

Early Dispute Resolution S&ME Active Compliance/ Interpretive Assistance working together

One of the Aspiration Benchmarks set by the S&ME Executive is that:-

“Objections to our S&ME audit and interpretation positions are successfully upheld in favour of the taxpayer, in part or full, in less than 20% of cases.”

This aspiration fits well with the corporate agenda. The organisation has adopted an integrated approach to dispute resolution, mainly to ensure that disputes are resolved as close to the original decision as possible, or even before the decision is made. The term 'early dispute resolution' is used to briefly describe the work being done in this area. Some of the benefits include reduced costs of compliance for taxpayers and of administration for the ATO - elimination of costly downstream disputation at the objection and litigation stages.

For example, for officers handling objections we have deployed the risk of litigation indicator, the matrix and supporting work practices and procedures. These products help the tax officer identify those cases that have a likelihood of ongoing disputation and provide instructions on early dispute resolution, and, where this fails, advice on the facts and evidence that needs to be gathered for litigation purposes.

Early dispute resolution in active compliance

Dispute risk is the likely risk that an audit will progress to objection and subsequent litigation. The early identification of dispute risk enables us to develop strategies and engage with the taxpayer to reduce the risk.

The early dispute resolution process is a two pronged approach for active compliance:

To identify audits with dispute risk during the life of the audit:

- *Analytical models* (system based on SME audit data) that identify those taxpayers that have a high risk of ongoing disputation during the life of the audit and
- *A manual dispute risk matrix* that is applied by the tax officer to those cases identified by the analytical model to confirm dispute risk. This is essentially an Excel spreadsheet that contains various factors that may or may not be indicative of dispute risk at audit. These factors are weighted and once complete, the spreadsheet generate a 'Likely' or 'Unlikely' result for dispute risk.

An escalation process must be followed for audits where ongoing disputation is likely. For this process to be effective it is important that the AC and IA areas including the litigation team are all working well together and that various functions are performed wherever possible at the correct stage of the process.

Specifically it is envisaged that the following areas are responsible for tasks as follows:

1. Active Compliance

1.1 All section 264 requests for information and evidence and access to books etc under section 263 should be gathered at the audit stage. This is in line with the ATO Executive Meeting of 9 December 2009 wherein the minute states:

“7 In discussing the need to obtain information to assist in resolving cases the point was raised that appropriate use of the Commissioner's coercive powers (eg. s264) should mainly occur in cases such as long term audits and at the audit stage rather than expecting the information to be obtained at the objection or litigation stage.”

1.2 Where an auditor intends relying on Part IVA it is their responsibility to prepare the required submissions and seek the necessary approvals. This also applies to cases involving section 45B.

1.3 If a valuation is needed it is the auditors responsibility to obtain the appropriate valuations, at the audit stage.

1.4 A Facts & Evidence worksheet is required to be completed for all High Wealth Individuals cases, complex cases and all cases rated as likely using the dispute risk process.

1.5 To enable easy access to documents relevant working papers are to be retained by the auditor and delivered to the disputes officer promptly once the matter progresses to that stage. Furthermore, appropriate notes on Siebel should be added, under the Case note facility, to enable the easy location of files and relevant evidence and an explanation on documents on Siebel making it easy for disputes officers to locate documents. Working papers should be properly folioed and cross referenced.

1.6 Wherever possible it is highly desirable that an audit is completed for all years prior to any amended assessments being raised. This will overcome the issues associated with having a dispute on foot for one year whilst an audit is still progressing sometimes on the same issue in other years.

1.7 At all stages of the audit consideration should be given to alternative and early resolution of the matter. The auditor should complete the dispute risk indicator as required and escalate likely cases in line with the S&ME Dispute Risk Guidelines. An IA officer will be nominated for each region to review these referrals. Furthermore, it is anticipated that regional forums will be established consisting of senior staff from both capabilities to meet on a regular basis to discuss issues arising out of the working relationship. A sub-committee of the Active Compliance and the Policy & Advice BMC's will be formed to manage this function.

