



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Biannual hearing with Commissioner of Taxation

FRIDAY, 23 OCTOBER 2009

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**JOINT STATUTORY
COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

Friday, 23 October 2009

Members: Ms Grierson (*Chair*), Mr Georgiou (*Deputy Chair*), Senators Barnett, Mark Bishop, Bushby, Feeney and Lundy, and Mr Adams, Mr Bevis, Mrs Bronwyn Bishop, Mr Bradbury, Mr Briggs, Ms King, Mr Neumann and Mr Robert.

Members in attendance: Senator Feeney, and Mr Adams, Mrs Bronwyn Bishop, Mr Bradbury, Mr Georgiou and Ms Grierson.

Terms of reference for the inquiry:

To inquire into and report on:

Biannual hearing with Commissioner of Taxation

WITNESSES

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Committee met at 10.35 am

D'ASCENZO, Mr Michael, Commissioner of Taxation, Australian Taxation Office

BUTLER, Mr David, Second Commissioner, Australian Taxation Office

FITZPATRICK, Mr Kevin, Second Commissioner, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, Small and Medium Enterprises

OLESEN, MR NEIL, Deputy Commissioner, Superannuation, Australian Taxation Office

QUIGLEY, Mr Bruce, Second Commissioner, Australian Taxation Office

VIVIAN, Ms Raelene, Chief operating Officer, Australian Taxation Office

CHAIR (Ms Grierson)—I welcome everyone here today to the committee's sixth biannual meeting with the Commissioner of Taxation. These meetings are an opportunity for the parliament to hold the tax office publicly accountable for its decisions and operations. The commissioner has an important role and wide-ranging powers. The community is entitled to know whether the tax office treats taxpayers fairly, as well as its capacity to generate the revenue that underpins government programs.

This hearing will also provide an opportunity for the tax office to tell its side of the story on tax administration. We know it has been a very busy year, so where appropriate it can explain its decisions. The tax office can also discuss key challenges and advise us, as legislators, of any legal amendments that will improve tax administration from either its perspective or that of the taxpayers.

I remind participants that the committee will be looking at policy and administration matters only. We are not seeking to act as a review panel for any individual case studies or grievances with the tax office. By law the ATO cannot disclose details of an individual's tax matters.

Before beginning, I advise witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and will attract parliamentary privilege. I welcome the representatives from the Australian Tax Office before the committee. Mr D'Ascenzo, do you wish to make a brief opening statement before we commence?

Mr D'Ascenzo—Yes, I do.

CHAIR—Thank you.

Mr D'Ascenzo—I am pleased to report to the committee on our performance in the 2008-09 financial year. We have provided the committee with a written report that highlights our end of year performance against our outcome statement, our 2008-09 corporate plan, our commitments

to government and independent survey findings. We also welcome the committee's advice on our focus for the coming year.

We delivered on the priorities of the past year against a backdrop of extraordinary events—the global economic downturn, the natural disasters in many parts of Australia, our tight budget position, the extra workloads and commitments we had taken on since the May budget, constitutional challenges and the delivery of the tax bonus payments. These were all commitments met by being adaptive and doing things differently as an organisation.

Some highlights on our performance include responding to natural disasters by suspending correspondence with affected people and businesses, fast-tracking refunds, assisting with the reconstruction of tax records, supporting people in dire financial stress by deferring lodgement due dates, relaxing payment arrangements, providing remissions of penalty and interest, and the release or non-pursuit of tax debts. We provided practical and tailored support to help small businesses through visits, seminars, workshops and phone assistance, as well as early intervention in relation to debt. We also introduced 12 months interest free payment arrangements and deferred activity statement payment due dates for small businesses, as well as reducing the uplift factor on GST quarterly instalments from nine per cent to two per cent from 2010 fiscal year, delivering around 8.7 million tax bonus payments worth around \$8 billion, progress with our change program focusing on releases to meet election and budget commitments, and delivering on our commitments to the community in 22 out of 27 service standards.

The full assessment of our performance for 2008-09 will be included in our annual report to be tabled in parliament next week. You will see a dip in aggregate collections relative to last year, largely attributable to the economic downturn. Significantly, our surveys show that we have generally maintained the confidence of businesses, tax agents and the community. Organisationally, we continue our message of thrift, using our tight financial position as a lever for innovation and productivity improvements. We made progress with our transformational change program, with the schedule for the remaining releases remaining high risk.

On the people front, we focused on leadership, and our new agency agreements provide for greater flexibility, skill development and talent management. Looking forward, our corporate plan for 2009-10 provides a holistic view of our corporate priorities moving into 2010. Our draft strategic statement 2010-15, included in our report, outlines our initial thinking about our longer term strategic direction. I appreciate the committee's views on the direction we are heading in—one based on inclusiveness in working closely with the community in the care and management of the public's tax and superannuation systems. Thank you.

CHAIR—Thank you. Before we proceed, is it the wish of the committee that both the submission from the Australian Taxation Office dated 21 October 2009 and the statement made today by the Taxation Commissioner be accepted as evidence to the sixth biannual meeting? That has been moved by Mr Adams and is authorised for publication.

I think you have outlined for us just what a busy year it has been. The challenges were compounded. It was not just the changes from the global financial crisis, but as you point out, the additional work done with Centrelink and so on, and helping people in relief situations. I know members have had specific involvement in and may wish to further explore those.

We have dealt with compliance and we note compliance issues at these hearings. I suppose we have seen two different aspects in the last 12 months. One has been seen as a generosity by the taxation office with small business and individuals during the global financial crisis, and the other has been your pursuit of higher earners. Would you like to comment, generally, on how those two operations have sat with each other and within the Taxation Office?

Mr D'Ascenzo—Basically it reflects our corporate value of trying to help people over the line who are in genuine need, people who are trying to do the right thing. We have improved our assistance of small business. I mentioned over 100,000 visits, whether it be by phone or personal visits, to small businesses to help them, and our work on debt or people in financial difficulties, deferring payment arrangements, remitting penalty interest. All of that has been seen in the marketplace as very useful for small businesses with short-term issues.

What we also find in an economic downturn is that some people, some by necessity and some by the occasion, tend to increase their risk profiles in difficult economic times, so it is very important for us to be vigilant. The government itself has provided us with further funding to focus on areas of income tax compliance, particularly in relation to high wealth individuals and large companies. We have been doing that. Our focus in both of those areas has been based on prevention rather than cure. We have been highlighting to large business, high wealth individuals and taxpayers more generally that there are opportunities in Australia to obtain a level of certainty in relation to your tax affairs if you want to provide fuller and earlier disclosure of what you propose to do. I am giving the invitation to boards or to taxpayers more generally to think about enhanced relationships with the ATO to provide them with greater certainty in the way that they carry out their business opportunities.

CHAIR—As the recovery progresses will it be difficult to get back to the relationship with taxpayers, particularly those who have been high risk? Do you see that as a long transition process and do you have methods to handle that or a strategy to take that on?

Mr D'Ascenzo—I mentioned in my opening statement the difficult downturn, and the empathetic approach we have taken with taxpayers in genuine need, which operates at the large end as well. In fact, I have had a number of large taxpayers and I remember one vividly. This was a very large multinational corporate group. It wrote back and thanked us for providing them with payment arrangements. In their words, they were facing liquidation and they said, 'This allowed us to refinance our position over time and since then we have been able to pay back the tax that was owing.' That empathetic approach does not only stop at individual taxpayers and small businesses. It goes all the way through the line. The other side of it is that our surveys suggest that we have maintained the confidence. For most taxpayers at all levels that relationship has not been broken. If anything, I think it has been enhanced and that is a positive.

CHAIR—That is good to hear. We had an earlier briefing with Professor Braithwaite looking at people's trust and people's approaches, so that is good to know. You said in your report that there are 102 high wealth audits in progress and another 25 are about to commence. You have exceeded the target of compliance on revenue that you had set, and you certainly have received some publicity. I think you identified 250 new high wealth individuals in the last 12 months. That is greater than \$30 million. The current total of those people is 1,817. Given the press interest, can you tell us whether your approach to those high wealth individuals, through their audits and so on, is consistent or whether it is flexible?

Mr D'Ascenzo—Again, our role is to apply the law in that regard and that is what we do. Across all of our market segments we are trying to look at prevention rather than cure. That is why last year we wrote to high wealth individuals saying, 'Here's some guidance material about the sorts of things that we can do to help you make sure that you are doing things in the proper way.' Most people generally responded to that positively. There were some complaints. Also, while we have met the direct revenue targets that we expected, the real importance of compliance work is actually supporting high levels of aggregate compliance by that segment and by the community more generally. If you look at our trend information on the level of compliance in the high wealth individuals, it has remained at a consistently high level after a very significant boost back in 1998, when the high wealth individuals taskforce was first set up. It has remained consistently high. The way that I measure our success is that we maintained high levels of compliance across the broader community and not just the adjustments that we made along the way.

