



THE TAX INSTITUTE

THE MARK OF EXPERTISE

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Does the ATO think your client is risky?

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1 Introduction

It is a pleasure to be presenting to the Tax Institute membership, with Deputy Commissioner Michael Cranston, who has responsibility for Privately Owned and Wealthy Groups ('private groups') at the Australia Taxation Office.

Whilst the presentation is jointly with Michael, the paper was written by me and accordingly, the views expressed are mine and I take full responsibility for the material set out in the paper. Having said that, I have had reference to material kindly provided by the ATO.

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1. Words are powerful. Take the word risky for example. The on-line Oxford Dictionary describes risk as:

"... a person or thing that is likely to cause problems or danger at some time in the future ..."
 2. Words can shape a nation, rouse and unite people to action, build bridges or offend. And so, the topic *"Does the ATO think your client is risky?"* might mean different things to different people. To a tax adviser, we might think the Australian Taxation Office (ATO) is all about risk, audit focused, dealing with non-compliance, as we have been on the receiving end of many a review or audit (or still might be, given the leak of the Panama papers).
 3. In October 2013 the Inspector-General of Taxation tabled a report on ATO risk assessment to the Assistant Treasurer and placed it on the public website in February 2014. The Inspector-General after extensive review, recommended guidelines address *"the governance, inputs and transparencies of the ATO's risk assessment process as well as related communication with taxpayers and the proportionality of resulting ATO compliance action to detected risks"*.
 4. The Inspector-General commented generally:
 - The Inspector-General of Taxation was encouraged to investigate the methodology of risk assessment tools by the ATO.
 - Interested parties were concerned at how the ATO set the risk benchmarks, the transparency of the process generally and communication with the taxpayer.
 5. The recommendations of the Inspector-General reflect a community's desire for a fair and reasonable tax and super system, representative of the following characteristics:
 - Governance - there must be confidence that ATO risk assessments are being applied as intended.
 - Effective use of inputs - the old concept of garbage in, garbage out applies.
 - The ATO's risk hypothesis must be to ensure *"risk inputs are relevant to the risk being identified"*.
 - Transparency – *"The risk assessment process are to engender community confidence and improve taxpayer behaviour and practices"*.
 - Communication - There must be notification of the category particularly at the higher levels, where the taxpayer *"must be afforded a right of review"*.
 - Proportionality - The compliance approach *"should be proportionate to the level and type of risk presented by the taxpayer ..."*.

6. Changing a community's view of the ATO is no easy task, however, under the leadership of Tax Commissioner Chris Jordan that is exactly what he has set out to do through a formal transformation program, Reinventing the ATO. In fact, Commissioner Jordan's most recent speech "*Better Services and a better experience for Australians*"¹ tells us that he considers a service mindset is critical to the transformation the ATO needs to make.
7. Since Commissioner Jordan's appointment on 1 January 2013, he has given a number of speeches setting out the ATO's mission:

"... fostering willing participation in our tax and superannuation systems."
8. He tells us that the core of the ATO's mission – willing participation in the tax and superannuation systems - drives everything the ATO does and together with the ATO's mission – to be a leading tax and super administration known for its contemporary service, expertise and integrity – describes the kind of organisation the ATO wants to be.
9. Although not reflecting on the Inspector-General's review or recommendations, Commissioner Jordan has openly acknowledged that the ATO has not always got it right from its end and calls on the tax profession to work together with the ATO to facilitate taxpayers through a complex system². Commissioner Jordan explains the tax profession's role to play is to reflect on how we are advising our clients and promoting willing participation in our tax and super systems. This conciliatory act coupled with an open hand for the tax profession to work with the ATO sets the framework for a professional working relationship.
10. So, I put it to you, if this presentation was titled "*Does the ATO understand your client's circumstances?*" would you change your view of what the ATO is all about? As I said, words are powerful. In this context, the word "understand" is not combative but rather suggests a desire to seek out an explanation through dialogue.
11. As tax advisers, we might like to rethink our view of the ATO and what role the tax profession can play in helping the ATO understand our clients' circumstances.
12. This paper addresses issues for Privately Owned and Wealthy Groups, defined as:
 - entities and their associates (often referred to as economic groups) that have an annual turnover of greater than \$2 million and are not public groups or foreign-owned, and
 - resident individuals who, together with their business associates, control net wealth over \$5 million.
13. Private groups play an important role in the Australian economy and in the tax system. The Australian Government's 'open for business' mantra reinforces the important role of private groups in getting on with building their business for the economic benefit of Australia.