1.8 Active Compliance staff should obtain specialist assistance during the audit where necessary. This could be in the form of referring precedential matters to Centres of Expertise for their determination of the ATO view, referring matters to STL, Case Leadership and/or IA for their appropriate input. On occasions the involvement of Tax Counsel may also be warranted. Refer appropriate guidelines.

1.9 If a matter arising out of an audit cannot be resolved and the taxpayer ultimately lodges an appeal the auditor is required to attend relevant meetings which take place at the litigation stage. On occasions this could include conferences with external counsel and members of Legal Services. The AC officer may also be required to have factual input into documents that are required to be lodged with the AAT or Court, and undertake any further forensic work if required.

2. Interpretive Assistance

2.1 On receipt of an objection, the disputes officer should contact the auditor to notify them of the objection and to obtain the relevant audit papers. If there are a large amount of documents the auditor should provide appropriate assistance in locating the relevant documents for the disputes officer.

2.2 IA staff should obtain specialist assistance during the objection where necessary. This could be in the form of referring precedential matters to Centres of Expertise for their determination of the ATO view, referring matters to STL and/or Case Leadership for their appropriate input. On occasions the involvement of Tax Counsel may also be warranted. Refer appropriate guidelines.

2.3 The disputes officer should review the facts and evidence worksheet and should seek assistance if necessary from the auditor (and STL officer, where appropriate) to update any shortcomings.

2.4 The disputes officer is able to discuss the matter with the auditor (and STL officer, where appropriate) and to seek their views on why they took a particular course of action. This does not detract from the fact that the disputes officer is carrying out an independent view and is the decision maker on the objection.

2.5 Prior to finalising the objection the disputes officer is required to notify the auditor of the decision they have reached. Where a matter has had STL/Case Leadership involvement at the audit stage these parties should also be informed on the objection decision prior to it issuing to the taxpayer.

2.6 The disputes officer should consider alternative dispute resolution methods once again to try and resolve the matter. The litigation risk indicator process must be followed for all disputes and where the matter is identified as likely the disputes officer should escalate to Legal Services via the Regional Litigation Coordinator.

2.7 In the rare circumstances where some work was not considered necessary at audit but is necessary at objection the auditor may be required to provide further assistance as required. Specifically in Pt IVA matters this could take the form of assisting with framing the Pt IVA submission. Likewise with the use of the Commissioner's coercive powers it could take the form of having input in the drafting of the required notices.

2.8 Senior IA staff in the each region will be required to participate in regular forums with their AC counterparts to discuss issues arising from this working relationship A

sub-committee of the Active Compliance and the Policy & Advice BMC's will be formed to manage this function.

2.9 If a matter cannot be resolved and the taxpayer lodges an appeal it is the responsibility of the disputes officer to prepare the draft section 37 documents to be lodged at the Administrative Appeals Tribunal. The disputes officer is also required to attend relevant meetings which take place at the litigation stage. On occasions this could include conferences with external counsel and members of Legal Services. Finally it is the responsibility of the disputes officer to process any amendments required as a result of Court/AAT decisions.

3. Litigation

3.1 The litigation coordinator is responsible for coordinating and managing the risk associated with the litigation matter for the BSL. This role includes involving the relevant stakeholders in the process.

3.2 The litigation coordinator is required to review likely litigation cases referred to them prior to seeking input from Legal Services.

3.3 The litigation coordinator is required to consider alternative dispute resolution methods including providing the BSL view at mediation set down by the court/AAT. This could involve seeking input from senior staff from the BSL.

3.4 The litigation coordinator is required to provide feedback to AC/IA emanating from early dispute reports which are prepared by Legal Services, giving reasons why cases did not proceed to hearing and advising of any systemic/procedural issues.

Escalations

Corporate and BSL escalation procedures should be followed at all times. Escalation to and interaction with TCN and COE's are to be in accordance with relevant Practice Statements and corporate instructions.

Referrals to STL are to be in accordance with S&ME's escalation procedures for AC and IA areas to STL (put link in)