SLAUGHTER AND MAY

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Managing cross-border tax investigations: a UK and Australian perspective

Zoe Andrews	Welcome to our Horizon scanning podcast on the risks of cross-border information requests and how to manage them. I am Zoe Andrews, Head of Tax Knowledge and the co-host of our regular Tax News Podcast. I am delighted to be joined today by my colleague Jamshed Bilimoria and Louise Giorgini, a senior associate at Corrs Chambers Westgarth who is joining us from Australia. Hi Louise, it's great to have you on the podcast. Please tell us about yourself and your tax disputes practice.
Louise Giorgini	Hi Zoe, really pleased to be here today. I'm a Senior Associate in the Corrs Chambers Westgarth Tax and Tax Controversy team, and I specialise in controversy and dispute resolution. That covers everything from the transactions stage, to engagement with revenue authorities, all the way to dispute resolution and litigation.
Zoe Andrews	And welcome to Jamshed. Can you tell us about your experience of managing HMRC enquiries and disputes?
Jamshed Bilimoria	Hi Zoe – great to be here. For those who don't know me, I'm a Senior Counsel in our Tax department and I advise on the range of tax matters that we cover as a firm, whether that's contentious or non-contentious. On the contentious side, that could include dealing with HMRC enquiries, taking cases through the tribunals and the courts systems, and things like mutual agreement proceedings.
Zoe Andrews	Tax authorities worldwide have stepped up compliance and enforcement activities, especially in respect of multinational groups. At one extreme, you have "single-authority" enquiries – for example, where a tax authority from country A examines a taxpayer's activity in country A. And at the other, there are cases where two tax authorities wrestle over taxing rights arising from the taxpayer's activity in one of the two jurisdictions. Increasingly, however, there is a third species of enquiry that tax advisors and taxpayers need to have in mind: the joint audit. Today we are going to discuss a broad range of topics including the differences between HMRC and the ATO's processes and powers to request information, practical tips for responding to these information requests, and how to approach a joint audit. We will also touch briefly on the use of Mutual Agreement Procedure to resolve cross border disputes. Firstly, Louise could you give us an idea of the breadth of the ATO's information request powers?

Differences between HMRC/ ATO	
Louise Giorgini	• Of course Zoe. • So there are a few different ways that the ATO can request information from the taxpayer, and these include: (i) informal requests for information, (ii) formal requests, (iii) offshore information notices, (iv) an interview with the ATO, or (v) an exchange of information under applicable tax treaties. • Now the two most common we see in Australia are the informal or the formal requests. • An informal request will typically contain a range of questions asking for documents and information. The ATO tends to use these early on in a review to build up their understanding of a particular taxpayer's affairs. • They're not compulsory, but if you don't respond the ATO will usually treat that as a lack of cooperation and that can lead to formal notices down the track. • So a formal notice, known as a 35310 notice, is a different beast. Significantly more onerous. You generally get thirty days to respond, although you can sometimes negotiate an extension. And importantly, non-compliance is a criminal offence. It can also attract civil administrative penalties. In practice, the ATO typically uses one of these once it's progressed further in its examination, usually at the audit stage. • On top of information requests, the ATO can issue what's called an offshore notice. This relates to documents held overseas that aren't in the custody or control of the Australian taxpayer. Unlike the formal notice, there are no penalties for non-compliance with an offshore notice. But here's the catch. Any documents you fail to produce can become inadmissible in later litigation or proceedings unless the ATO consents to their admission. • Where the ATO feels that documents alone aren't sufficient, they can also request formal or informal interviews with employees of the taxpayer. And for formal interviews, there are civil administrative penalties and strict liability penalties for non-compliance. • Finally, the ATO does have mechanisms under various international tax treaties for exchanging information with other tax authorities, but I believe we'll touch a bit more on that later in the podcast.
Zoe Andrews	So quite broad powers then. And how does that compare with the UK, Jamshed? Do HMRC have similar information gathering powers?

