisions and why decisions are ultimately reversed.

4.35 However, a comparison between the global reversal rates for legislative data matching and those for non-legislative data matching illustrates a clear difference with legislative data matching leading to lower levels of reversals.

4.36 The marked variance in reversal rates between legislative and non-legislative data matching projects, as well as different non-legislative data matching projects targeting similar tax risks, suggests that these rates are based on a number of different factors. These factors include the quality of the data relied upon by the ATO as well as the willingness of taxpayers to challenge ATO adjustments.

4.37 The ATO recognises the need to better understand the areas which generate the high levels of disputation and the underlying reasons for this. During the course of this review, the IGT was advised that the ATO had commenced a program of work to enhance its recording and reporting on the rate of reversals in data matching. In particular, the ATO's program of work seeks to:¹⁷¹

- identify and report on reversal rates on a monthly basis rather than an annual basis; and
- record reversals against the specific data matching project to which it relates.

4.38 The IGT is also of the view that enhanced identification and reporting would provide the ATO with greater understanding of the underlying drivers of reversals. It would provide valuable input for improving specific data matching projects and processes as well as reducing the level of disputation.

4.39 Moreover, the IGT notes the difference between the proportion of affected taxpayers seeking reversals and the proportion of quantum actually reversed. This suggests that while fewer taxpayers are challenging ATO decisions through the reversals process, the decisions challenged have resulted in high value adjustments. It is important to recognise this as submissions to the IGT, and recent academic literature, suggests that on some occasions, taxpayers with small value disputes may choose not to challenge the ATO because they perceive it to be too costly or difficult. This issue is discussed further below.

171 Above n. 15.

Objection and Litigation

4.40 As noted above, decisions made by ATO officers in relation to data matching can be challenged under the formal objection and litigation process pursuant to Part IVC of the TAA 1953. ATO statistics indicate that objections by individual taxpayers account for the highest proportion of all objections received and determined by the ATO. For example, in 2011–12, the ATO reported that of the 33,676 objections it received, 21,015 of these were from individual taxpayers.¹⁷² It is important to note that this comprises objections from all compliance activities against individual taxpayers, not just data matching.

4.41 The ATO has advised the IGT that there are current limitations on the ability of its information technology systems to report on the objection and litigation rates specific to data matching. This is due to its general data matching system, ATOMS, not aligning with the enterprise case management system, Siebel, in which objection and litigation matters are recorded.

4.42 The ATO has advised that in order to determine what data matching cases progressed through to objection, it needs to adopt a multi-step process which involves:

- extracting case lists from both Siebel (objection case list) and ATOMS (data matching case list);
- applying business rules to compare the above case lists to identify and extract details of taxpayers who had been the subject of data matching and who had lodged objections; and
- manually review the contents of objections in the extracted cases to determine whether the objections were lodged against data matching decisions.

4.43 The process is resource intensive. Moreover the ATO has also advised that through its use of administrative reversals, as well as current processes for treating objections as reversal cases, the actual numbers of objection decisions are likely to be low. Correspondingly, the number of adverse objection decisions which progress to litigation is also likely to be low.¹⁷³ As a result of the expected low numbers of such cases and the difficulties in aligning the data, statistics in relation to objection and litigation do not form a part of the ATO's standard business reporting in data matching.

4.44 The IGT was advised during the course of this review that the ATO is currently undertaking work to refine its internal reporting of objections and litigation rates and outcomes in data matching,¹⁷⁴ although as at the date of this report, the specific details of what the ATO seeks to do as part of this project remains unclear.

4.45 For the purposes of this review, the IGT sought to understand the extent to which data matching cases generate formal disputes through objections and litigation. At the IGT's request, the ATO undertook work to collate relevant data in this regard.

4.46 The quantity and value of the ATO's data matching objections are outlined in Table 19. The ATO notes that despite its best efforts, the data below may still contain objections

¹⁷² Above n. 13, p. 94.

¹⁷³ Above n. 16; ATO, communication with the IGT, 1 May 2013.