CHAIR—Before I pass to my colleagues, I would like to know about the other area of high wealth individuals and companies. You said you have annual compliance arrangements with four entities, two around income tax, which are the ANZ and the CBA, and two around GST with Integral Energy and Origin Energy. Can you explain what those annual compliance arrangements entail?

Mr D'Ascenzo—It is an opportunity for businesses to come and work with us early, even before the lodgement of returns, to work out issues up front and to see where their risk management processes have identified potential risks in their tax position. We will disclose to them how our internal risk assessment has disclosed any risk. In other words, we virtually compare our risk profiles of the company and therefore where we have common risks we start to explore how we can resolve those in a quicker way, rather than waiting until after the event.

CHAIR—Do you usually get that started or do they?

Mr D'Ascenzo—We have been marketing the proposition of people entering into annual compliance agreements. It is probably our initiative that we are seeking to have people come in.

CHAIR—There is a bit of a mismatch generally?

Mr D'Ascenzo—We have asked people to do it in this way. We normally do risk assessments and profiling on large companies as a matter of course. With this we say, 'We'll show you what we've done. You show us what you have done in terms of your corporate governance' and therefore we can have surety that the level of risk is manageable, low, or if there are particular issues we can get on to them early to see whether or not we can resolve them earlier rather than later. Mr Konza might be able to say more in terms of the details of the program.

CHAIR—I am happy to move on. Ms Bishop.

Mrs BRONWYN BISHOP—Figures published in the paper regarding Project Wickenby are that you have issued adjusted assessments or identified \$440 million to be collected, of which you have presently collected something in the vicinity of \$340 million. Are those figures correct?

Mr Quigley—The figure raised to the end of August was just over \$440 million, and the collections were just under \$366 million.

Mrs BRONWYN BISHOP—I think I remember the figure of \$242 million coming from a single individual. Is that correct?

Mr Quigley—That is correct. That was one particular matter, yes. I think I am correct in saying that that figure is not included in there.

Mr Konza—That is correct. The \$242 million figure is not included in those Wickenby results. That was a high wealth individual who had arrangements in a tax haven, but it was not progressed under our Wickenby project, it was progressed under the high wealth individuals taskforce.

Mrs BRONWYN BISHOP—It is not in the Wickenby figures?

Mr Konza—That is correct.

Mrs BRONWYN BISHOP—Is the expenditure of \$210 million attached to Wickenby and not to the high wealth individuals?

Mr Quigley—That is right. The expenditure for Wickenby per se is across the whole of the agencies, not only the Australian Taxation Office.

Mrs BRONWYN BISHOP—What percentage of that does the Taxation Office have? Australian police would have something else?

Mr Quigley—That is correct. The Australian Taxation Office has about \$117 million.

Mrs BRONWYN BISHOP—It is more than half, and for that we have collected \$366 million?

Mr Quigley—Just to focus on those figures misrepresents the situation. As the commissioner was saying earlier, we are seeing even greater benefit from people coming in to us and voluntarily disclosing. We are seeing that people who have been identified as being in the Wickenby environment are adjusting their behaviours going forward. The real benefit for the community is that these people are now going forward in a voluntary way.

Mrs BRONWYN BISHOP—Glenn Wheatley did that and they put him in jail, so what about the others?

Mr Quigley—Each case has to be looked at differently. I think it is overly simplistic to say that because somebody might have avoided a large amount of tax they should be put in jail. You have to look to see whether there was criminal behaviour.

Mr GEORGIU—Nobody said that. Can you tell us a bit more about the \$240 million?

Mr Quigley—As Mr Konza said, it was a case of a high wealth individual involving a tax haven. It was quite a complex arrangement, and it is an issue that has a lot of complex legal issues around it. Whether that becomes a criminal matter is another issue.

Mr GEORGIU—I am not talking about the area of criminality. Can you tell us a bit more about the \$240 million?

CHAIR—How did it come to the attention of the tax office? \

Mrs BRONWYN BISHOP—Just a minute. I accept that the \$244 million is in the high wealth category. I would like some figures about how much has been collected in that category over the life of the program. How long is the program's life?

Mr Butler—It was introduced in 1996.

Mrs BRONWYN BISHOP—How much have we collected since 1996?

Mr Quigley—I am not sure I can give you those figures.

Mrs BRONWYN BISHOP—Would you like to take that on notice?

Mr Quigley—Yes. I can only give you more current figures.

Mrs BRONWYN BISHOP—Can you give it to me over five years?

Mr Quigley—I only have 2008-09 figures.

Mrs BRONWYN BISHOP—Can you give me those and take the rest on notice?

Mr Quigley—Yes. They were the figures that were mentioned earlier. I can give you the collections over the three years 2006-09. Approximately \$568 million was collected in that period, 2006-09.

Mrs BRONWYN BISHOP—The \$242 million has really been a great big collection?

Mr Konza—No. I need to correct a misunderstanding here. Assessments have been issued in respect of the case of \$242 million. Objections have been lodged against those assessments and objection proceedings are continuing. We have not yet collected.

Mrs BRONWYN BISHOP—Not a cent?

Mr Konza—No. We said that liabilities have been raised.

Mrs BRONWYN BISHOP—Is that figure of \$568 million liabilities or collection?

Mr Quigley—The \$568 million over 2006-09 was actually collections.

Mrs BRONWYN BISHOP—What were the liabilities raised for that same period?

Mr Quigley—I do not have the liabilities for that period. I have the liabilities for 2008-09, which is \$530 million.

Mrs BRONWYN BISHOP—How much have you collected for 2008-09?

Mr Quigley—I do not appear to have the collections for 2008-09.

Mrs BRONWYN BISHOP—Have there been any?

Mr Quigley—Yes, I am sure there have been.

Mrs BRONWYN BISHOP—Are they within that \$568 million total?

Mr Quigley—Yes, unless things have changed. We publish a table in every year's annual report that has the high wealth individuals' liabilities and collections.

Mrs BRONWYN BISHOP—In that high wealth category, when Graham Richardson's case was settled, was that considered a high wealth individual or was that considered part of Wickenby?

Mr D'Ascenzo—We do not give individual names—

Mrs BRONWYN BISHOP—It was very publicly reported.

Mr D'Ascenzo—unless the committee wants us to, in which case we suggest that you do it in camera.

CHAIR—No. We do not categorise individuals—

Mrs BRONWYN BISHOP—I do. There are a lot of people who are quite shocked that it was settled. It was very publicly reported, and I do not think there is anything improper in my asking you whether it was part of Wickenby or part of high wealth individuals? Is he included in either of those figures?

CHAIR—There is no requirement—

Senator FEENEY—This is a question that should, at the very minimum, go in camera.

CHAIR—That is right.

Mrs BRONWYN BISHOP—I am not raising anything that has not already been in the press.

CHAIR—We do have a protocol here that we do not pursue individuals by name and so on. It is very easy for us to slip into that, but it is not our practice. You can most certainly take that up in another way.

Mr ADAMS—Can I ask a question?

CHAIR—Certainly.

Mrs BRONWYN BISHOP—Perhaps I can ask for my question to be answered.

CHAIR—If other members have questions on Project Wickenby, that is very much needed, but I would like to add that you also told us that 46 people under Project Wickenby were charged with indictable offences. Can you tell me how many of those progressed to actual court cases or prosecution? We know only one has gone to jail.

Mr D'Ascenzo—There have been four who have gone to jail.

CHAIR—Can you give me the breakdown on those 46 people?

Mr Quigley—A breakdown of the 46?

CHAIR—It is in your report. It says that to the end of August 2009 some 46 people have been charged with indictable offences. That is all it said. It did not say what happened with those people.

Mr Quigley—That is right. Forty-six people have been charged, which means that they are in various stages of the criminal process, which is of course conducted by the Director of Public Prosecutions.

CHAIR—Mr Adams, I did not realise that you had a plane to catch. My apologies. Would you like to put your question to the tax commissioner before you go?

Mr ADAMS—I appreciate that. I was interested in the phoenix companies and superannuation. Due to the circumstances of the economic slowdown have there been any more cases emerging? Has anyone been prosecuted in the last 12 months? In the last hearing you were talking about new systems and intelligence in this area. Can you give me some overview on that?

Mr Konza—The incidence of phoenix activity is growing. It is hard to say whether it is due to the economic conditions or whether it is due to people promoting and getting more involved in such activities. We recently secured a conviction, which involved a custodial sentence. I cannot tell you anything more than that because the judge ordered that the details of that case be suppressed because that person is going to give evidence against two principals of the company and their trials are coming up. We have about half a dozen more cases either with the Commonwealth Director of Public Prosecutions or on their way to them. We are working with ASIC to try to identify phoenix operators and take appropriate action between us.

It is so difficult to investigate and prosecute all these cases. What we are trying to do is identify those who get involved in phoenix and monitor their activities very directly so that they cannot get into a position of indebtedness to the tax office. We received funds in the last budget to help us do that. To try to suppress the risk we identify those who are active phoenixes. We have people who check their BAS lodgements and their income tax return lodgement every

period and are on to them straightaway if they are the slightest bit late. That is a suppression technique more than anything else.