Jamshed Bilimoria	• Yeah. So as you'd expect, HMRC have similarly got both formal and informal information gathering powers. So typically we see HMRC issue informal requests on a voluntary basis, and generally we'd encourage our clients to cooperate where they can to maintain a good relationship with HMRC throughout the enquiry. Now, in any event, failure to comply with an informal request will usually lead to a formal information notice and that must be complied with. Sometimes, though, a taxpayer may actually want or need a formal request to be able to comply with things like contractual confidentiality obligations to do with disclosure of information. And once a formal information notice is issued, disclosure of the information is then required by law. • So a formal information request, commonly referred to as a Schedule 36 notice as it's contained in Schedule 36 to the 2008 Finance Act, and that is a compulsory request for information, as we said. Documents that are requested must be reasonably required to check a person's tax position. So HMRC can't use a Schedule 36 notice as a general “fishing expedition”, hoping to find some potential issue. And failure to comply with the notice within the time frame specified will typically lead to penalties. • Now, a Schedule 36 notice can be challenged before the First-Tier Tribunal, usually on the grounds that the information requested is not reasonably required for the purposes of the inquiry, and HMRC can also issue things called Third-Party Information Notices to obtain information about a taxpayer from people like banks, employers and advisors. Now, Tribunal approval or taxpayer consent is usually required, but a financial institution notice, as they're called, which requires a financial institution to provide information or documents relating to the collection of a taxpayer's tax debt does not require any further approval or consent. • Further, as of 2026, HMRC can now issue a “File Access Notice” as it's called to request documents from tax advisors or other holders of documents in particular circumstances. That's generally where the revenue have reasonable grounds to suspect a tax advisor is engaging in what they call sanctionable conduct, and where a tax advisor has been convicted of an offence relating to tax involving fraud or dishonesty, so in those two situations. Notably, though, HMRC do not need to seek permission from the tribunals to issue a File Access Notice, but if they do seek that permission, the tax advisor can't appeal against the notice. And again, non-compliance results in fines for the tax advisor issued with the notice. • But interestingly, unlike the ATO it seems, the revenue in the UK does not have the power to require taxpayers to attend an interview, except where there's a criminal context.
Zoe Andrews	And it seems to me Jamshed that every year HMRC seem to add to their powers. They’ve got quite an armoury now. Louise, are there any taxpayer safeguards or what can be done to protect the taxpayer from onerous information requests from the ATO?
Louise Giorgini	• There are definitely some important strategic considerations here around how much information you share with the ATO. The key is to engage proactively, and where necessary, try to narrow the scope of what's being requested. • Similarly, where the ATO ask for documents that fall outside of the audit period, taxpayers should tread carefully and think about whether those documents are genuinely relevant before handing them over.

	• To dive a bit deeper, a document is defined very broadly by the ATO. It includes any record of information. So we're talking physical and digital files, recordings, images, maps, plans, even drawings or photographs. That's why it's so important to engage with the ATO to clarify what they actually mean by document, in the context of a particular request, and whether the request could be narrowed. For example, limited to communications or contracts. • It's also important to understand when legal professional privilege applies. LPP protects communications and documents, which were brought into existence for the dominant purpose of obtaining legal advice or for use in litigation that's on foot or reasonably contemplated. These documents don't need to be provided to the ATO, even under a formal notice. • But, and this is important, organisations need to make sure privileged material is handled very carefully to avoid any inadvertent waiver. And keep in mind that the ATO may ask you to explain your claim for privilege, but in a way that doesn't disclose the actual content of the legal advice.
Jamshed Bilimoria	• And I think we've got similar issues in the UK around privilege, Louise. • So, privileged documents in the UK are generally excluded from HMRC's information gathering powers. In theory, however, HMRC can require something quite similar. What they call a privilege log, which has a summary description of each document being withheld on the basis of privilege, but again without actually disclosing the content of that document. • Now, from practical experience, we've found that HMRC is sometimes willing to waive this requirement where you've got large scale document production and we can reassure them that the privilege review has been conducted by legal advisors rather than by the taxpayer directly. So we typically provide HMRC with some kind of covering letter, setting out broadly the kinds of material that's been withheld rather than a document-by-document log.
Practical Tips	
Zoe Andrews	So, what are your practical tips for responding to information requests in either jurisdiction?
Louise Giorgini	Well, there are a few things taxpayers can do to make the process as smooth as possible when engaging with the ATO. • First, understand your obligations under the particular information request. Taxpayers are only required to provide documents within their possession, custody and control. Where offshore information has been requested, make sure you maintain a clear record of the steps you've taken to identify that information. That might include engaging with overseas affiliates, running IT searches, or even communicating with third parties. Be careful not to inadvertently bring offshore documents onshore if it's not intended to provide those documents. • Secondly, I would say engage early. That means with your internal stakeholders and your advisors. • And thirdly, clarify the scope with the ATO. Sometimes requests can be very broad simply because the ATO doesn't know what information exists. It can be really helpful to proactively engage with the ATO through workshops or discussions, and spend some time presenting a clear and coherent factual narrative. Quite often, tax disputes arise from a simple misunderstanding of the facts.