¹⁷⁴ Above n. 173.

which do not strictly relate to data matching adjustment decisions, such as cases in which taxpayers objected because they were out of time to amend their income tax returns.¹⁷⁵ The ATO estimates that objections not directly related to data matching account for 20 per cent of the data provided in Table 19.¹⁷⁶

Table 19: Quantity and value of objections arising out of data matching

	Year	
	2010–11	2011–12
Total number of audits finalised	413,989	535,563
Total objections lodged	645	968
Percentage of audits objected against	0.16%	0.18%
Total liabilities raised from data matching compliance activities (\$)	\$407,903,029	\$743,185,724
Total value of objection liabilities adjustments (\$)	\$4,088,112	\$12,588,603
Value of objections as a percentage of total liabilities raised from compliance activities	1.00%	1.69%

Source: ATO

4.47 The percentage of objections to total audits finalised represents only a small fraction, being 0.16 per cent and 0.18 per cent in 2010–11 and 2011–12, respectively. However, care must be taken when undertaking this comparison as it is unclear what the ATO considers to be an ‘audit’ in this context and whether they include cases where there was no adjustment or the adjustment was in favour of the taxpayer.

4.48 The outcomes of objections lodged with the ATO are outlined in Table 20.

Table 20: Outcomes of data matching objections

Recorded outcome	Year			
	2010–11		2011–12	
	Volume	%	Volume	%
Allowed in full	495	76.74%	764	78.93%
Allowed in part	40	6.20%	67	6.92%
Disallowed	12	1.86%	25	2.58%
Invalid	13	2.02%	15	1.55%
No outcome recorded	56	8.68%	54	5.58%
Other	8	1.24%	11	1.14%
Withdrawn	21	3.26%	32	3.31%
Total	645	100.00%	968	100.00%

Source: ATO

4.49 As outlined in Table 20, 82.94 per cent and 85.85 per cent of objections were allowed in full or in part in 2010–11 and 2011–12 respectively. In each of these years, 1.86 per cent and 2.58 per cent of objections were disallowed and the remainder was handled in other ways.

4.50 Given the proportion of allowed objections, it is reasonable to assume that the numbers of litigated cases concerning data matching adjustments would be relatively low, however, the ATO has been unable to collate relevant statistics in relation to data matching litigation cases.

¹⁷⁵ ATO, communication with the IGT, 27 June 2013.

¹⁷⁶ Ibid.

IGT observations

4.51 The relatively low numbers of objections as a proportion of the broad data matching activities and the corresponding expected litigation levels may be due to a number of reasons. These include taxpayers agreeing with the ATO's adjustment decisions or that the ATO's reversals process is effective in diverting matters from objections towards a less formal dispute resolution mechanism.

4.52 In addition to these reasons, it is also important to recognise that some taxpayers may disagree with the ATO's decision but may feel that the time and cost involved in disputing such decisions outweigh the ultimate benefits. This may be especially true in data matching projects which target taxpayers with low disposable income (such as those in receipt of government pensions or allowances) and which result in low quantum adjustments. As noted in recent academic research on point:¹⁷⁷

Tax disputes in many cases can be characterised by the asymmetry between the individual taxpayer and the Australian Taxation Office (ATO) in terms of resources and power. Further, resolving tax disputes outside the ATO is a risky and costly process to individual taxpayers. In most cases, the implicit costs (loss of time) and explicit costs (monetary expenses) involved may be of sufficient magnitude to deter taxpayers from seeking independent tax dispute resolution.

4.53 As with the administrative reversals statistics above, the IGT notes the difference between the proportion of affected taxpayers seeking objections and the value of objections allowed. This differential lends some support to the academic research and the view that some taxpayers may be deterred from challenging ATO decisions as perceived costs may outweigh the value of liability challenged.

4.54 The IGT also notes that while objections occur in only a small proportion of all data matching activities, the high rates of objections actually being allowed in full, or in part, suggests that there is scope for improvement in the data used by the ATO or the processes applied by the ATO prior to, or after, data matching is complete and discrepancies are identified.

4.55 Such opportunities for improvement may include strategies to enhance quality data collection, processes to cleanse and validate data and ATO staff engagement with taxpayers and their agents when undertaking compliance activities. The improvement opportunities are necessarily informed by an understanding of those data matching activities which are causing disputes and/or reversals.

4.56 The IGT considers that, in seeking to clearly appreciate the nature of these disputes, the ATO must ensure that it has sufficient and robust reporting to enable it to understand the extent of disputes and the specific projects generating the highest levels of disputes.