Mr D'Ascenzo—One more point is that we also tried to look at a very strategic level, working with Treasury and ASIC, about whether or not further legislative change would be warranted. I think there is a paper to government suggesting legislation that might strengthen the hand of the Commonwealth in these cases.

Mr ADAMS—My last question is probably to the commissioner. In relation to the G20 and the activities going on at that level with tax havens, how many Australian registered companies would we be looking at that would be registered overseas or have tax havens somewhere overseas? Have you got a number?

Mr D'Ascenzo—I do not know precise numbers. It is not unusual for businesses to have involvement with tax havens. Not all tax haven activities are necessarily illegitimate from a commercial or legal prospective. Our main concern with tax havens is what we call the abusive use of tax havens.

Mr ADAMS—We might disagree with that.

Mr D'Ascenzo—I understand. Again, under the law—and that is all I can look at—it is a question of whether or not people have hidden wealth that should be subject to some Australian tax. That is the focus that we have. Another area of focus is within the law which has its own, what are called, attribution regimes, so that if you control a company in a tax haven part of the income in that company should be attributed back to Australia. The law itself countenances the fact that people can operate legitimate business through tax havens if they wish, but there are laws in Australia, which not all countries have, that try to bring back some of the share of the profits to Australia.

Mr ADAMS—What about the G20 trying to deal with some of that, where people do not pay any tax in any country? I am interested in whether we are trying to knock over the Cayman Islands, which have thousands of companies registered in them.

Mr D'Ascenzo—At a political level, there are three perspectives. One is the secrecy of those tax haven arrangements. I think there has been a very strong push and strong support across all the G20 countries that that is unfair. Australia, along with a lot of other countries, has been pushing exchange of information agreements with tax haven countries and we have been reasonably successful, as a government, in signing a number of those agreements. That has been promoted. We are also seeing a number of tax havens now agreeing to the OECD's standard article in agreements and that will allow exchange of information. At that secrecy level I think significant progress has been made. There is a wider political question, which is outside my bailiwick, about whether or not unfair tax competition is a good thing for the economy.

Mr ADAMS—Thank you.

CHAIR—We are going to go back to Wickenby and high wealth individuals, and then we will come back to those areas.

Mrs BRONWYN BISHOP—Will we come back to phoenix?

CHAIR—We will certainly come back to phoenix.

Mr GEORGIU—There has been some misapprehension about the nature of that \$242 million. Could you tell us what the situation is?

Mr Quigley—I am not sure what you mean by ‘situation’?

Mr GEORGIU—Some people have thought that that was money that has actually been collected.

Mrs BRONWYN BISHOP—Yes, I did.

Mr GEORGIU—I am asking for clarification. Can you please tell us what is happening?

Mr Quigley—A lot has happened and is happening. What has happened, as Mr Konza said, was that assessments have been raised for \$242 million, which includes tax penalties and interest. What is happening is that the individual involved has objected to those assessments, which is all part of the process under the law. Those objections are being considered.

CHAIR—By a legal team or by whom?

Mr Quigley—They are being considered, as objections are, within the tax office.

Mrs BRONWYN BISHOP—Not by the AAT?

Mr Quigley—No. If those objections are disallowed in whole or in part the taxpayer has the right to appeal to the Federal Court or the AAT, which is the Administrative Appeals Tribunal.

Mr GEORGIU—This is quite puzzling, because you kept on dragging the issue of imprisonment in, which nobody has raised.

Mr Quigley—I thought Mrs Bishop said something about criminal proceedings.

Mrs BRONWYN BISHOP—I asked about the Wickenby criminal proceedings and that is why I am interested.

Mr Quigley—There was no suggestion on my part that there are criminal proceedings.

Mr GEORGIU—There was no suggestion on anybody’s part.

Mrs BRONWYN BISHOP—With respect to the names of individuals and what happens to them, the precedent was set by the tax office when Philip Smiles was named. I do not accept that you do not discuss individuals publicly. That was established when you did it.

Mr GEORGIU—Basically, you have asserted, he has rejected and it is in the process of going through to a conclusion. Can you take on notice that I would like figures for the monies raised and the expenditure on Project Wickenby and the High Wealth Individuals Taskforce since their respective inception?

Mrs BRONWYN BISHOP—Before you get to the \$242 million, can you tell us what component is primary tax and what component is penalty and interest, GIC?

Mr Quigley—I do not have that off the top of my head.

Mrs BRONWYN BISHOP—Can you take that on notice?

Mr Quigley—Certainly.

CHAIR—I interrupt because Mr Bradbury is at an economics committee inquiry today and I know he has limited time.

Mr GEORGIU—I am really sensitive to your needs, but I have one more question.

CHAIR—Certainly. We are trying to finish off the Wickenby and high wealth individuals area.

Mr GEORGIU—Sometimes the attempt to facilitate procedures actually takes more time than just letting them go.

CHAIR—Let us be mindful.

Mr GEORGIU—Is the comparison of those two projects capable of leading to a conclusion that one was more efficient/effective than the other?

Mr D'Ascenzo—I am not sure, in that bald sense, whether that is so. I will give you my reflections on this.

CHAIR—And reflect on whether you are comparing apples with apples as well.

Mr D'Ascenzo—All I am saying is that when I look at the high wealth individual taskforce—and we will provide the figures over time—from memory, there have been collections or liabilities raised of about \$1.5 billion. There has also been a range of losses disallowed that otherwise would have been available. That is a sizeable amount in itself, but as I indicated at the beginning, the real success of the high wealth individuals was to lift the general level of compliance in that sector to what was appreciably higher than would have been the case even if you adjusted for economic growth and other economic conditions. It is that indirect voluntary compliance effect that I think was very useful. I also think it is very important that there is a message that everybody in Australia is subject to the same laws and that there is consistency in administration. I think that has been a very useful exercise and that is why the government has continued to fund it over many years.

I know we focused on what was raised with Wickenby in terms of liabilities. It sends a different message. This is more about people hiding and concealing money offshore. It comes back to the argument that we had about how good the G20 is in terms of opening up tax havens. The intent from day 1 for Project Wickenby was to send the message to say that this behaviour is really un-Australian. It is fraudulent, an evasion activity and the Commonwealth will, working together with a whole range of Commonwealth agencies, have serious consequences for that activity. At the same time, knowing that we are not going to be able to necessarily follow through, detect or prosecute, we are trying to give people the opportunity to come forward. If they come forward we are trying to provide them with more concessional arrangements that allow them to move on. I do not rate the projects from the direct revenue at all. I rate the projects in terms of the impact that it has had in terms of community perceptions of the fairness of the tax system. I think the fact we are talking about both of them here indicates that it is in the public eye.

Mrs BRONWYN BISHOP—Is Glenn Wheatley the only one who went to jail?

Mr D'Ascenzo—No. There have been four.

CHAIR—We will get back to that. I need to move to Mr Bradbury. I am very mindful of our quorum and commitments of members. Mr Bradbury.

Mr BRADBURY—That is a good point to pick up on. I wanted to ask one question in this area and then to move on to some discussion of the Inspector-General of Taxation's review of the ATO's administration of public binding advice. In respect of the issue of voluntary disclosures, as a result of the additional spotlight that has been given to some of your enforcement activities, I noted your comments in relation to the attribution regimes. Are you able to detect any correlation between those elements of the tax law under which these additional tax liabilities—in the form of voluntary disclosures—have come forward? Have they been in respect of income that was not brought to account under the attribution regimes or would that be an oversimplification?

Mr D'Ascenzo—No. I think we are covering two different subject matters. When you are looking at the attribution regime it is really normal commercial activity being carried out in a tax haven but controlled from Australia. It is not hidden income. Whereas when you are looking at Project Wickenby you are looking much more at hidden income. On one end it is just the application of the law to commercial activity carried out under your control in a tax haven, and under Wickenby it is more evasion-type activities or income that has been left offshore that has derived further income and has not been brought to account in Australia at all.

Mr BRADBURY—The reason why the attribution regime is not as effective as it might be is because of secrecy laws that might prevail in some other parts of the world. I wonder whether or not some of these disclosures have, in fact, been from individuals or entities that are responding to the fact that their activities were otherwise occurring within jurisdictions where those secrecy provisions allowed them to not disclose income under the attribution provisions?

Mr D'Ascenzo—I have not seen that link.

Senator FEENEY—I have a related question.

CHAIR—We will come back to that.

Mr BRADBURY—In the Inspector-General of Taxation's review into public binding advice he made a number of recommendations, some of which the tax office has agreed with, some partly agreed to and some that have not been agreed to. There were two issues. One was with respect to some of the non-binding published advice, in particular the supplement to the TaxPack and the annual guidebook on rental properties. I understand that the recommendation of the Inspector-General was that those items should fall under the heading of general administrative practice and, therefore, provide taxpayers with the protection that flows from acting in a way consistent with the advice provided in those documents. Could I have a response to that suggestion? It seems to me that that would be a very sensible suggestion, but I understand that recommendation has not been wholly adopted by the ATO?