¹ <https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Better-services-and-a-better-experience-for-Australians/>

² <https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Building-trust-and-confidence-in-our-tax-system/>

14. Recognising the challenges faced by private groups and the important contribution they make to the Australian economy, improving their tax experience is a central aim to fostering willing participation in the ATO's compliance approach. The better the experience, the more likely the ATO will build trust and confidence in Australia's tax administration.
15. The ATO is taking a fresh look at its compliance approaches through the 'Reinvention program'. The ATO's reinvention has refocused its taxpayer segment from SMEs to private groups. This signals a number of significant shifts which allow the ATO to:
 - appreciate the structures and legal frameworks that exist in the community that are used by private groups and not just focus on SMEs
 - recognise that private groups have different governance and reporting requirements, and
 - more effectively tailor its approaches based on choices, behaviours, circumstances and levels of certainty recognising the needs of private groups.

2 Improving the tax and super experience

16. The ATO now has a new blend and balance of strategies that are tailored and based on the risk indicators: complexity, transparency and behaviour. The ATO's key aim is to achieve right and reasonable outcomes given a client's situation and behaviour. These words resonate with the recommendations of the Inspector-General. Actions speak louder than words and for private groups, the ATO has moved those words into action.
17. In April 2015, Deputy Commissioner Michael Cranston announced³ the first round of improvements for private groups, as shown in the Every Year Counts calendar⁴. The ATO's approach for private groups is underpinned by three themes: transparency, early engagement and certainty. The themes give further explanation to the kind of experience private groups want with the ATO and resonate well with the Inspector-General's recommendations:
- to be transparent to engender community confidence and improve taxpayer behaviour and practices
 - to engage early rather than build risk hypothesis that is not relevant, and
 - to provide certainty, to notify them about what they look like to the ATO.

³ <https://www.ato.gov.au/Media-centre/Media-releases/ATO-to-start-tax-assurance-talks-with-large-private-groups/>

⁴ http://reinventing.ato.gov.au/sites/default/files/EYC_POWG_Jan2015.pdf

3 Improving transparency by being upfront

18. Unpacking the ATO's improvements for private groups means comprehending the importance of transparency and the role it plays in reaching a mutual understanding of a client's circumstances. An example of how the ATO is being transparent, is an '*Online Resource*' dedicated to private groups and their advisers that was released in April 2015 as part of its package of improvements.
19. The '*Online Resource*', which can be accessed at www.ato.gov.au/privategroups explains:
- the importance of a strong and transparent working relationship with the ATO
 - what private groups and their advisers and the ATO can expect from each other
 - what attracts the ATO's attention.
20. The ATO designed this '*Online Resource*' to be informative and interactive for private groups. The aim of the interactive '*Online Resource*' is to help private groups and their tax advisers "*get things right*". The '*Online Resource*' is all about openness, transparency, honesty, integrity and building a working relationship between the ATO and private groups and their advisers. Without having a pleasant experience with the ATO, taxpayers and their tax advisers will not be open to these concepts.
21. However, as many of us know, to build any type of productive working relationship, someone has to take the first step, and therefore I put it to you, the ATO's spokesperson for private groups, Deputy Commissioner Cranston, is reaching out to taxpayers and their advisers. To complement the release of the '*Online Resource*', Deputy Commissioner Cranston said⁵:

"Privately owned and wealthy groups play an important role in the Australian economy, and in the tax and super systems. Not only do you as owners pay tax as individuals and in your businesses, you're often major employers, withholding taxes and paying super contributions on behalf of your employees. Many of you take on a great deal of personal risk to build your business.

You might be a diverse group, but you've got one thing in common – you, your tax advisers and us, we're partners in the tax and super systems (underlining added) and so your experience in the tax and super systems is extremely important.

As part of the Reinventing the ATO, we've been talking to our stakeholders, our partners, our clients and our staff; to understand the kind of experience they want when they participate in the tax and super systems.