4.57 It should be noted that for these reporting purposes, disputes should include all matters which are the subject of internal review (whether treated as formal objections or considered as part of the reversals process) and any litigation matters.

¹⁷⁷ Binh Tran-Nam and Michael Walpole, 'Access to tax justice: How costs influence dispute resolution choices,' (2012) 22 JJA 3, p. 4.

4.58 In addition, the IGT is of the view that the ATO should capture data regarding those taxpayers who are lodging objections against data matching decisions which are ultimately referred and treated as administrative reversals. This would provide a basis for the ATO to assess which classes of taxpayers are opting for objections over reversals, the reasons for this choice and whether more focused and directed communication may assist to encourage greater use of the reversals process as an efficient and cost-effective means of challenging ATO adjustment decisions.

RECOMMENDATION 4.2

The IGT recommends that the ATO:

- (a) enhance its reporting capability to identify and report on:
 - (i) data matching projects generating the highest levels of dispute through the administrative reversals process, the reasons for the high rate of disputation and the outcomes of reversal requests;*
 - (ii) the numbers of objection cases which are treated as administrative reversals; and*
 - (iii) the rate of objections and litigation from data matching decisions and the outcomes of these cases; and**
- (b) use the above information to augment and refine the ATO's data matching processes with a specific focus on improving its approach in areas or projects generating the highest levels of disputes.*

ATO response

Agree

The ATO agrees to enhance its existing internal reporting capability to identify and report on administrative reversals, objections and litigation related to data matching projects.

APPENDIX 1 – TERMS OF REFERENCE AND SUBMISSION GUIDELINES

BACKGROUND

Each year, the Australian Taxation Office (ATO) receives approximately 12.4 million income tax lodgements from individual taxpayers. The ATO takes the approach that it is neither possible nor realistic to expect that all returns be manually reviewed for potentially incorrect claims. Data matching is one of the tools which the ATO uses to assist in its verification of returns lodged by individual taxpayers. It consists of automated processes and analytics which are supplemented by manual intervention.¹

The ATO's data matching processes compare individuals' tax return data with third party data obtained from a range of sources including state revenue authorities, financial institutions, state land title registries and other federal government agencies. Broadly, the ATO processes seek to identify 'mismatches' between the tax return data and the third party data. These mismatches form the subject of ATO enquiries, which may lead to audits or other compliance activities.

Concerns have been raised with the Inspector-General of Taxation (IGT) about the ATO's use of data matching, associated communications between the ATO and taxpayers and the consequential impacts on taxpayers and their advisers. These concerns can be summarised as follows:

- 1 the accuracy, reliability and currency of the third party data relied upon by the ATO;
- 2 the appropriateness of ATO actions resulting from identified mismatches including the perception that the ATO takes direct action based upon raw data rather than engaging with taxpayers to better understand the reasons for mismatches;
- 3 the clarity and adequacy of ATO communications, including the identification of the third party data used and any actions the taxpayer may take to ensure the ATO has the most accurate information; and
- 4 additional costs and time in understanding the ATO's concerns and resolving disputes.

This IGT review is one of three concurrent reviews examining the ATO's compliance approach to individual taxpayers. It aims to explore the underlying causes for these concerns with a view to identifying opportunities for improvement.

The other two reviews conducted in this area are the review of the ATO's income tax refund integrity program and the review of the ATO's administration of the excess contributions tax.

1 Australian Taxation Office, *Compliance Program 2012-13* (2012) pp 19-20.

TERMS OF REFERENCE

In accordance with subsection 8(1) of the Inspector-General of Taxation Act 2003 (IGT Act 2003), the IGT will review the ATO's use of data matching in its compliance activities involving individual taxpayers with a specific focus on:

The accuracy, reliability and currency of the ATO's data matching processes including:

- a. the processes and procedures for identifying sources and selection of third party data; and*
- b. the adequacy of processes to verify and refine data obtained from third parties (including investigating reasons for any mismatches with information provided in taxpayers' returns) before making contact with taxpayers.*

The proportionality of the cost of conducting the data matching and associated activities to the resulting adjustments.