Mr Fitzpatrick—We issue a number of different products. Some products are in the form of guidance to taxpayers, which according to the law are not binding, although obviously we stand by them as much as we can. As a general rule, if we change that view in a ruling it is legally binding so any change of view can only be prospective from the date of effect.

We had a lot of discussion with the Inspector-General about what a general administrative practice means. We agreed to seek further legal advice to clarify the meaning of the term in the law. Various types of guidance products we issue may evidence a general administrative practice. The law provides, in those circumstances, protections from penalties and interest. As I said, if we have a practice which we then change, as a general rule, except in tax avoidance cases, we would not go back and amend past years if a taxpayer complied with our practice over a period of time. That is our policy and it has been for many years.

Mr D'Ascenzo—Except in avoidance.

Mr Fitzpatrick—Except in avoidance cases it is.

Mrs BRONWYN BISHOP—Not quite.

Mr BRADBURY—I would like to drill down and ask the question more simply. Do the supplement to the TaxPack and the annual guidebook on rental properties contain binding advice?

Mr Fitzpatrick—Some parts of the TaxPack are legally binding and we call that a legally binding public ruling. In that sense, under the law it is a legally binding part of the document. If we get it wrong we can only change it going forward. Some parts of the TaxPack are not.

Mrs BRONWYN BISHOP—In 2008 the TaxPack was said to be a public ruling and taxpayers were covered. In the words of the TaxPack, itself, it states:

The TaxPack is a public ruling for individuals who use it reasonably in good faith to complete their 2008 personal tax return. This means that if we stated the law incorrectly, or our advice on the application of the law is incorrect and as a result you do not pay enough tax, we will not ask you to pay the tax.

In 2009 you say that your commitment to us is:

If you follow our TaxPack 2009 and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money we must ask you to pay it, but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

Was it your decision to change the attitude from 2008 to 2009?

Mr D'Ascenzo—No. It was a change from a thicker TaxPack to more of a guide format.

Mrs BRONWYN BISHOP—Why? What justified that? Did you lose money?

Mr D'Ascenzo—No.

Mrs BRONWYN BISHOP—How much money did you lose?

Mr D'Ascenzo—What justified it was that people were saying, 'We want guides to be practical, not legal treaties. We want things that we can just follow as guides and go on with our business, rather than trying to have things that are complicated and put in legal terms that really force us back to accountants and lawyers.'

Mrs BRONWYN BISHOP—I have heard that argument; that you say you want to go to legalese. For years the TaxPack has been regarded such that, if you follow it, you are okay. Suddenly, in 2009 you say, no. I want to know: have you done an assessment on saying that the taxpayer can rely on your TaxPack? Have you lost money and, if so, how much?

Mr D'Ascenzo—No, we have not lost money.

Mrs BRONWYN BISHOP—Why did you change it in 2009?

Mr D'Ascenzo—The principle is that we are moving to guidance that is practical for people.

Mrs BRONWYN BISHOP—There has to be a better reason than that.

CHAIR—Mr D'Ascenzo, I must say that Professor Braithwaite would say to you, from her information today, that people were asking for simple information.

Mr D'Ascenzo—That is the feedback that we have had.

Mrs BRONWYN BISHOP—They want it to be binding. They do not want you to go back.

Mr D'Ascenzo—Only accountants and lawyers want that.

CHAIR—Mr Bradbury, you were trying to explore a point with your previous question.

Mr BRADBURY—I accept the point you are putting, that it is important that the vast bulk of taxpayers who do not have access to legal advisers have a clear understanding of what their legal obligations are. The principle that I am concerned about is that those two documents that I referred to are probably the two documents that most individual taxpayers refer to in attempting

to meet their obligations under the tax law. I think that most individuals filling out their tax returns would be horrified to learn that they would not have the degree of protection currently that they previously had in adhering to the advice that was provided in those documents.

Mr D'Ascenzo—That occurred over many years. I think it was from 2006 to 2008—a two-year period. The normal position has been that the guide is a guide. As Mr Fitzpatrick said, our general practice is of people being reasonable. We do not go back in those sorts of situations. Once you start to make something legally binding then you have to use legal terms.

Mrs BRONWYN BISHOP—Where is that one?

Mr D'Ascenzo—The fact is that you have to protect the community in terms of what is precise.

Mrs BRONWYN BISHOP—Then write a precise booklet.

Mr D'Ascenzo—I can take you back to the TaxPack. When we did the first TaxPack a decade ago it was a much thinner product and there were some concerns from the accounting and law profession that we did not cover every single situation, so it was translated into a 112-page booklet and we had a jump in the number of people that went to tax agents because they found it difficult.

Mrs BRONWYN BISHOP—Yes, they were frightened to death.

Mr D'Ascenzo—What we have heard from small business as individuals is, 'Just give us a guide.'

Mr GEORGIU—Do not take us back in history. What happened between 2008 and 2009?

Mr Fitzpatrick—As the commissioner explained, the TaxPack was changed from 2008 to 2009.

Mrs BRONWYN BISHOP—I just read it out.

Mr GEORGIU—What happened and why?

Mr Fitzpatrick—We wanted to provide guidance to people as to how to comply with their affairs when lodging their tax return. From the surveys of individuals and small business, they want clear, concise and simple guidance, not in legal precision terms. Part of the TaxPack in 2009 is legally binding, the same as it was in 2008.

Mrs BRONWYN BISHOP—Page 112.

Mr Fitzpatrick—The other part, which is less expressed in legal terms, but rather in guidance terms, is like many of our products. Most of our products, in a similar vein, are in terms which we—

Mr GEORGIU—I am not asking the question sufficiently clearly. Let me try to do so. What change occurred between 2008 and 2009? Did you have a significant addition of information in 2009 than you had in 2008? Did you become more legalistic? That is what I am trying to get at.

Mr D'Ascenzo—We have moved to have guides in a more practical sense. Also, as to the individuals that used paper returns and TaxPack, we started out with about three million individual return preparers. We now have over two million of those preparers using e-tax. We have now got a lot of information on e-tax and we are trying to present that. There has been more information provided to taxpayers on the e-tax process. We want to make that not in terms of legal arguments, although there is a fair bit of legal argument if you want to go behind what you want in TaxPack and what you want in guides, simple guides, 'Follow this. You will be okay if you are reasonable.' I can use the argument the other way around. There is no occasion that we have gone back and been unreasonable in regards to people who have tried to do the right thing.

Mrs BRONWYN BISHOP—There is nothing to stop you doing that. Why can you not state that in the undertaking?

Mr D'Ascenzo—Because everything becomes binding and then people start playing games about arguing whether a guide is legal or not legal and does this word mean that. I then have to be very careful about the words I use and it actually narrows the help that I can give people.

CHAIR—Can Mr Bradbury finish.

Mr BRADBURY—The reason I ask the question is not because I am on some witch-hunt as to what has occurred that has changed this. It seems to me that you have gone about trying to provide sensible advice to people that they understand, and that is an objective that should be pursued.

Mr D'Ascenzo—That is right.

Mr BRADBURY—The issue that I am concerned with is the very large number of taxpayers that want to be able to lodge their own tax return, and whose financial affairs are very straightforward—call them the plain vanilla taxpayer if there is such a thing. In most cases they have already met most of their tax obligations because they are pay-as-you-earn employees. I want to be clear that those people—providing they are acting in good faith—if they are relying upon the substance of the only document that most taxpayers in that situation will have any reference to, that they are not going to be exposed or find themselves in any difficulty.

Mr Fitzpatrick—Generally speaking, that is correct. They are protected. The law protects them in the case of binding rulings, but in the case of those guidance products we have made it clear. We do not get them wrong generally, so there is not an issue for most people most of the time. If we did get something wrong in one of those products and then corrected it, as we have said, our policy has been the same for many years. Unless there is a tax avoidance situation involved, we do not go back and change past year assessments when taxpayers have relied on advice in those guidance products that we have provided.

Mrs BRONWYN BISHOP—You cannot go back because you have previously given them an undertaking.

Mr BRADBURY—Just to be satisfied that the plain vanilla taxpayer has a degree of comfort and protection that they are meeting their obligations, what are the matters that are excluded from the binding nature of the advice provided?

Mr Fitzpatrick—Our legal framework provides that if we issue a public ruling or private ruling to an individual taxpayer they are legally binding on the commissioner. We cannot change that ruling and go back and amend past years. All other products, besides the public rulings and the private rulings, are not legally binding under our laws. As I have said, we provide protection to taxpayers who rely on those guidance products. The law provides protection from penalties and interest. We say that, if you follow those products, comply with them in accordance with those products, we will not go back and amend if we change that view, or if we got it wrong, for example. We do not often get it wrong, but if we happen to get something wrong, we will not go back and change past years unless there is tax avoidance involved. That has been our policy for many years. You can be comforted that the taxpayers that you are talking about have got protection in that sense.

Mr BRADBURY—I am talking specifically about the document itself, the TaxPack, where there are parts that are not legally binding.

Mr Fitzpatrick—That is correct.

Mr BRADBURY—On what basis was the decision made to separate some of those matters into binding and non-binding?