We've listened to the feedback and now we're transforming your experience. How we are changing and our commitment to you is explained in our newly released on-line resource for privately owned and wealthy groups.

You, and your tax adviser, can access this online resource anytime to get things right and work with the ATO, where needed, so we can build a strong and transparent working relationship".

⁵ <https://www.ato.gov.au/General/Gen/Improving-the-client-experience--transcript/>

22. Deputy Commissioner Cranston goes on to say: –

“You’ll see our key services in the online resource under the links to: –

Excellent working relationships: The value of conversation

The right services: Getting what you need when you need it

Transparency: By being open about your affairs, you know where you stand, and

Tailored engagement: Your circumstances are understood”.

23. The above is a remarkably frank and open hand offered by the ATO.

24. Back in the 1970s when the New South Wales Deputy Commissioner was Mr R R Gray he used to sponsor a morning tea for newly appointed tax agents. I remember attending one of those morning teas. His opening words back then were that *“My door is always open and you can share your client matters with me in confidence”*. In the intervening thirty years, this co-operation arrangement has waxed and waned. It has now come the full circle. Deputy Commissioner Cranston can be proud of the transformation in culture. The transformation is starting to be seen in the ATO approach but not so easily seen with the tax advisers. We now need to see the implementation of the *‘Online Resource’* facilities from both sides.

25. For the ATO it has been a culture change that needs to keep improving. The speeches that Commissioner Jordan made in 2013, 2014 and 2015 for the Tax Institute are important. They show where the Commissioner wishes to take the ATO, the taxpayer and the tax advisers. In his speech at Hobart on 27 March 2014, Commissioner Jordan, amongst other things, said the Tax Office should:

- provide services just like any modern large company
- streamline business processes and cut red tape - to modernize
- work more cooperatively and effectively and to identify problems and tax design solutions
- be more pragmatic, making decisions that are good in the long run to ensure willing participation and integrity of the system
- take compliance action based on transparency, risk and behaviour
- advocate more strongly for change when laws are seen not to be working.

26. Commissioner Jordan points out there are cultural issues that will take time and need to be addressed, and further, that the ATO is not a homogenous place. The Commissioner will know being ex KPMG that tax advisers are also not homogenous either and will take some time to adapt to the *‘Online Resource’* and the risk determinations for their clients. There is still the sense that we are on opposite sides of the fence. However, as mentioned previously, the role that the tax profession plays is critical to helping this cultural change evolve across the tax and super systems.

4 Understanding the Risk Differentiation Framework

27. The relevant topics covered by the 'Online Resource' for this presentation include:
- [How to assess risk](#), explaining how the ATO uses a risk differentiation framework to tailor engagement approaches
 - [What attracts ATO attention](#), explaining the ATO commitment to transparency in helping taxpayers know the behaviours and characteristics that may attract the ATO attention
 - [Transparency](#), a key theme in the ATO reinvention for private groups, explaining the importance of transparency in helping the ATO understand a taxpayer's circumstances
 - [Good tax governance](#), noting that the ATO expects to release an online tax governance guide specific for private groups in May 2016
 - [Income Tax Assurance Notification](#), given to lower risk groups where the ATO does not intend to take further action in a specific year
 - [Income Tax Risk Report](#) (recently renamed as the Income Tax Profile) given to the largest private groups and other groups where specific issues have attracted attention. The report sets out the ATO view of the taxpayer's level of risk so they can deal with any issues. These issues presumably would also be the reasons for a particular risk category.
 - [Tailored engagement](#) explaining the ATO's engagement approach through one on one conversations, reviews and audits.
28. The ATO's approach is evolving from a compliance backed up by audit approach to tailored engagement based on understanding a client's circumstances and the right information in a timely way.
29. Historically, it was in the 1980s that all businesses were covered by effectively an audit programme. This was particularly so of the largest businesses. In 1993 the first concept of 'perceived revenue risk' was introduced to an expanded large business range. Then in 1994 the ATO adopted the concept of business lines and moved away from assessment, collections and appeals.
30. By 2000, the ATO's risk assessment programme developed. The ATO published their "Co-operative compliance" booklet, with the aim of large businesses self-managing their tax risk.
31. Since 2004, the ATO has used a range of risk tools (including risk engines, data mining and analytical models) to detect risk and to profile private groups. These methods have evolved over the years.
32. By 2006, the booklet on large business and tax compliance was issued. The risk differentiation framework was introduced in 2010, as a complement to the compliance model, and used first for the large market. It was applied for the first time to private groups since 2012 where its use was to provide an initial perception of risk.