The nature and appropriateness of ATO action taken as a result of data matching, including:

- c. whether the communication to taxpayers was timely and sufficiently clear to enable them to fully understand the ATO's concerns;*
- d. whether taxpayers were given an opportunity to respond and provide further information;*
- e. the clarity and appropriateness of any information requests to taxpayers and tax practitioners and the reasons for such information requests; and*
- f. the transparency and robustness of the ATO's processes for considering taxpayer responses.*

The adverse impacts that the ATO's data matching processes can have on taxpayers and tax practitioners and the ATO's support to minimise these impacts.

SUBMISSION GUIDELINES

The IGT invites you to provide written submissions to assist with this review. The IGT envisages that your submission will be divided into two parts:

- your experience in dealing with the ATO on compliance activities involving data matching; and
- opportunities for improvement.

Your experience in dealing with the ATO

It is important to provide detailed accounts of your experience in dealing with the ATO. It would be useful to provide a timeline of events outlining your key interactions with the ATO including any correspondence, telephone communications, information requests and responses from the ATO. It would also be helpful to understand the time taken to deal with the ATO and any costs you incurred, such as engaging a tax practitioner to assist in these dealings. Separately tax practitioners may wish to comment on and outline any irrecoverable costs incurred.

It is important to provide details of specific factors, including the ATO practices and behaviours that, in your view, delayed resolution of the issue at hand and resulted in increased costs and impacted on your personal or business affairs. The IGT also seeks examples of positive factors in the ATO's use of data matching.

The following questions are designed to assist you in setting out your experiences.

Questions for consideration – your experience

- Q1. How and when did the ATO first alert you to its concerns that the information reported by you, or on behalf of your clients, may not be correct?
- Q2. How did the ATO's initial communication enable you to understand:
- a. the source of third party data used by the ATO;
 - b. the ATO's concerns or investigation;
 - c. the proposed ATO action regarding your tax return; and
 - d. what action you could take, such as providing further information or evidence to address the matter.

Please provide a copy of any correspondence.

- Q3. What action did you take after the ATO's initial communication? If you contacted the ATO, what was the ATO's response? Did you consider that the ATO's response addressed your queries?

Questions for consideration – your experience continued.

- Q4. Did you check the accuracy of the information upon which the ATO relied? Did you consider that the ATO was correct? Did you feel that the ATO fully considered your information and position before arriving at its final decision? Did the ATO explain to you why its position had remained the same or changed?
- Q5. Was the action taken by the ATO appropriate in your circumstance? If not, why was it not appropriate?
- Q6. If your matter was resolved with the ATO, how was it achieved? How long did it take?
- Q7. What impact has dealing with this matter had on you? For example, did you incur additional costs such as seeking assistance from a tax practitioner? Please quantify these costs. How could these have been minimised?
- Q8. If your matter was resolved with the ATO, how was it achieved? How long did it take?
- Q9. What impact has dealing with this matter had on you? For example, did you incur additional costs such as seeking assistance from a tax practitioner? Please quantify these costs. How could these have been minimised?
- Q10. If you are a tax practitioner with a significant number of clients who were the subject of data matching processes, what impact did this have on you or your practice? Were you satisfied with the level and quality of information and support provided by the ATO?

Opportunities for improvement

The IGT invites you to identify opportunities to improve the ATO's use of data matching and its dealings with individual taxpayers and tax practitioners in this area.

Your submission may outline alternative frameworks, actions, practices or behaviours which, in your view, could minimise costs or adverse impacts arising from the current system and its operation.

Set out below are questions to help you outline any improvements which you believe could be made in this area.

Questions for consideration – improvements

- Q1. How should the ATO verify the accuracy of information that individuals report in their tax returns?
- Q2. Do you support the ATO's use of data matching? What aspects of data matching do you consider desirable for both the ATO and taxpayers? Would there be situations where data matching was inappropriate?
- Q3. How can the ATO assist taxpayers and their advisers to better understand its data matching processes and data sources?
- Q4. What could the ATO do to ensure third party data used in data matching activities is more accurate, reliable and current without placing an undue burden on third party information providers?
- Q5. How could the ATO's communications with taxpayers or tax practitioners be improved? Specific examples or suggestions are particularly helpful.
- Q6. What could the ATO do to improve its approach to amending individual taxpayers' tax returns based on data matching? What information should be provided to taxpayers and what opportunities should be afforded to taxpayers to address any mismatches? What circumstances would justify the ATO not providing such opportunities? Please explain your views.
- Q7. What ATO data matching processes are good examples or models and which are not? What are the characteristics which distinguish the two?
- Q8. Are there any other specific improvements you would like to raise?