Mr D'Ascenzo—It is the same sort of process. Next year the TaxPack will be even thinner because the number of people using it has reduced. It will be much more of the old guide style, which is not really appropriate for a binding ruling regime. It was just a transition to a situation where most taxpayers either use e-tax or they use tax agents. The individual preparers are now under a million out of about 11-odd million people. 'Here is the guide. Follow it.' As Mr Fitzpatrick said, there has been no occasion where we have been unfair to people who have tried to do things reasonably.

Mr BRADBURY—There is guidance throughout the process with e-tax in submitting a return. Is any of that considered to be advice?

Mr D'Ascenzo—It is just normal guidance. Once you start to think about the various circumstances of all the range of people, we could have arguments—not that we have had them—in theory because when you try to cover generic advice and guidance on income you are not going to be able to cover all the various different circumstances that more complex taxpayers may get involved with.

CHAIR—I will just make an interesting observation that you might comment on later. I am going to point out that in your surveys the least satisfied group was the legal profession. Perhaps we have seen some of Mr Bradbury's experience being reflected in your surveys. Mr Georgiou.

Mr GEORGIU—I am sure that every committee needs a like mind. I would like you to come back to us with what the components of the \$240 million are.

Mrs BRONWYN BISHOP—He has given me that undertaking.

Mr Quigley—I have already agreed to break that up into primary tax, penalty and interest.

Mrs BRONWYN BISHOP—Thank you.

Mr GEORGIU—I wanted to go back to the comparison between Wickenby and the high wealth individuals. Your response was that they are directed at different purposes?

Mr D'Ascenzo—No, not directly different purposes. All I am saying is that one was a focus on high wealth individuals in terms of that segment of the community to give the community confidence that they are paying their fair share of tax. The outcome of the work that we have done has been to lift the general level of compliance in that group to high levels. Wickenby is very much trying to send a message that if people try to evade their responsibilities by using abusive use of tax havens through secrecy provisions, then there is a real risk that the Commonwealth, acting as the Commonwealth, can track that down and there will be consequences.

Mr GEORGIU—In the case of one you have indicated a concrete success measure and, having been lifted initially in 1996-98, that has maintained a high level. What are the tangible indicators of success of Wickenby, given that you seem to be discounting the significance of the money raised?

Mr D'Ascenzo—At a reporting to government level, the amount of money raised is a criterion and we are meeting that criterion. All I am saying is that there is a more important criterion there, and I agree that it is not easy to measure.

Mr GEORGIU—What indicators do you have?

Mr D'Ascenzo—As part of our inquiries we have followed through on a number of promoters that might have been involved in these sorts of arrangements. We know there have been at least two arrangements where they had planned to funnel through to tax havens money in the order of hundreds of millions of dollars but where they have not done that. We also have anecdotal information from accountants and lawyers who have said that they have had people coming to them and saying, 'I would like to have my tax reduced, but I don't want to get involved in any of that overseas stuff.' We have surveys in terms of an increase in recognition of Project Wickenby within the community.

CHAIR—Would you see both programs as being fairly successful at this stage?

Mr D'Ascenzo—Yes, I would.

CHAIR—Senator Feeney has been waiting quite a long time.

Senator FEENEY—I have one question pertaining to Project Wickenby. It goes to how the tax office handles these cases. I am not inviting you to comment on any individual case. Have there been occasions when persons or entities have been identified through Project Wickenby and, as a consequence, the tax office has engaged with those persons or entities in negotiations, legal action or whatever it might have been, and as a consequence of that engagement that person or entity has thereafter been dealt with pursuant to your high wealth individuals program rather than Project Wickenby?

Mr Konza—Yes.

Senator FEENEY—That is the end of my Wickenby questioning.

CHAIR—Is that in consultation with the other agencies or is that a decision that the ATO makes solely?

Mr Konza—That is a decision that the ATO makes. The answer is yes to both. Obviously the other agencies have an interest in understanding the criminality of the Wickenby-type behaviour. The reason that these cases are often done in the high wealth individuals taskforce is that having our attention directed at that individual we are interested in their total compliance.

CHAIR—Over the next 10 or 20 years?

Mr Konza—Yes. We also look not only at the tax haven activity but any other activity that may have been—

Senator FEENEY—Can you give us any assurance that the decision to have such persons or entities dealt with through the high wealth program rather than the Wickenby program does not arise from that person or entity seeking to be dealt with by an inquiry that may stigmatise them and their activities less?

Mr Konza—We have a memorandum of understanding with the Commonwealth Director or Public Prosecutions that requires us to refer any cases where we suspect criminal activity has taken place. Those people, having been investigated by the high wealth taskforce, would be reported for the consideration of the CDPP. It is their decision.

Senator FEENEY—Let me explain where I am going, because we are practical folk. Our interests are the same as your interests. We want you to get the money that taxpayers and the broader community are entitled to see obtained. My interest is this. It might be, in the end, that the total success of Project Wickenby is not apparent.

Mr GEORGIU—He is trying to be helpful so it does not obscure the issue so that you cannot attribute one to one, which is actually—

CHAIR—I do not think he needs your help. Would you like to continue, Senator Feeney.

Senator FEENEY—It is a shame to see a fellow Victorian accuse me of such villainous things.

Mr GEORGIU—It was a bit transparent at the beginning.

Senator FEENEY—My concern is that the total success of Project Wickenby may not be fully comprehended because many of the liabilities and collections that arise from it are collected by separate programs.

Mr Konza—The success of Project Wickenby is to stop the use of tax havens.

Mr D'Ascenzo—Abusive use.

Mr Konza—Abusive use of tax havens.

Mr GEORGIU—I am sure when you are reporting you attribute across from Wickenby to high wealth individuals so, therefore, a proportion, in cash terms, is attributable to one rather than the other. I am sure you would do that.

Mrs BRONWYN BISHOP—I guess the guts of the question is: with the individual who was identified under the high wealth program and the liability for \$242 million, should that have been part of Wickenby and why was it not part of Wickenby? It was such a large amount of money. Have there been any prosecutions at all under the high wealth program? We have established that there have been four convictions with jail sentences under Wickenby, but we have not established how many prosecutions we have had? Can we have all of those figures?

CHAIR—I did ask for that information. Forty-six people have been charged with indictable offences and I wanted to know what had happened to those.

Mrs BRONWYN BISHOP—Are they all under Wickenby?

CHAIR—You are going to give me that on notice; is that right? This was under Wickenby.

Mr Quigley—They are under Wickenby and we will take those on notice.

Mrs BRONWYN BISHOP—Are there any prosecutions under the high wealth program and/or any convictions?

Mr Konza—There have been no convictions. I would need to check whether there have been any charges. I will need to take that on notice.

Mrs BRONWYN BISHOP—Did that particular case begin under Wickenby and get transferred to the high wealth program?

Mr Konza—No. That case was identified within the high wealth program. What happened was that the members of the high wealth individuals taskforce became aware of business purchases being made by a person. We wondered where they had got that money from. We became aware that they had sold assets in another country. When we made the inquiries we found that they had attempted to cover their tracks.

Senator FEENEY—Is that a legal term?

Mr Konza—I was trying to think of something that would be less offensive to the individual. They ran the money through a tax haven and tried to use the secrecy of that haven to hide those proceeds.

Mr D'Ascenzo—I might add that this is all alleged, because the taxpayer might want to appeal.

Mr Konza—We have raised assessments on that basis, but they have objected.

Mrs BRONWYN BISHOP—Going back to the four convictions under Wickenby, were they all people like Mr Wheatley, who came clean, as it were, and offered up the information or did they fight you?

Mr D'Ascenzo—None of the people convicted had made voluntary disclosures.

Mrs BRONWYN BISHOP—Mr Wheatley did.

Mr D'Ascenzo—I do not want to get into individual ones.

Mr GEORGIU—I would like to pursue your point. That means that the \$242 million could have fallen quite properly under Wickenby because it did involve tax havens?

Mrs BRONWYN BISHOP—Yes.

Mr GEORGIU—I am just asking. I am not drawing any particular point.

Mr Konza—I am not sure that we have said that it came under Wickenby. It was Mr Quigley's speech, but that is not my understanding. All we have said is that here is the type of thing that happens. This person has made a lot of money and they have abusively used a tax haven.

Mr GEORGIU—What you said was that it involved a tax haven. My question was quite simple. Could this case have fallen under Wickenby given that Wickenby is about tax havens? I did not say anything other than that. Why are you so sensitive about this?

Mr Konza—I thought you were saying that we were saying that it was under Wickenby. I was just clarifying—

Mr GEORGIU—There are two heads. You can do it under Wickenby, which is focused on tax havens, or you can do it under the high wealth individuals taskforce. Without going too deeply into the facts of this specific case, could it have fallen under Wickenby? That is quite straightforward. It is a simple naïve question.

Mr Konza—It is a matter of choosing which set of investigators are going to look at the situation. As I said before, we have so far put all cases where someone is a high wealth individual through the—

Mrs BRONWYN BISHOP—One stream goes to prosecution and the other does not.

