

# The ATO TOP 500 PRIVATE WEALTH PROGRAMME

## The ATO Tax Conservation

### John Dahlsen

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The JC Dahlsen Pty Ltd Group which I wholly own has now received 100+ questions and interrogatories of Olympian proportions to be answered in 27 working days. It is simply not possible. Whilst the ATO has issued other cohorts with similar requests mine is the result of being in the so-called list of 500 largest private companies. I don't know where we rank on the list, but it would be towards the bottom. This request to be answered in 27 days where we will be probably lodging 1000+ pages of information demonstrates the ATO's insensitivity to the demands being placed on taxpayers. Where do they find the resources with all the other current pressures?

The timing of this is awful.

Not only because of the massive CV-19 stress on private companies and individuals in our community but the government is also under huge stress. We have one of the highest ratios ever of debt to our total assets. Fortunately, with very low interest rates our ability to serve this debt is not as bad as it could be, but would be highly dangerous if interest rates increased.

The only way the government can get out of this debt crisis is through:

- Higher taxes
- The inflating of the value of our assets, so that the percentage borrowed drops against the value of the inflated asset
- Productivity gains - that is increasing output per unit but at a time where labour reform appears impossible
- Lowering government expenditure particularly on non-productive activities
- Combination of the above

Of the above, productivity gains are crucial, but we are now facing escalating compliance and regulation costs in many areas including OH&S, planning, climate change, employment, gender etc, etc, etc, etc, which drive down productivity and inhibits our ability to fund social infrastructure and benefits. It would be interesting a comprehensive list and what it is costing companies. It is against this background that the demands being made by the ATO are extraordinary given it is these companies and small business that are the engine room of productivity growth. An interesting slide from the IPA on regulation growth is attached.

In the case of Dahlsens our stress is the inability to provide builders with all the products they need to fulfill their contracts, which could put this in serious financial difficulty - with fixed building contracts, with delayed commencement dates. This is the direct result of the Federal Government's stimulus packages to the building sector – a key driver of a growth.

Why am I making these comments?

My advisors and family tell me not to do it. But I am 86, at the end of my career, when criticism is less important. I will be soon in the grave, where no one can reach me. There are benefits and obligations of being old. Is there any wisdom or truth you can communicate? If so, when? My family of five generations has been passionate about helping small businesses in regional areas. We have helped where we can, and in some cases helped business to survive, such as many builders over the years.

I have a deep interest in public policy where there is no vested interest. See my CV with subjects covered.

What is the value to our Group and family? Why provoke the ATO? Stay under the radar, comply, grin, and bear it. It will be less costly to give the information now than the cost of two - three annual audits. The ATO is likely to punish you but it should be stated there are some outstanding people in the ATO that are not driven by malice, understand your predicament and are highly sensitive to your issues. In our case the ATO were very quick to offer us JobKeeper payments but as a permitted business we did not need it.

The ATO has massive levers. It can require enormous volumes of data, cross examine and distract your people and make it extraordinarily difficult.

Invariably this forces the use for external consultants. But does the ATO care?

It is like a massive due diligence which precedes an IPO or a major acquisition where the accountants have to verify each individual piece of information.

With the breadth of questions being asked it will take a long time and be very expensive.

Despite what might turn out to be a huge cost for me, I believe there are extremely important public policy issues that need to be debated. We need an open conversation about the fairness, reasonableness, and sense of proportion of the ATO. Hopefully more will share their experiences and engage in a debate whether they be the taxpayers themselves or their advisers.

My intelligence is that the same, or very similar, interrogatories have been given to all companies, so it does not matter whether you are Company No 1 or 500. It is a game where one size fits all. This is lazy and unfair. The ATO has massive resources and should have the data or analytical power to refine and make the questions more relevant and important to the ATO statutory obligation to gather tax.

It appears that many of the questions are far more suited to a public company which has much wider reporting obligations than private companies. There will be no value to many smaller private companies in gathering the kind of information the ATO is seeking. The information might enable the ATO to do some matching and so is getting the information from a taxpayer for a collateral purpose and the taxpayer is not compensated for giving the ATO information which is not relevant to calculation of their tax. To say nevertheless if you give us all the information and it is satisfactory, we will not audit you for 3 years, is an unfair exercise of its powers. What happens during the 3 years? Do you have to update the answers to your questions, and will that breather be as valuable as the ATO are saying? The jury is out on this.

The difficulty the taxpayer faces is that it has to prove its innocence and has to pay up the tax irrespective of circumstances. This payment often depletes the

ability of the taxpayer to fight the issue, and it can take years to resolve. It is not surprising that taxpayers are distressed. With civil law it is probabilities but with crime you are not guilty until your guilt has been proved beyond reasonable doubt. It is this inherent injustice that gives the ATO the lever to seek all this information - some relevant, some irrelevant – to their ability to tax you in exchange for the proposition that I will not take advantage of you for three years.