	• And finally, from a practical standpoint, as I mentioned earlier, taxpayers, together with their legal advisors, should identify any potentially privileged material. It can also be helpful to appoint a single point of contact to centralise communications with the ATO and ensure messaging stays consistent. That's especially important when audits and reviews can be ongoing for multiple years. Usually, that will be your legal advisors.
Jamshed Bilimoria	• I think that's right. And certainly on the UK side, it's very important to engage with HMRC and clarify what exactly it is they're looking for and why. For example, if HMRC asks for all emails pertaining to a certain topic, you could seek to agree which individual's inboxes are going to be searched, what search terms are going to be used, what date range is going to be used, and if an initial search within those parameters turns up a very large number of documents, it's often worth a discussion with HMRC to try and further narrow the search parameters. • Similarly, you shouldn't hand over documents to HMRC in bulk without reviewing them. That not only runs the risk of privileged documents being disclosed, but also means you aren't prepared for what HMRC might find or be able to contextualise what might look like prejudicial documents. • Although it brings forward some of the costs, we generally suggest that taxpayers carry out a review of what's being disclosed at what we call the "litigation standard". Not only does that mean you're better prepared, but it also avoids the review having to be redone if the case ends up in litigation. • Now, HMRC will generally ask for information in electronic form, including any metadata, so it's therefore worth engaging with advisors and internal IT teams to consider how you plan to share what can often be very large volumes of electronic data before the deadline.
Joint Audit	
Zoe Andrews	As we mentioned at the start of the podcast, we're increasingly seeing situations where several authorities are engaged in a joint audit. Jamshed, how do joint audits work, and what are the key issues to be aware of if a taxpayer is subject to a joint audit?
Jamshed Bilimoria	• Sure. So these are enquiries that engage with multiple jurisdictions' tax rules. However, they operate within a shared framework that, at least in theory, enables a coordinated and simultaneous examination of taxpayers. The idea is that this should make it easier for both taxpayers and tax authorities to resolve complex cross-border disputes. • As part of this process, authorities may exchange information that is foreseeably relevant to the taxpayer's tax position in the participating jurisdictions. So from a tax authority's perspective, joint audits are a win-win: each authority retains its domestic enquiry powers, but at the same time benefits from visibility over what the other tax authorities are saying and doing. • It may be tempting to dismiss joint audits as nothing more than a collection of parallel local inquiries. However, I think that misses where the real risk lies. The challenge isn't dealing with, say, seven tax authorities. It's dealing with seven tax authorities who are talking to each other. • Approaching a joint audit as if it were just a bundle of several single-authority enquiries – so instructing different local counsel in each jurisdiction, letting each of them run the case in isolation