33. A revised addition to the large business tax compliance booklet was introduced in 2010 and between 2010 and 2012 risk notification letters were sent to large businesses setting out their risk categorisation. The ATO's categorisation framework for large business, known as the 'Four quadrant model' was a diagram divided into quarters, with 'key taxpayers' and 'higher risk' taxpayers in the top quartile, while the 'medium risk' and 'lower risk' taxpayers were in the bottom quartile⁶. How you were awarded a high risk was the ATO's *"estimated likelihood of you having a tax position that we disagree with ... as evidenced by your behavior, approach to business activities, governance and compliance with the tax laws"*.
34. In 2012, the ATO released in a booklet *"Tax compliance for small-to-medium enterprises and wealthy individuals"* (the SME publication). The 'Online Resource' builds on the ATO's previous SME publication and provides relevant and up-to-date information, as well as giving guidance on the kinds of issues that attract its attention.
35. To 2016, the ATO continues to improve its risk differentiation framework so as to maximise the effectiveness of taxpayer engagements and better take into account what is learned through interactions with other taxpayers and the business and financial marketplace generally. There now will be an ever increasing focus on tax governance and refining risks. Today the use of a risk differentiation framework model is to tailor the ATO engagement based on an understanding of the taxpayer risk position, circumstances, choices and behaviours.
36. The private groups risk differentiation framework provides another level of detail to explain categorisation as higher risk or lower risk⁷. The ATO explains that the risk differentiation framework is the first step in its risk assessment process and that it is *"based on information the ATO holds and its understanding of the group"*. The ATO tells us that they use intelligence, sophisticated data matching and analytics to detect risks, understand circumstances and profile private groups. Two tests are based on the likelihood of an outcome that the ATO would not agree and the second, is the consequence on the *"potential impact of non-compliance ..."*.
37. Is it an appropriate measure to classify taxpayers risk as high, medium or low? Does that give the wrong impression? The ATO makes much of transparency and working with tax advisers as 'partners'. How does it look to a taxpayer and their tax adviser when the ATO gives them a high risk rating? Should the ATO issue interim risk reports or notices for every taxpayer who has been 'awarded' with a high tax risk? This is particularly so, when one does not know how the high risk rating was assessed. Hence, we come back to the theme of transparency.
38. The Inspector-General of Taxation's report of October 2013 made the point that communicating outcomes and having due process were fundamental processes. He said that:
- "Affected taxpayers ... must be afforded a right of review of their initial risk rating particularly where they are characterised at the higher levels which may potentially result in further compliance activity"*.

⁶ <https://www.ato.gov.au/general/building-confidence/public-and-international-groups/transparency/how-we-assess-and-manage-risk/>

⁷ <https://www.ato.gov.au/General/building-confidence/private-owned-and-wealthy-groups/transparency/how-we-assess-risk/>

39. You will see in this paper, numerous criteria used by the ATO, but much of those criteria are subjective and that which is not subjective may be factually incorrect. Even more of an issue, is where a taxpayer may have lost a tax appeal on a difficult technical matter and as a result, is rated high risk and then made subject to an audit. Has the tax adviser to make it known to his client, that as there was a loss before the AAT, it may make the taxpayer the subject of an audit? Is this just one more hurdle? An example follows from an audit where the question was whether the taxpayer had 'aggregated turnover' of more than \$20 million for the purposes of determining whether an R & D offset refund should be made. If an export market development grant and the New South Wales rebate under the Job Action Plan, were regarded as 'ordinary income' then the aggregated turnover would have been more than \$20 million. Having lost the matter (or more correctly, not pursued it) would the ATO regard the taxpayer as high risk?
40. Then what categories should the ATO use for describing risk. Maybe replacement category names for high risk could be 'make further enquiries' or 'subject to review' or 'to follow up'. Certainly, phrases such as 'understand your circumstances' builds bridges. Perhaps the ATO could consider that low risk category should be referred to as 'no risk'.
41. The point I am making is that the word 'risk' does not sit well in describing the activities of a taxpayer 'partner'. Changing the word 'risk' would change perceptions.