Submission lodgement

Submissions should address the terms of reference and submission guidelines set out above. It is not expected that each submission will necessarily address all of the issues and questions raised.

The closing date for submissions is 18 December 2012. Submissions may be sent by:

post to:	Inspector-General of Taxation GPO Box 551 SYDNEY NSW 2001
fax to:	02 8239 2100
email to:	[for enquiries regarding this review, please email enquiries@igt.gov.au]

Confidentiality

Submissions provided to the IGT are dealt with in strict confidence. This means that the identity of the taxpayer and/or of the tax practitioner and any identifying information contained in such submissions will not be made available to any other person, including the ATO. Sections 23, 26 and 37 of the IGT Act 2003 safeguard the confidentiality and secrecy of such information provided to the IGT – for example, generally the IGT cannot disclose the information as a result of a Freedom of Information request, or as a result of a court order. Furthermore, if such information is the subject of legal professional privilege, disclosure of that information to the IGT is protected and will not result in a waiver of that privilege.

APPENDIX 2 – ATO RESPONSE



Australian Government
Australian Taxation Office

SECOND COMMISSIONER OF TAXATION

Mr Ali Noroozi
Inspector-General of Taxation
GPO Box 551
SYDNEY NSW 2001

Dear Ali

Review into the ATO's compliance approach to individual taxpayers – use of data matching

Thank you for the opportunity to comment on your report on the review into the ATO's compliance approach to individual taxpayers – use of data matching.

I welcome your constructive feedback and note that a number of your recommendations are aimed at assisting us to continually improve the quality of the program.

Our response to your recommendations is attached at Annexure 1. We agree with all recommendations (one with a qualification) as presented in your report.

Finally, I would like to acknowledge the efforts of all involved in the undertaking of this review.

If you require further information on this matter, please contact Steve Vesperman, Deputy Commissioner.

Yours sincerely

Bruce Quigley
Second Commissioner of Taxation

8 October 2013

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[To minimise space, the appendix to the ATO's response has not been reproduced here, but has been inserted into the text of this report underneath each of the recommendations to which that text relates.]

APPENDIX 3 – ATO NON-LEGISLATIVE DATA MATCHING PROJECTS BETWEEN 1 JULY 2010 AND 30 JUNE 2013

Date	Gazette Number	Name of Project	Description of Project
28 July 2010	GN29	Online Selling Sites Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • better understand and address the compliance behaviour of taxpayers involved with online selling through electronic bulk matching of data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.
8 September 2010	GN35	Education Tax Refund Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with lodgment and debt payment through electronic bulk matching data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities.
22 September 2010	GN37	Property and Share Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with Capital Gains Tax, Income Tax and Goods and Services Tax; • check and assess correct completion and assessment of property transactions in business activity statements and income tax returns to; • administer fuel tax credits; • provide education to taxpayers who may not be aware of their obligations in relation to these types of transactions; and • be more strategic in its approach to business activities.
22 September 2010	GN37	Motor Vehicle Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • understand and address non-compliance behaviour of taxpayers through the electronic bulk matching data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.
10 November 2010	GN44	Credit and Debit Card Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance behaviour of taxpayers through the electronic bulk matching data; • to identify potential ATO activity; and • be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.
1 December 2010	GN47	Nation Building, Economic Stimulus Payments Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with tax obligations through electronic bulk matching data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities.
30 March 2011	GN12	PSI Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • identify and address non-compliance through electronic bulk data matching; and • be more strategic in its approach to ATO business activities.
26 October 2011	GN42	Education Tax Refund Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • identify and address non-compliance with taxation obligations with taxpayers claiming the education tax refund through electronic bulk matching; and • be more strategic in its approach to ATO business activities.
16 November 2011	GN45	Legal Profession Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • identify people outside the taxation system; and • address non-compliance with lodgment and debt payment.
16 November 2011	GN45	Dependent Spouse Tax Offset Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • identify and address non-compliance with taxation obligations with taxpayers claiming the dependant spouse tax offset through electronic bulk matching; and • be more strategic in its approach to ATO business activities.