Mr Konza—No. I made that very clear before. All of our officers are under an obligation to report instances of criminality to the CDPP. There is no difference in treatment if they go through high wealth or if they go through Wickenby.

Mr GEORGIU—The commissioner clearly differentiated between the purposes of Wickenby, which is about the use of tax havens, and high wealth individuals, which was not.

CHAIR—There can be overlap.

Mr D'Ascenzo—I did do that. There can be an overflow.

Mrs BRONWYN BISHOP—Why do we have two programs?

Mr D'Ascenzo—If we were to find such a situation, let us say Project Wickenby had seen the tax haven leg and then blew that out into a wider one, it could conceivably come within a Project Wickenby environment. Project Wickenby is really just our work in terms of following up abusive users of tax havens. This could conceivably come within that. It does not necessarily mean that all those cases that we see under Project Wickenby would go to prosecution. Under Project Wickenby you have Operation Wickenby, which is an Australian Crime Commission led task/objective, and they do have a criminal prosecution angle to their Operation Wickenby. We have a wider Project Wickenby, which would cover a whole range of assessments that we have raised. Most of these cases that are under assessments are not cases that will necessarily go to prosecution.

CHAIR—Mr D'Ascenzo, in answering Mr Adams about the G20 and international cooperation, you said that there have been many more countries now that have adopted the OECD standard. In the EU what are the notable exceptions that have not adopted the OECD standard in terms of tax havens?

Mr D'Ascenzo—I am not sure about the specific countries. I was harking on the comment made by Switzerland that they were going to accept it, and that is a large one.

Mrs BRONWYN BISHOP—That is right, and Portugal as well.

Mr D'Ascenzo—Outside Switzerland you have Singapore and Hong Kong also saying that they were going to accept that wider one. I am not sure what others. We could probably provide that to you on notice.

CHAIR—Yes. I would be very interested in some information on that update. Thank you. Ms Bishop.

Mrs BRONWYN BISHOP—I would like to go back to the 46 prosecutions under Wickenby.

Mr Quigley—That is 46 people who have been charged.

Mrs BRONWYN BISHOP—It said convictions.

CHAIR—No, prosecutions. People 'charged with indictable offences' is the wording.

Mrs BRONWYN BISHOP—No, ‘prosecutions’—46 people, four convictions. How much money was collected from the 46 who were charged?

Mr Quigley—I do not have that information. We will attempt to take that on notice to get that.

Mrs BRONWYN BISHOP—Thank you. The four convictions are part of the 46 prosecutions, I take it?

Mr D’Ascenzo—Yes.

Mrs BRONWYN BISHOP—A ratio of 46 to four—

CHAIR—Being charged does not mean they were prosecuted, does it?

Mr D’Ascenzo—No. It means that they are in the course of being prosecuted.

Mr Quigley—This is my point.

Mrs BRONWYN BISHOP—I am coming to that point. Can you tell me how many of them are on foot?

Mr Quigley—I will need to double-check on whether the four were included in the 46. If so, we have 42 on foot.

Mrs BRONWYN BISHOP—How many cases of the 46 are completed?

Mr Quigley—Now I see what you are getting at. You are saying: how many of those went to prosecution but failed? I do not have that information.

Mrs BRONWYN BISHOP—I would have thought that figure would be on the top of your head.

Mr D’Ascenzo—That is not the case. I am not sure. I think none has been desisted other than one, which did not go further. I am not sure if that was charged at that stage. Of the 46 I think they are still all on foot, other than the four.

Mrs BRONWYN BISHOP—Are they before the court?

CHAIR—We have already asked for that information on notice and the tax office has agreed to give us that information.

Mr D’Ascenzo—Most of them are. Again, we have hearing dates set and a whole range of legal processes.

CHAIR—And you are going to give us that information.

Mrs BRONWYN BISHOP—All 42 outside the four convictions are not completed?

Mr D'Ascenzo—That is what I believe.

Mrs BRONWYN BISHOP—Thank you. Will you take on notice the amount of money collected?

Mr D'Ascenzo—In relation to those 46, yes.

Mrs BRONWYN BISHOP—Why did we call it 'Wickenby'?

Mr D'Ascenzo—I am not quite sure.

CHAIR—I would like to move to another area of prosecutions and the phoenix situation. Your report to us said that since 2000 some 10 company directors had been prosecuted under phoenix arrangements. That is a long time and not very many prosecutions, yet you have also told us that phoenix behaviour is growing. Would you like to comment on the difficulties or why there are so few prosecutions in terms of phoenix companies?

Mr D'Ascenzo—I will ask Mr Konza to do that. I must admit that, as we have shared with the committee and the committee has shared with us, this is not a practice that we would like to see grow or continue. It hurts a lot of people along the way. Anything we can do to stop it is important. I think quite an important progress point has been the fact that we have worked with Treasury and ASIC to provide government with some options in terms of strengthening our position. Mr Konza can give you some more details having been closer to this area.

CHAIR—Thank you.

Mr Konza—There are two things that I can say about this. Firstly, we are not satisfied with the number of prosecutions that we have achieved of late, and certainly the commissioner has made that very clear to me. Secondly, the reason the prosecutions are few and far between is that in the early-2000s we obtained a number of high profile successful prosecutions, but after a few years we found that the penalties that were imposed on people who were successfully prosecuted became ineffective. We went from people getting custodial sentences to people getting home detention, which included a provision that allowed them out during daylight hours to conduct business, so there was essentially no penalty. I think that led to a loss of confidence and a loss of interest, to some extent. When you are dealing with the court system and the Director of Public Prosecutions, they have an enormous caseload of very serious cases. It is hard to get cases up when their assessment is that the penalty is likely to be a slap on the wrist. But we have redoubled our efforts and that is why we have some cases in court at the moment and we have a number on the way as well.

CHAIR—I would like to express some disappointment, not just as the chair of this committee but as the member for Newcastle. We see you are pursuing a company that has been involved in these sorts of behaviours for tax avoidance or non-compliance. It is a worry when we also see the same company flouting the immigration laws and occupational health and safety laws. I wonder how much cooperation and information sharing is happening around these sorts of behaviours. Perhaps if that were increased you would see patterns of illegal behaviour that might suggest deeper inquiry and also, of course, more pursuit of these companies through the legal system. I would like your comment on that.

Mr D'Ascenzo—Supportive of those views.

Mr Konza—Yes, agree.

CHAIR—You agree with all of that?

Mr Konza—Yes.

CHAIR—It is all very well to be in agreement after the event. I suppose that is the frustration that the public and contractors who are owed a lot of money experience every day. It is okay to agree after the event. Can you give us some assurances that you have made recommendations to government? Are you changing any practices yourself to be more proactive in these areas, because generally we see the risk and the loss is to the lower end of the market?

Mr Quigley—I can answer that and Mr Konza might like to add to my comments. In those types of cases we take active audit action and then follow up with recovery action. The difficulty is that previously we have not had information on a real-time basis. We now have an arrangement that ASIC provides us daily with companies that they are going to strike off. That is a major shift.

CHAIR—How long has that been happening?

Mrs BRONWYN BISHOP—We have to say that happened as a result of the work of this committee.

Mr Quigley—That support was greatly appreciated, because we did give evidence previously of that being a real concern.

Mrs BRONWYN BISHOP—Yes, around superannuation.

Mr Quigley—That is right.

Mrs BRONWYN BISHOP—I think it was the first thing I raised the first time I came.

Senator FEENEY—Having given the committee the praise you are now focusing it further.

CHAIR—I think the work of the parliament is always to be noted.

Mrs BRONWYN BISHOP—We are quite prepared to share.

Mr Quigley—There are still significant weaknesses in what we can achieve in this area, as Mr D'Ascenzo has indicated, and I think you are asking for reassurance. We have worked with Treasury to provide government with some options, which we understand will be put into a discussion paper. Obviously this is a matter for government, but we are hopeful that discussion paper will go out for consultation and get feedback from the community on what will be legislative options that will be able to give us greater opportunity to act quicker, in more real time, to take greater action and protect the sort of people that are hurt most. As you say, they are the contractors.

CHAIR—This is usually around the development and construction sector. Have you increased audits in that area?

Mr Konza—We have, although our resources are limited.

CHAIR—You will often find that superannuation guarantee contributions have not been put away as well.

Mr Konza—Yes.

CHAIR—I know you were resourced around that area. There seems to be some overlap there.

Mr Konza—The problem is that when we take action our collection rate is six per cent. We just do not have the powers to collect the money. That is why we have been happy to work with this committee on this issue, because it is a matter of great concern to us.

CHAIR—In putting forward suggestions to government, I do not think we would be satisfied if the suggestions had a caveat, ‘If we don’t get the success we’d like here, so therefore ...’ Are the suggestions you are putting forward the ideal ones to get the best outcome or are they ones that concede that that may never be possible?

Mr D’Ascenzo—We are talking about strengthening our position so that we can improve performance. There is always a question of resourcing and how much we can put there. There is also a question of wider issues. You mentioned the building industries and whether or not wider withholding arrangements should be appropriate in those circumstances. Those things are in the government’s sphere of consideration.