	– that not only fails to address the specific risks of a joint audit; it often creates risks. Not only do you have duplicated efforts and wasted costs but most importantly you can find that discrepancies between the different responses in different jurisdictions can breed suspicion amongst the tax authorities.
Zoe Andrews	And Louise, are you seeing the ATO taking part in joint audits?
Louise Giorgini	• Joint audits are certainly less common in Australia, the ATO doesn't publish any statistics suggesting they occur regularly, though they are possible and they do mention them occurring on their website. • But for some context, in 2025, 70% of the ATO's income tax audits involved international related party dealings or profit shifting issues. And those often require a level of cooperation with foreign jurisdictions. So, while formal joint audits are less common, exchanges of information and the sharing of intelligence between the ATO and foreign revenue authorities certainly do take place regularly, so you can safely assume that the authorities are talking to each other.
Zoe Andrews	How should taxpayers respond to joint audits then?
Jamshed Bilimoria	• Well, I think local advisors remain essential; so they undoubtedly understand the local laws, local practice and (I think increasingly importantly in our experience) local tone. But, to use a metaphor one of my colleagues shared: in an orchestra of local counsel, what you need is a conductor. That's coordination, and that coordination needs to sit somewhere. • So, for a UK taxpayer, for instance, we would see the natural home for that role as the UK tax advisor. And in acting as the intermediary between the taxpayer and local counsel, that conductor or lead advisor can add value in probably three main ways, I would say. • First, you've got consistency: so it's ensuring that responses – whether its things like business descriptions, tax management strategies, or factual narrative – are all aligned across the jurisdictions. Where you know the authorities are going to be comparing notes between each other, any minor inconsistency can breed suspicion and often invite more questions. • Secondly, you've got strategy. So local advice might well be correct in isolation, but joint audits often require a much more holistic take on risk, sequencing, and strategy. • And thirdly, you've got the domestic angle. A foreign inquiry can have repercussions for a taxpayer's domestic tax position. For example, the joint audit into withholding tax reclaims might directly affect the taxpayer's domestic tax credit position. And in addition, the taxpayer's home authority is likely to be involved in any joint audit. • So the domestic advisor can play a critical role in managing that relationship with the domestic authority and ensuring that overseas affairs don't also cause damage at home.

What can go wrong/ what to avoid	
Zoe Andrews	What do you find can often go wrong when responding to tax authority information requests, and how can the taxpayer avoid these mistakes?
Louise Giorgini	• I think really the key here is to gather your information and evidence early and to manage the provision of key information strategically from the outset. And that may include, as Jamshed mentioned earlier, a forensic analysis to support commercial rationale. • It's also really important to present a clear and coherent factual narrative from day one. As mentioned earlier, many tax disputes arise from misunderstandings of the facts. Practically speaking, you want to start gathering information and evidence as early as possible, and that can even be done before a dispute begins to make sure the business has its best foot forward in case of any future enquiries. • It also ensures consistency over the months and years of review, and ensures that the same message is being communicated to the relevant authority. And remember, the onus of proof rests with the taxpayer. That means you need to retain sufficient records over time to substantiate your tax position. This is particularly important where the ATO seeks historical context beyond the standard four year period of review. For example, information relating to the entry into, or commencement of, the relevant arrangement.
Jamshed Bilimoria	• I think that's right. I mean, one of the places we often see clients go wrong, we think, is not instructing advisors early enough. • It's tempting to try and manage costs by doing the first bits of the enquiry process yourself, of course, but once disclosure exercises are required, particularly large disclosure exercises, it's usually sensible to bring in external advisors at that point. Investing early in that kind of advice can often avoid higher costs later on.
Cross-border disputes	
Zoe Andrews	Shall we move on to the subject of cross-border disputes? In cross-border tax disputes, multiple jurisdictions' tax rules can be engaged which can be resolved through mutual agreement procedures, set out in the relevant tax treaty between those jurisdictions. What is your experience, Louise, with cross-border disputes?
Louise Giorgini	• Cross border disputes are by their very nature complex and have a lot of moving parts, as you would expect, and taxpayers facing cross border disputes will need to think carefully about their options and decide whether to pursue a domestic objection and litigation process first, or to seek relief under the mutual agreement procedure (or MAP) in an applicable tax treaty. Each pathway has different implications in terms of timing, cost, certainty and strategy, and it's something that should be discussed with your legal advisor. • An interesting recent case on this interplay has come out in Australia. *Oracle Corporation Australia Pty Ltd v Commissioner of Taxation* [2025]. In that case, the Full Federal Court granted a stay of domestic tax proceedings concerning a royalty withholding dispute worth over $253m relating to