Date	Gazette Number	Name of Project	Description of Project
16 November 2011	GN45	WorkCover Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with lodgment and debt payment through electronic bulk matching data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities.
16 November 2011	GN45	DIAC/ATO Temporary Visa Data Matching Project	Enables the ATO to: <ul style="list-style-type: none"> • protect the public revenue from potential abuse; • address potential fraudulent activities concerning refunds, tax system registrations, non-compliance with lodgment and debt payment through electronic bulk matching data; and • be more strategic in its approach to addressing and mitigating refund frauds perpetrated on the tax system.
7 December 2011	GN48	Marine Insurance Data Matching Program	The objective is to identify individuals who have insured pleasurecraft with a value of \$25,000 or more. This information, when combined with additional wealth indicators, will assist in identifying taxpayers whose net wealth is such that their affairs should be reviewed under the Highly Wealthy Individuals or Wealthy Australians programs.
22 February 2012	GN7	Coffee Supplier Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • better understand the compliance behaviour in the coffee industry and identify entities avoiding their taxation obligations; and • apply a strategic approach to ATO administrative strategies, with the aim of encouraging taxpayers to voluntarily comply with their taxation and record keeping obligations.
22 February 2012	GN7	Building Industry Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • better understand and address the compliance behaviour in the building industry and identify entities avoiding their taxation obligations; • determine whether it is appropriate to seek data from other building suppliers; and • apply a strategic approach to ATO administrative strategies, with the aim of encouraging taxpayers to voluntarily comply with their taxation and record keeping obligations
13 June 2012	GN23	Share Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with Capital Gains Tax, Income Tax and Goods and Services Tax; • check and assess the correct completion of share transactions; • provide education to entities confused with their obligations in relation to these types of transactions; and • be more strategic in its approach to ATO business activities.
4 July 2012	GN26	Dependent Spouse Tax Offset Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • identify and address non-compliance with taxation obligations of taxpayers incorrectly claiming the dependent spouse tax offset; and • be more strategic in its approach to determining appropriate educational and compliance strategies to encourage voluntary compliance for the dependent spouse tax offset.
3 October 2012	GN39	Contractor Payments data matching program	Enables the ATO to: <ul style="list-style-type: none"> • identify and address the compliance behaviour of contractors who may not be correctly meeting their taxation obligations; and • be more strategic in its approach to determine appropriate educational and compliance strategies to encourage voluntary compliance for contractors.
7 November 2012	GN44	Motor Vehicle Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with lodgment and debt payment; • address the compliance behaviour of individuals and businesses buying and selling motor vehicles who may not be correctly meeting their taxation obligations, particularly to support identifying high risk non-lodgers, those with undeclared income and support, Luxury Car Tax, Fringe Benefits Tax and Fuel Schemes compliance verification activities; and • be more strategic in its approach to determine appropriate educational and compliance strategies to encourage voluntary compliance for taxpayers to voluntarily comply with their taxation obligations.