5 What attracts the ATO's attention?

42. The risk differentiation framework is a general document short on specifics or characteristics as to what categorizes a taxpayer as lower risk or higher risk. However, the details are further explained in the 'Online Resource' under "*What attracts our attention*"⁸. Again, the preamble to that section notes that the ATO has given a commitment of transparency in working with private groups on issues that attract its attention.
43. The behaviours and characteristics are many and varied and include capital gains tax issues, Division 7A, franking credit issues, non-lodgment, late payments, R & D incentives, revenue losses, tax refunds and others. One may ask how the ATO will gather this information, as much of it will not be highlighted in the income tax return itself.
44. The broader behaviours and characteristics that may warrant the ATO seeking to understand your client's circumstances include:
- tax or economic performance is not comparable to similar business
 - low transparency of your tax affairs
 - large, one-off or unusual transactions, including transfer or shifting of wealth
 - a history of aggressive tax planning
 - tax outcomes inconsistent with the intent of tax law
 - choosing not to comply or regularly taking controversial interpretations of the law
 - lifestyle not supported by after-tax income
 - treating private assets as business assets
 - accessing business assets for tax-free private use
 - poor governance and risk-management systems.

⁸ <https://www.ato.gov.au/General/building-confidence/private-owned-and-wealthy-groups/transparency/what-attracts-our-attention/>

6 Tax Governance

45. The aim of this presentation is to focus the tax advisers' attention to risk. I commenced this paper explaining that the tax adviser thinks the ATO is all about risk, identifying and dealing with non-compliance. In what way can the ATO identify taxpayers who may well not be complying with the law? A crystal ball is not practical. Hence we ask what information is relevant? The ATO answer is the history of the transactions of the taxpayer. How does the ATO then know that history?
46. The ATO will know through its intelligence, third party data, benchmarking and computer software systems, whether a particular taxpayer is a risk. To take these examples:
- Where the sales at G1 in a BAS statement are significantly out of whack with the revenue in the tax return.
 - A large capital gain on a long held property where no rental income has been disclosed.
 - Where the industry code does not match the business operations and hence, fails the benchmarking test.
 - Where the assets position is \$5.99 million for a small business CGT concession.
47. Once advisers understand risk, they can then look to governance, which in effect says how can tax advisers and taxpayers plan for and lessen risk? Governance is all about protecting the future position of the taxpayer.
48. Private groups are only now starting to think about governance, what it means, who applies it and how can it be applied. The ATO has been consulting with the community to build a tax governance guide specifically for private groups that will set out standards of tax governance that can potentially lower tax risk categorisation.
49. So how does the ATO see tax governance? Without pre-empting the release of the ATO's tax governance guide in May 2016, it should be expected that the ATO would be encouraging private groups to invest in an effective tax governance framework that supports appropriate tax outcomes. Amongst others, it would be expected to include key principles for tax governance such as accountable management, appropriate oversight, having an open and transparent constructive relationship with the ATO, identifying and managing commercial and tax risk, and acting ethically and responsibly with honesty, integrity and in accordance with community expectations.
50. That is not the position with public companies. It is politically correct for large corporations to expend an enormous amount of words on 'Governance' and its various aspects. For example, a major public company's annual report for 2015 devotes more than 30 pages in respect of governance. It is interesting to note very little was on tax governance.
51. The comments by Commissioner Jordan at the Senate enquiry on 22 April 2016 postulate that public company continuous disclosure on taxation issues is quite varied. He raised the issue of accounting standards and when taxation disputes should be notified to the market and in what form. The focus of public companies and their governance issues is going to filter through to private groups.
52. In a long judgment on corporate governance Middleton J (ASIC v. HEALEY 2011 FCA 717) considered a dispute between the directors of the Centro Property Group collapse. That case is referred to in the "*ATO Tax Risk Management and Governance Review Guide*". The Commissioner is using that case as an example of the obligations imposed on directors under the Corporations Act, particularly section 180 of that Act.