Mrs BRONWYN BISHOP—At a time when there is a discussion about increasing superannuation surcharge there is a really good case to be made out to ensure that those who are supposed to be paying are paying.

Mr D’Ascenzo—I think that is right. You asked the question beforehand about whether we have increased it. We have increased our focus on employer obligations over recent years, and we actually did get some extra funding from government to do some of that. Again, could we do more? Yes, we could do more.

Mr Konza—As I said at the very early part of this session, we shifted our strategy towards real-time monitoring of those who we know engage in this activity to try to prevent debts arising in the first place, but it is very resource intensive.

Senator FEENEY—In terms of monitoring, how many people are we talking about?

Mr GEORGIU—How much money?

Mr Konza—I could not say.

Mr Quigley—I could give some figures in what we have identified as high-risk employers that have been reviewed since 1 July 2008. We had 6,013 high-risk employers under the

employer obligations audit program, which the commissioner referred to. Over 4,600 of those had not complied with their PAYG withholding obligations and almost 3,000 had not met their super guarantee obligations.

Senator FEENEY—Can you tell us anything about the industries those entities are in?

Mr Quigley—I do not have that information, but anecdotally I think you would find that the building and construction industry would be high up there.

Mr GEORGIU—Do you have aggregate amounts?

Mr Quigley—I do not have those, either.

Mr GEORGIU—Could you also give us a quick rundown on what additional powers would help you?

Mr Fitzpatrick—As the commissioner said, we have spoken to Treasury and ASIC about options.

Mr GEORGIU—You do not want to talk to this committee?

Mr Fitzpatrick—It is not our position to talk about what government policy might be.

CHAIR—I would say that it is an interest of this committee. If someone within the Taxation Office has prepared a briefing on this that gives the full information we are looking for in the act of preparing advice, then we would like to see that sort of background information—in terms of the breakdown, industry and so on. You always have an interest for yourself in terms of the return to you, but we as members of parliament representing the public have an interest in the people who are very low on the list as creditors and so on.

Mr D'Ascenzo—We will provide a separate report that will cover some of the materials that we have.

CHAIR—That would be helpful.

Mrs BRONWYN BISHOP—I also wanted to raise a different issue of fraud. It has come to my attention that there is at least one case, probably more I would say, of where someone working either as a tax agent or for a tax agent has taken instructions from a client to establish an ABN number to do some business that will come under the threshold for the need to register for GST. The person who has taken the instructions has then taken the identity of that person and registered for GST, filed bogus claims and taken the refunds that have come in respect of those, and the original client is now facing the debt because it is in his name. It is causing this individual—and I cannot imagine that it will be a one-off—an enormous amount of difficulty because it is a debt in his name, but his identity was stolen for the purposes of this registration.

The tax office, in fact, has paid those refunds to that entity. The tax board, which was made fully aware of all of this, and I understand is staffed by the tax office's call centre, took no particular real interest from what I can see and, in fact, when it was further complained about the

principal of the person employed received a letter from the tax board simply to say that this person was no longer registered. The fact is he has left the country—no reasons, no investigation, nothing. I contacted the board and asked the board whether they had informed the tax office, and they said they did not have to. Subsequently I have been informed that they have informed the tax office.

I know we are getting a new piece of legislation where the tax board is to be replaced and where there is going to be personal liability on the agents, but on the question of getting anything back from them I am yet unaware as to whether they have to belong to an association to get access to a compensatory fund or whether there is going to be such a fund set up under the new legislation. I cannot get that clear at this present time. My concern is that here is a new piece of identity fraud that is adversely affecting someone who has acted in good faith, and is now saddled with a debt from the tax office and is not being adequately dealt with. Can I please have some response?

Mr Quigley—I could give a response. We are talking about the tax agent boards, who have responsibility under the current legislation for the registration.

Mrs BRONWYN BISHOP—They seem to be a sham.

Mr Quigley—I will not respond to that. They are a body that is basically given powers under the Income Tax Assessment Act 1936 at present and, as you correctly point out, will be changed to a national board; they are state based boards. The normal practice when the state tax agent boards receive complaints about unregistered agents is that they direct the complainant to the tax office. That is the normal situation. The tax office then investigates those complaints. There may have been a breakdown in that process in the particular example that you are referring to, but that is the normal practice and we certainly do investigate those matters.

Mrs BRONWYN BISHOP—I would like the number in the last 12 months of such incidences that have been referred to you and what action has been taken. My major concern is that the individual whose identity has been stolen is being pursued by you—not you personally—for money which he is not responsible for.

Mr Quigley—Without going into the individual situation, that sort of thing would happen because the information at that time—it might be an audit or some other sort of action—would indicate that person A was registered for GST.

Mrs BRONWYN BISHOP—All of this information was given to the tax board, which did not pass it on to you. It has now been passed on to you since my intervention. I want to know what is going to happen as a result.

Mr Quigley—I am telling you that each case is investigated. That would include looking to see whether it was appropriate for liabilities to be raised against this particular person. Indeed, if through no fault of that person there was fraudulent activity by an unregistered agent, we certainly will reverse the situation.

Mrs BRONWYN BISHOP—The agent was registered at the time. He was employing someone who was not registered. The person who was not registered handled the issue, but the principal to whom he was employed subsequently has left the country and they struck him off.

CHAIR—If it is an individual case that you want to pursue I think that is for another place.

Mrs BRONWYN BISHOP—I am using it as an example of what can happen across-the-board, and I am asking in the generic sense, which is why I want to know how many such cases occurred in the last 12 months, for instance, and what action has been taken. When somebody's identity is fraudulently stolen and registered with you, what is the result for the individual? What other action have you taken?

Mr Butler—I can make some broader comments. This is a difficult area. It is an increasing concern for the Australian Taxation Office and for many other countries around the world. Quite recently the ATO has agreed to lead some work through the OECD to look at identity fraud, phishing arrangements and a whole range of things, because it is a concern for many countries. We find now that, on average, there will be about 50 phishing attempts a year, so almost one per week.

Mrs BRONWYN BISHOP—This is not a phishing example. This is different.

Mr Butler—I appreciate that, but it is all about stealing someone's identity. They often come from offshore, not even within Australia. Almost once per week we will have a certain type of email going out to people saying it is from the tax office with an embedded website address in it, where it says, 'A refund is due to you. Fill in your bank details, credit card details and personal information.' That is then used elsewhere.

The example you refer to is one of a range of examples we are seeing where people have unfortunately had their identity stolen. We are working very strongly to strengthen that. With the particular phishing arrangements we work very actively with the Australian Federal Police. Where this is from offshore we work with other law enforcement agencies to have these website addresses shut down.

It is a great concern to us and to many other tax administrations. As Mr Quigley said, with individual cases we need to look into what has happened and, if there is clear evidence that someone has had their identity stolen, we will take whatever steps are appropriate to rectify that.

Mrs BRONWYN BISHOP—That person will no longer have that liability and you can pursue the person who stole the identity?

Mr Butler—Unfortunately, they are often not in Australia.

Mrs BRONWYN BISHOP—I understand that.

Mr Butler—If they are in Australia certainly we would look at what we can do.

Mrs BRONWYN BISHOP—The person who has had his identity stolen will not be penalised by you pursuing that person? That is what I want to get straight.

Mr Quigley—That is what I was saying. We would do that investigation. I can give you some statistics.

Mrs BRONWYN BISHOP—Yes.

Mr Quigley—In 2008-09 the tax office referred a total of 121 matters to the tax agents board where agents' behaviour warranted a review of their registration. That included 53 instances where practitioners failed to meet their personal lodgement obligations. As a result, the tax agent board has cancelled or suspended the registration of 26 of those agents. There is a number of criminal investigations being undertaken, often jointly with the Federal Police, when persons such as tax agents commit or assist others to commit fraud in the revenue system. We currently have 22 criminal investigations involving tax agents or unregistered preparers nationally, and 10 of these are currently before the courts. The advice I have is that in 2008-09 the tax agents board referred to the tax office 115 cases where there was a whole range of issues. They were split between registered agents and unregistered preparers. Fifty-four of the referrals were for registered agents and 61 were for unregistered preparers. We do take this very seriously.

Mrs BRONWYN BISHOP—I wonder how many were like the one that I gave you and were not referred.

Mr Quigley—As I said, there are 22 criminal investigations which, unfortunately, would involve some type of fraud on the revenue system.

Mrs BRONWYN BISHOP—My next question is: what action is the tax office taking itself to prevent such a person stealing the identity of a client and fraudulently registering the person for GST?

Mr Butler—In an individual case, if someone's identity has been stolen and a tax debt has been raised which is directly related to that issue—I have just confirmed with the commissioner—we would not try to recover that amount at all.

Mrs BRONWYN BISHOP—Thank you.

Mr Butler—Mr Quigley was referring to before was investigating and gathering evidence to make sure that is demonstrated. But if it is demonstrated then the tax debt will be removed from that person.

Mrs BRONWYN BISHOP—That is a very important point. Thank you very much. I want to know what you are doing to stop this happening.