Date	Gazette Number	Name of Project	Description of Project
14 December 2012	GN49	Credit and Debit Card Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • better understand and address the compliance behaviour of taxpayers through the electronic bulk matching data to identify potential ATO administrative action; and • be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.
14 December 2012	GN49	Motor Vehicle Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • better understand and address the compliance behaviour of taxpayers through the electronic bulk matching data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.
19 December 2012	GN50	Credit and Debit Card Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • better understand and address the compliance behaviour of taxpayers through the electronic bulk data matching to identify potential ATO administrative action; and • be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.
19 December 2012	GN50	Banking Transparency Strategy Data Matching Program	The information collected will be electronically matched with certain sections of ATO data holdings to identify non-compliance with lodgment and payment obligations under taxation law. Approximately 50,000 offshore account records will be matched.
19 December 2012	GN50	Real Property Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • address non-compliance with lodgment and debt payment through electronic bulk matching data to identify potential ATO activity; and • be more strategic in its approach to ATO business activities.
30 January 2013	GN4	Tax-free government pensions or benefits Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • identify and address non-compliance with taxation obligations of taxpayers incorrectly claiming related dependent tax offsets; and • be more strategic in its approach to determining appropriate educational and compliance strategies to encourage voluntary compliance for those tax offsets.
30 January 2013	GN4	Local Government Payments (2011 and 2012 financial years) Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • identify and test the correct taxation reporting by recipients of government payments across the local level of government; and • identify areas that require improved educational and compliance strategies to encourage voluntary compliance for recipients of government payments.
27 March 2013	GN12	WorkCover Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • identify and address the compliance behaviour of contractors who may not be correctly meeting their taxation obligations; and • be more strategic in its approach to determine appropriate educational and compliance strategies to encourage voluntary taxation compliance by employers.
3 April 2013	GN13	Online Selling Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • address the compliance behaviour of individuals and businesses selling goods and services via online selling sites who may not be correctly meeting their taxation obligations, particularly those with undeclared income and incorrect lodgment and reporting for Goods and Services Tax; and • take a more strategic approach in determining appropriate educational and compliance strategies to encourage voluntary compliance for taxpayers in the online selling market to ensure they meet their taxation obligations.
17 April 2013	GN15	Department of Immigration and Citizenship Temporary Working Visas Data Matching Program	Enables the ATO to: <ul style="list-style-type: none"> • improve existing risk detection models and treatment systems; • identify potentially new or widespread refund fraud methodologies and those entities controlling or exploiting those methodologies; • investigate and take steps to mitigate threats of non-compliance and fraud; and • develop and implement administrative strategies to improve voluntary compliance and address the identified risks posed by temporary working visa holders and employer sponsors.

APPENDIX 4 – KEY ROLES AND RESPONSIBILITIES IN THE ATO’S NON-LEGISLATIVE DATA ASSURANCE PROCESS

The following table lists the key roles and responsibilities within the ATO’s special purpose data acquisition assurance process. This list is extracted from the ATO’s Corporate Management Practice Statement PS CM 2004/17 *Special Purpose Data Acquisition*.

ATO Personnel	Key responsibilities
Business lines Data Warehouse Manager (may also be project managers)	<ul style="list-style-type: none"> • Ensure data is stored securely and is accessed appropriately, comply with retention and destruction timeframes and requirements; and • Report all exceptions/breaches to the Data Matching Gatekeeper.
Business lines Senior Executive Officer	<ul style="list-style-type: none"> • Review and approve: Special Purpose Data Steward briefs; Data matching concept briefs; Data matching program protocols; and Data matching secondary usage concept briefs; • Ensure the Special Purpose Data Steward has been consulted and the Assistant Commissioner Data Matching Compliance Strategies has approved the data matching strategy before any contact is made with a data provider; and • Ensure that no discussion with data providers concerning payment for data extraction and formatting costs occurs without first consulting the Data Matching Gatekeeper.
Data Matching Gatekeeper	<ul style="list-style-type: none"> • Ensure that specific requirements of the Office of the Australian Information Commissioner including the data matching guidelines are met for all data matching programs involving individuals; • Provides specialist privacy and on-disclosure advice to business lines; • Publishes instructions and tools which provide clear direction to ATO personnel on procedures to follow when conducting a data matching program; • Provides advice to project managers when data providers request payment for data extraction and formatting costs; • Ensures the <i>Data Matching Steering Committee</i> endorsements are in place for all data matching programs; • Maintains the ATO Forward Strategic Data Acquisition Plan and submit to the <i>Data Matching Steering Committee</i> for agreement; • Maintains a register of all <i>Data Matching Steering Committee</i> endorsed data matching programs; and • Informs the <i>Data Matching Steering Committee</i> of: new, amended or secondary use data matching programs; exceptions and breaches of data storage and destruction rules; requests for payment for data extraction and formatting costs; and requests for on-forwarding/ on-disclosure of data.
Data Matching Project Manager	<ul style="list-style-type: none"> • Work with the Special Purpose Data Steward team to prepare the Special purpose data steward brief for business line Senior Executive Officer approval and sends to the Special Purpose Data Steward for approval by the Assistant Commissioner Data Matching and Compliance Strategies; • Ensure that the Assistant Commissioner Data Matching Compliance Strategies has approved Special purpose data steward brief before any contact is made with a data provider; • Work with the Special Purpose Data Steward team to prepare the <i>data matching program protocol</i> or <i>data matching concept brief</i> as directed by the Data Matching Gatekeeper; • Ensure that business line Senior Executive Officer approval has been obtained prior to forwarding the data matching program protocol or data matching concept brief to the Data Matching Gatekeeper for approval; • Ensure the Data Matching Steering Committee has endorsed the data matching program protocol or data matching concept brief before data matching occurs; • Ensure the proper use of the Commissioner’s access powers to acquire special purpose acquisition data comply with all necessary access processes; • Complete the appropriate data matching program evaluation forms as required; and • Ensure that secondary or subsequent use of the data by another business line is aligned with the original acquisition purpose, complies with the retention, evaluation and destruction timeframes of the original data and has the appropriate Senior Executive Officer and Data Matching Gatekeeper approvals.