One acute difficulty is a sense of proportionality and size. In essence the cost of tax compliance is a fixed cost which can bear little relationship to volume, profit or return. The bigger companies have the opportunities to fractionalise these fixed costs with huge volumes. Larger companies can employ and engage tax specialists who understand intimately all the individual heads or siloes of tax liability and match the ATO siloes. Further larger companies can afford to have costly information systems which will automate a lot of the ATO requirements. Smaller companies simply cannot afford to operate such systems. At the other end of the scale, the small taxpayer has to talk to his accountant who would need to be outstanding to understand all the ATO traps. The cost of compliance at this level is out of all proportion.

A little example of what the ATO is seeking, is copies of all your service agreements. Does this mean your electricity, gas, water, insurance, arrangements with your professionals, etc?

More bricks in the build of process driven governance direction and management. It is the ATO type of intrusion that is sucking out all the energy, time and emotion of those trying to drive our businesses, add value and

facilitate the underwriting of our vastly and ever-increasing social infrastructure.

Where is the balance between the tax providers and those seeking social benefits, above or below a reasonable bench mark?

A typical comment of a businessman, particularly a smaller one, would be:

“I pay tax and accept that I have an obligation to paying for my share of social infrastructure.

It is our business how we do this.

Please don't tell us how to do this. We don't tell you how to run the tax department.

We need space, time, and environment, where we can meet your obligations.

Don't make it any more difficult for us to do this. If we are evading or not paying our share of tax, then you are entitled to be difficult. But don't be difficult until that has been proven. Why should we have to prove this at great cost and inconvenience?

If you have ideas of how to help, fine. But don't make this a condition or apply levers to drive us in your direction.

Don't sap our energy and drive and create an environment of animosity or drive us to do the very things you are trying to stop – paying tax albeit with minor unimportant omissions some of which will help you, and some me.

Take your staff on a journey of first principles. How would I react? There but for the grace of God go I. Do unto others as.....

Don't build antipathy, fear, or an unwillingness to be open and transparent. After all, I am paying your wages and funding the wider community.

Please do not bear any malice.

Please don't play games or try to trap us.

Please recognise that with CV-19 we are all struggling in different ways.

Please try to see it from my point of view."

What is the Australian way?

It is self-evident the ATO are overreaching in many areas:

- Should not this be debated in the community?
- How did we facilitate taxpayers having a say?
- How do we get the ATO to engage?
- Where is the balance and fairness?
- How much evidence is there?
- Is it not possible for an independent survey to be run on all taxpayers finding out anonymously to a number of carefully professionally crafted questionnaire?
- Is there a case for a forum where people can have their say?
- What roles should the professionals play?
- Have professionals become part of the problem?
- Out of all this information who should write up the case for reform?
- Is there any chance this can be taken on by the government and the opposition in a bipartisan way? Is this not a healthy activity?
- Should the Treasurer drive this?

- How do we get a sense of independence and sufficient evidence to the answers being realistic and useable?
- Should we listen to the ATO in terms of any objections to the above?
- What has happened in other countries?

The following questions should be asked:

- Is it a fair and reasonable exercise of power where there is a huge imbalance of power for the ATO to say:  
     You prove your innocence by providing a huge amount of information some relevant, some irrelevant, or we will audit you each year.
- This implied threat is an abuse of power and process. You have to earn our trust by providing you with a huge amount of information which is untested as to its relevance.
- Does not the ATO have an obligation to make its information gathering simple and user friendly? Is this not unconscionable behaviour?
- There is a huge tension with the ATO's enormous power substantially driven by statute and the exercise of that power. Is the ATO's exercise of power proportionate to benefits gained and the cost to the taxpayer? There is no ability of the taxpayer to realistically test whether the ATO is using that power in a reasonable way.
- What is the net benefit to the community?
- The ATO is not obliged to report how much time it spends on any particular taxpayer's affairs, and a tax which yielded and net benefit to the community.
- The ATO is going close to managing your business. The information required and the implicit processes required to get that information appear to go beyond their need to make fair and appropriate taxing decisions.
- What will this mean for non-executive directors? This is another huge area of compliance which will worry them. Will it effect insurance premiums? Does this mean we have to go through the whole representation process with sign-offs from management? Much of it



seems to be process for the sake of it. If the underlying risk is low why import a process that will not change the reality of tax risk?

- It is this lack of exposure and discussion in public that makes it difficult to truly understand the behaviour of the ATO. The ATO argues that if you are not guilty why should it concern in providing the information.

Another example of the ATO overreach is that in July 2022 Payroll Reporting Part 2 cuts in, where a massive amount of data is being required on an employee's arrangements, ie part time, fulltime, casual, etc. This will clearly be of interest to other government departments and WorkSafe.

Should this be described as bureaucratic malaise that is existing in many government departments?