CHAIR—We are just hoping that you do not have lots of people listening to that, now trying to use identity fraud as an excuse for their situation.

Mr D'Ascenzo—That is why Mr Quigley said that we had to look at each case on its own circumstances.

Mrs BRONWYN BISHOP—Of course you have to investigate. That is right.

Mr D'Ascenzo—The general principle is that, if it has not been perpetrated by the person, and the person is not complicit in it, they should not be penalised or in any way disadvantaged.

Mr Butler—With the whole area of fraud, as you move more into the electronic world, there is more opportunity for people to do things. That is one of the reasons the OECD is quite interested in commissioning this work we are involved in, and we are very keen to push that forward. Every tax administration is under pressure to issue refunds quickly, but to do so we need to maintain robustness in our practices as well. That is a hard trade-off, and the work we are doing is specifically around that.

Mrs BRONWYN BISHOP—Perhaps we can flag this as a issue that we can follow up next time to see what progress you have made.

Mr Butler—Yes.

CHAIR—I would like to broaden this out to the proceeds of crime, because we have had discussions at previous hearings. The federal government is introducing new legislation targeting the proceeds of organised crime. That would obviously have implications for you. Could you give us an update on two issues? Firstly, how you are progressing targeting the proceeds of crime and, secondly, the security of information when you are dealing with people who will stoop to anything with your own officers. Can you give us an update on those two fronts?

Mrs BRONWYN BISHOP—Can I flag that I want to ask about U-turns on trusts.

Mr Quigley—I am not sure how specific you want to get about the proceeds of crime situation. We are working with the other agencies across the Commonwealth in the work on the new legislation. I do not know, off the top of my head, exactly where we are at with that.

CHAIR—But you have been involved?

Mr Quigley—Yes.

CHAIR—That is reassuring.

Mr Quigley—Indeed, I think it was either last week or the week before we convened a workshop with the relevant agencies.

CHAIR—I am happy to leave it at that. We look forward to that in another hearing as well. The other aspect of my question was regarding the security of information when dealing with those sorts of issues, arising from the Fitzgerald and Boucher inquiries.

Mr Quigley—That information is held on a need-to-know basis and very tightly controlled within the organisation, where there are criminal matters. They are only dealt with by specialist investigators.

CHAIR—You have put in greater controls as a result of those reports. Are you satisfied that they are progressing or that you have put in greater controls?

Mr Quigley—Those sorts of controls were in place. I do not think that was a recommendation. The Fitzgerald inquiry has not finished, so we do not have recommendations there. I do not recall that that was a specific recommendation around Boucher, as far as being a concern.

CHAIR—Are you satisfied with the controls in place at the moment?

Mr Quigley—Yes. It certainly has not been brought to my attention that there have been any significant leaks of information.

Mr D'Ascenzo—To put it in context for you, if you look at our buildings, where we have our serious non-compliance people, they have separate and even different physical processes to get in. I cannot get into some areas myself with my pass.

CHAIR—That is a worry.

Mr D'Ascenzo—There is a range of checks and balances of that nature.

CHAIR—What is your security rating?

Mr D'Ascenzo—It is a question of just taking the concerns that you have and making sure that we address them well. There are physical checks and a range of procedures that we have in place. We continually try to make sure that people understand those procedures and follow them. I am very comfortable that our processes are very tight and good, but again we do not want to be complacent and that is why we welcomed and initiated reviews like Boucher and Fitzgerald.

CHAIR—I have two quick questions. I think you predicted 74,000 additional taxpayers would come forward for the tax bonus, but I think there were 80,000. What were the figures?

Mrs BRONWYN BISHOP—More.

Mr Quigley—Sorry?

CHAIR—In terms of the tax bonus, what was the number of new taxpayers who came forward?

Mr Quigley—I think it was more than that. It is hard to work it through.

Mrs BRONWYN BISHOP—I thought it was about 1.3 million.

Mr D'Ascenzo—It is hard to work out, because what happens is that you have the majority of taxpayers that go through tax agents and, therefore, they are on a lodgement program. What we have seen is a bringing forward of some of the ones that might be there. I am not sure how much is there and how much is not there. There is also the point that it is not a static population, in other words, the lodgement figures change as people go out of the system and people come into the system.

CHAIR—Are you pleased overall with the outcome?

Mr D'Ascenzo—We are. One of those criteria where people perhaps were coming in is people who came in with past year returns and admitted a number of them. I think we had over 300,000 of those.

CHAIR—You have cleared up those shoeboxes for a lot of people?

Mr D'Ascenzo—That is right.

CHAIR—I also wanted to ask you about the credit card trial—paying by credit card. Could you give us a brief update on that?

Mr D'Ascenzo—Again, the feedback has been very positive.

Mr Butler—I have some numbers from the trial starting in February this year. As at 30 June we had 12,219 payments for a total of \$42.7 million. It has been quite successful, to the extent that we have decided to continue going forward with it.

CHAIR—Do you think that is based on just the ease of that sort of method?

Mr D'Ascenzo—That is right. We have a commissioner's small business consultative committee, and they were very strongly in favour of the proposal for two reasons. One, it allowed them cash flow time, if they needed some time to pay, and they also liked the frequent flyer points.

CHAIR—I am sure the banks out there are listening to that.

Mrs BRONWYN BISHOP—I will finish up on this last question. I will go the question of U-turns being canvassed in the press at present and the concern that particular agents have about clients, particularly in trust areas, where the practices have been settled. I will quote Mr Leibler from Arnold, Bloch, Leibler, who stated:

The ATO's practice on present entitlements—

and I will say 'for instance'—

to a trust had been settled and consistent for more than 10 years and until recently it had never suggested the entitlement could be a loan. There is now some suggestion from some quarters in the tax office that the definition of loan which includes financial accommodation would include present entitlements.

His attitude is there is absolutely no basis for that approach. It is certainly of concern to me when there has been a settled position regarding the way affairs are treated and then there is suddenly a new attitude, which sometimes can also be put in place retrospectively. I think Mr Fitzpatrick and I have done battle on this issue before, so perhaps we will not do battle here today; we will talk to Mr D'Ascenzo. I am concerned about the U-turns, as they are reported, and whether or not this is a deliberate tack simply designed to rake in more tax.

Mr Fitzpatrick—Mrs—

Mrs BRONWYN BISHOP—No, I want to hear from Mr D’Ascenzo on this one, please.

Mr D’Ascenzo—It is a question of what ‘financial accommodation’ means. That is not a provision that has been in place for as long as the 10 years that Mr Leibler pointed out. It is a question of whether or not that law applies.

The factual scenario is this. Someone has an amount in the trust, says, ‘You’re entitled to it,’ you leave it in the trust and then it is mixed with other trust assets and used to buy, say, a boat, a house or for other purposes. One wonders whether that is not a financial accommodation in the terms of the law. The question is one that we are taking to our public rulings panel and we will consider it in that light.

Mr Fitzpatrick—We have agreed, Mrs Bishop, if I may say, on something.

Mrs BRONWYN BISHOP—That will be the day, Mr Fitzpatrick!

CHAIR—Thank you very much.

Mrs BRONWYN BISHOP—I have one last question, back to the TaxPack. Right at the beginning we have established that we have a very high use of tax agents in this country, and I think the argument is pretty sound that they are in fact de facto tax collectors—and on another topic we can be concerned that many of them are leaving that profession, for whatever reasons that may be; that can impact on the collection of the revenue. Mr D’Ascenzo said to me, when I was asking about the change in the public-ruling status of the TaxPack, that only lawyers and accountants wanted them. Over 70 per cent of people are using accountants or tax agents to do their returns and they are going to be particularly concerned with the new law coming in about the liability of the tax agent, that the advice that is given by you, the commissioner, is in fact good advice upon which they can rely. Not only do the 30 per cent of people who are doing their own returns rely on your TaxPack; so do those agents. I think it is perfectly acceptable and to be expected that they would. I find it concerning that in fact this change has taken place in the nature of the TaxPack and your preparedness to stand behind it.

Similarly, there has been a change to the e-pack, and only to those areas dealing with five specific items—employment termination payments, Australian superannuation lump sum payments, dividends, gifts and donations and Australian superannuation income streams. I do not want to argue the point with you. I would like you to reconsider it. I really do think, as a matter of public policy for ordinary taxpaying people and the people with whom they interact, that the TaxPack should be a document upon which they can rely. I would simply ask you to reconsider it and perhaps come back to us when we meet again.

CHAIR—That will conclude our hearing today.

Resolved (on motion by **Mrs Bishop**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

CHAIR—I would ask Mr D’Ascenzo to make his statement available to us before he leaves.

Mr D'Ascenzo—By all means.

CHAIR—I thank everyone for their contributions today. There are so many areas we have not been able to get to. We have been living in very interesting times. The next inquiry will perhaps be after the Henry review is more advanced, so we will explore that, perhaps the impact of the global financial crisis, and your involvement in some of the tax products and the things that you have learnt from that. On behalf of the committee I thank all the witnesses who have given evidence at the public hearing today and declare the public hearing closed.

Committee adjourned at 12.19 pm