ATO Personnel	Key responsibilities
Data Matching Steering Committee	<ul style="list-style-type: none"> • Promotes a corporate approach for: identifying data that meets business needs and the acquisition of that data; endorsing data matching programs in line with this CMPS; ensuring adherence with policy relating to payment for extraction and formatting costs; development of program protocols, concept briefs and secondary usage concept briefs; the storage and use of that data within the organisation; and the disposal of that data at the appropriate time; • Provides input to ATO planning processes from a data matching perspective; • Provides endorsement of new, amended or secondary use data matching programs and the relevant documentation as appropriate; • Works closely with the Micro Enterprises and Individuals business line to ensure that data matching programs involving legislative data are being effectively administered (for example, Pay As You Go Withholding, Annual Investment Income Report, Business Activity Statement etc); • Monitors, refines and develops the effectiveness of the ATO identity matching capability, recommending changes or strategies accordingly; • Works closely with Enterprise Solutions Technology sub plan in relation to initiatives which may involve or affect ATO data matching activities.
Deputy Commissioner Micro Enterprises and Individuals	<ul style="list-style-type: none"> • Considers all requests from agencies for the on-forwarding/on-disclosure of bulk special purpose acquisition data and/or bulk legislative data and provides approval as appropriate; • Endorses recommendations from the Assistant Commissioner Data Matching and Compliance Strategies for high risk strategies; and • Endorses <i>data matching program protocols</i> and the final supporting documentation.
Enterprise Systems and Technology Director Business Intelligence Branch	<ul style="list-style-type: none"> • Has overall responsibility for Information Technology Data Management in the Enterprise Data Warehouse; and • Ensure that only third party data endorsed by the <i>Data Matching Steering Committee</i> is loaded to the enterprise data warehouse. The content of the enterprise data warehouse is monitored for compliance and all exceptions/breaches are reported to the Data Matching Gatekeeper.
Identification Matching Services Director	<ul style="list-style-type: none"> • Ensures that only special purpose acquisition data which has been endorsed by the <i>Data Matching Steering Committee</i> is electronically identity matched through the Client Identification Compliance system.
Secondary Use Data Matching Project Manager	<ul style="list-style-type: none"> • Consults the Data Matching Gatekeeper prior to accessing data already acquired; • Works with the Special Purpose Data Steward team to prepare a data matching <i>Secondary usage concept brief</i> for business line Senior executive officer approval; • Ensures business line Senior Executive Officer approval has been obtained prior to forwarding the data matching <i>Secondary usage concept brief</i> to the Data Matching Gatekeeper for approval and circulation to the <i>Data Matching Steering Committee</i> for endorsement; • Completes the appropriate data matching program evaluation forms as required; and • Ensures that secondary use of the data is aligned with the original purpose and objectives for acquiring the data.
Special Purpose Data Steward	<ul style="list-style-type: none"> • Reports to the Assistant Commissioner Data Matching Compliance Strategies; • Assesses and makes recommendations for approval as appropriate to the Assistant Commissioner Data Matching Compliance Strategies for all: special purpose data acquisition strategies requests from agencies for the on-forwarding/on-disclosure of bulk special purpose acquisition data and/or bulk legislative data; and • Is supported by a specialist team that works with business line project managers to: develop strategies for acquiring and using proposed special purpose data acquisitions; assist with data analysis and formatting requirements; assist in establishing effective relationships to support data matching with data provider organisations; assess and minimise reputation risks associated with data matching; and work with the Data Matching Gatekeeper to ensure legislative and policy requirements for data matching involving individuals are addressed.