53. However, it must be realized that the directors in the Centro matter did not disclose \$AUD 1.5 billion of short-term liabilities, by classifying the liabilities as non-current. They also failed to disclose guarantees as short-term liabilities for approximately US\$1.75 billion. While it is important corporate law, however one cannot see why it has prominence in the Tax Review Guide.
54. An interesting question arises, rather than the ATO issuing guidance notes on risk, should there be legislative guidance so that the risk review does not become fickle. It should become a mandatory task, like that imposed upon directors by the Corporations Act.
55. That is the theory. Now let us come to the real world. How much time is devoted by private groups to focusing on tax governance? Currently the answer is 'not much'.
56. So what is tax governance? It is looking at the tax issues and handling these issues so there are no disputes. The objective being that the taxpayer be deemed low risk. In practical terms it will mean that the financial controller of a private group that has a tax issue will make two calls. One will be to the external tax adviser to ask advice on the particular transaction; and then the second call will be to the ATO or through a portal to confirm that the ATO has the same perspective. Rather novel, but that is where governance and risk are heading.
57. As a tax practitioner, you may well view yourself as part your client's tax governance framework which includes providing the right advice at the right time. We know understanding a client's circumstances such as business plans, structures, wealth accumulation and how the ATO views your client is critical to working through how the ATO might seek to interact with the client. For private groups, the ATO has focused attention on high wealth individuals because it considers them important, not only as a significant taxpayer but also because of their influence on community confidence in the tax and super systems. The ATO determines high wealth individuals as Australian-resident individuals who, together with their associates, effectively control an estimated net wealth of \$30 million or more.
58. In the past, the ATO has sent questionnaires that were costly and time consuming to complete, to determine if the taxpayer was a High Wealth Individual. That approach no longer aligns with the ATO's goals to improve the client experience under the ATO's Reinvention program. Instead, the ATO has recently been sending 'confirmation letters' to streamline the approach. The purpose of the confirmation letter is to engage with individuals whom the ATO's automated systems have indicated are High Wealth Individuals. The confirmation letter asks the recipient to either:
- confirm the information, and then to do nothing
 - disagree with the information by emailing the taxpayer's name.
59. If you disagree with the information, the letter indicates you can email the ATO. Although not specifically mentioned in the letter, you can correct the ATO's information. The '*Online Resource*' provides further information to explain the approach and also includes specific information for tax practitioners – visit www.ato.gov.au/how-we-identify-wealthy-individuals
60. So does receiving a confirmation letter mean your client will be subject to review or audit? As already mentioned, the ATO uses the risk differentiation framework to tailor engagement based on its understanding of a taxpayer's risk position, circumstances, choices and behaviours. It is not based on whether the ATO has categorised the taxpayer as a High Wealth Individual. Certainly, if the taxpayer was categorised as higher risk, the ATO would want to provide increased support and engagement to help the high wealth individual get things right, but that would be because an issue or concern has attracted the ATO's attention, not simply because they have been categorised as a high wealth individual.