	software licence fees. The taxpayer had asked for MAP proceedings in Ireland to go first. The ATO argued that the Australian proceedings should continue in the public interest, but the Full Federal Court confirmed that where MAP is invoked, the choice of remedy remains with the taxpayer and it can keep its domestic appeal rights alive.
Jamshed Bilimoria	• Yes. And we've had a similar case in the UK back in 2019: that was *Glencore Energy*. And there the taxpayers had requested a stay of domestic appeals so that a MAP between the UK and Swiss competent authorities could go ahead. HMRC resisted the application on the basis that domestic appeals take precedence, but nonetheless the FTT granted the stay and held that, in accordance with OECD commentary, the choice between pursuing a domestic appeal and MAP should lie with the taxpayer. Similarly, the various corporation tax and diverted profits tax assessments were particularly complex, which weighed in favour of a state of the domestic proceedings, as competent authorities generally have a more specialist knowledge of tax treaties. • The OECD actually published an updated version of its Manual on Effective Mutual Agreement Procedures (MEMAP) in February this year, and that outlines a very similar point. The choice between MAP and domestic remedies generally rests with the taxpayer, and access to MAP should not be contingent on the taxpayer taking actions with respect to ongoing domestic remedies.
Zoe Andrews	In both the UK and Australia, then, the taxpayer can choose which route to pursue first. Louise, what advice would you give to taxpayers considering whether to pursue a domestic or MAP process in the first instance?
Louise Giorgini	• I would say that taxpayers need to think carefully about which route to take balancing timing, certainty, double tax risk and the potential downstream impact of domestic court findings. • One important point to note is that taxpayers generally have no control over the timing or outcome of the MAP procedure. It depends on agreement between the competent authorities. While the ATO has committed to a target of resolving MAP cases within two years, complex cases involving bilateral agreements can take much longer in practice. • Equally, taxpayers need to take active steps during domestic litigation to preserve their objection, appeal and treaty rights. Failure to do so may limit access to relief at a later stage, so it's very important to be proactive on this front.
Good practice to minimise the risk of disputes	
Zoe Andrews	What would you say, then, is good practice to minimise the risk of these disputes in the first place?
Louise Giorgini	• First and foremost, taxpayers need to make sure they're audit ready. That means conducting health or hazard checks and making sure you have comprehensive commercial evidence on file. Where possible, this should be completed for all major transactions that are likely to be scrutinised by the ATO or a revenue authority. • Now, I know that may sound like a lot of work, but it will save a significant amount of time and effort down the road when a transaction does come under review.

Jamshed Bilimoria	• As we know, tax enquiries can come up years after transactions have taken place and can then run on for many years after that as disputes wind their way through the courts. During that time, memories can fade, documents can be lost, and employees can move on or retire. • So where you have transactions that you think are likely to be challenged, having that kind of defence file put together at the time when memories are fresh and documents are still available can be a huge help.
Tax Authorities' current focus	
Zoe Andrews	We are coming to the end of the podcast now, so to finish, what would you say are the key areas of focus for enquiries by the ATO and by HMRC at the moment?
Louise Giorgini	As you would probably expect, the current ATO focus areas are pretty broad. Some of the key ones we're seeing come up a lot at the moment include: • Hybrid measures; • Tax Treaty – Anti Abuse rules; • Transfer Pricing; • Part IVA, which is Australia's general anti-avoidance provision; • Foreign resident capital gains; • Intangibles; and • State payroll taxes.
Jamshed Bilimoria	And I think for HMRC there'll be some pretty similar focus areas: • Transfer pricing and diverted profits tax is obviously a big area of concern. • We also have quite a lot of focus at the moment on what we call the "unallowable purpose rule", which is one of the rules HMRC has in its armoury to deny deductions for financing costs. • A couple of other areas the revenue are particularly focused on in the UK at the moment are things like taxation of partnerships and also the treatment of off-payroll workers.
Recap of key takeaways	
Zoe Andrews	In today's discussion, we have explored how tax authorities are coordinating investigations across borders and what this means for taxpayers. We have outlined the importance of understanding the scope of information requests and that an effective response depends on early engagement with the relevant tax authority. We have discussed how joint audits present distinct challenges and that appointing a legal advisor to coordinate the relationship with domestic tax authorities and overseas counsel is key to navigating these investigations.

Thank you so much to Louise and to Jamshed for joining me today! And thank you for listening. If you have any questions, please contact Jamshed or me, or your usual Slaughter and May contact. Further insights from the Slaughter and May Tax department can be found on the European tax Blog – www.europeantax.blog

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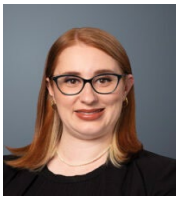

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