7 Tailoring Engagement

61. We all understand the private binding ruling system. While it works well for limited application, the system still is long-winded, overly technical and slow. We need a fast track system for taxpayers and tax advisers to contact the ATO for a quick response.
62. We are not far away from having such a response facility. The system exists now. Recently an adviser went to the ATO website, asked the question and in 24 hours the ATO came back to start the conversation after receiving the facts. The ATO got back and said 'yes' to the query. It works.
63. The facility or single entry point for the ATO to 'callback'⁹ taxpayers who are seeking early engagement for complex transactions provides an opportunity to have decisions fast tracked. Let us say a client has a complex transaction coming up. Why should the tax adviser not be able to ring the ATO and give advanced warning of the transaction and seek confirmation of the tax adviser's tax approach?
64. So the question remains: *"Does the ATO think your client is risky?"* Yes, the ATO does consider your client risky, but it might not be a higher risk, it might be a lower risk if they seek out early advice. When you say someone is a lower risk, why are they a risk at all? This is what the ATO has been hearing from taxpayers. They are saying it is the language that is the problem. Would low risk be better described as 'all in order and in good shape'? That language is very powerful.
65. It seems that the whole purpose of the risk rating is to determine whether further enquiry and perhaps audit are needed. The ATO wants transparency. If a taxpayer came to you and they provided their tax information with true and full disclosure, allowed the ATO to do the risk review and provided there was a low risk assessment rating after they have lodged their returns, then the ATO should in turn provide assurance that the ATO will not audit the taxpayer for the prior years.
66. In fact, the ATO says it understands private groups want certainty about where they stand with their income tax obligations. To help provide certainty, the ATO introduced an income tax assurance notification that is issued if your income tax risk is low, as assessed by its computer analytical models. Last year the ATO notified a significant number of groups – based on its risk assessment – who they do not intend to make further enquiries with unless material information subsequently comes to light (for example, tax fraud). The intention is that this process will provide certainty for groups, and lead to reduced compliance activity over time. Perhaps this is nearing 'all in order and in good shape'.
67. If taxpayers better meet tax performance levels as against their peers; or have economic performance better than their industry then the ATO's risk category will be substantiated. There may however be some instances where there is a trigger for the ATO to reconsider that category and perhaps change the taxpayer's category. For example, a building has been sold and the ATO did not see capital gains tax. Risk categories would change. The ATO has flags.
68. If the taxpayer has a number of these flags, they are point scored and then a taxpayer might move to a higher risk category. If somebody gets ATO attention, it is hoped the approach will be one where if they engage with the ATO, it will seek to understand them "a bit better". So that is the language. The process is not going to be massively different. There will be more engaging.

⁹ <https://www.ato.gov.au/General/building-confidence/privately-owned-and-wealthy-groups/the-right-services/early-engagement-with-us-prior-to-seeking-advice/>

69. Under the Risk Differentiation Framework the ATO is very keen on sharing how they risk filter. Broadly it is about economic performance. The ATO is getting access now to asset information that was previously never available. More data and greater access to review are making a difference.
70. How transparent should the ATO be about how they risk assess? Or is it about how much does the ATO discuss it? Being transparent is quite broad. One part of it is about how to share the process to a certain degree and one part of it is how much does the taxpayer or adviser open up with the ATO. How much does the ATO open up and tell the taxpayer what the ATO thinks about the taxpayer?
71. The question remains, “*Are you and the Tax Office looking at your client in the same way?*” If you have a high risk client, what do you do about it and how do you go from high risk to low risk? Do you ring up the ATO and say “I have a client you believe is high risk. You are wrong. The client is not high risk, they are actually low risk.” Or, what happens when you have a low risk client and they should be high risk? Do you go to the ATO to seek out some certainty for them? Unless the ATO tells you, how do you know what your client’s risk category?
72. Tailoring engagement based on risk for the ATO is about the future and does address the Inspector-General’s recommendations about proportionality - the compliance approach “*should be proportionate to the level and type of risk presented by the taxpayer ...*”.
73. A high risk category is a problem for tax advisers. If a taxpayer is high risk then the ATO will knock on the door and say we are here to do a ‘client risk review’.
74. Currently if the taxpayer is not in contact with the ATO, the taxpayer would not know how they stand with the ATO. That is changing. The ATO has been giving out risk reports, to be rebadged as Income Tax Profiles - telling private groups how the ATO views their level of risk where specific issues have attracted the ATO’s attention. These reports have also been used in one on one conversations with the largest private groups.

8 Conclusion

75. The ATO is looking at practitioner's as though they are now ready to embrace them as partners, to come forward, be honest and open and ask the ATO questions in advance of transactions. That still has not caught on yet. It has in the large space, but not with private groups.
76. How are disagreements treated under this new partnership? For example, a small business concession, active asset test. There is cash in the company. Question is whether that cash is 'inherently connected in the business'. Now I know the ATO will take one view and the adviser will take another. So, the question is, do I address it now with the ATO before the client sells the business and tries to claim the small business concession? How will the ATO address the question?
77. So, is the tax profession changing the way of doing business with the ATO? Are practitioners going to want to contact the ATO and put up a proposition in advance? The answer is, in the past no way. But, now with the right attitude from the ATO and the right attitude of the taxpayer, we will get there together.