

KPMG submission

Senate Economics Legislation Committee

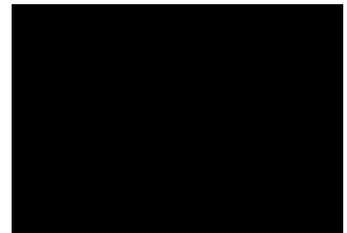
Performance of the Inspector-General of Taxation

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Executive Summary

KPMG welcomes the opportunity to lodge a submission in relation to the Senate Economic Legislation Committee's Inquiry into the performance of the Inspector-General of Taxation (IGT).

The IGT's role is to support the improvement of the revenue administration, and to provide rationally-based trust in this administration. This is complex and requires balance and a pragmatic approach to the interests of varied stakeholders.

This submission sets out a set of essential principles to support the performance of the IGT, as follows:

- a) The IGT must be a fair-minded scrutineer.
- b) The IGT must act with robust but collaborative independence in relation to the ATO.
- c) The IGT must help the ATO look forward, and support the ongoing process of reinvention.
- d) The IGT must connect complaint resolution with systemic improvements in tax administration.
- e) Statistics must be viewed in their proper context.
- f) The IGT must support improvement in the ATO's use of discretionary powers.
- g) The IGT must work with the ATO on complaint handling.
- h) Decisions on the performance of the IGT should be informed by an appreciation of the number, nature and outcome of the complaints the IGT handles.
- i) Taxpayers should ideally seek resolution directly with the ATO before involving the IGT.

We have also identified technology, the formation of a potential IGT advisory board and whistleblower protection as matters where the IGT can add further value to the quality of the administration of the tax system.

Detailed comments

1. Background: the nature of the IGT's role

- 1.1 KPMG welcomes the opportunity to present its submission in relation to the Senate Economics Legislation Committee's Inquiry into the performance of the Inspector-General of Taxation (IGT).
- 1.2 Success for IGT can be described as the public having a high level of justified trust in the Commonwealth revenue administration over the long term. Achieving this requires IGT to maintain balanced and proportionate analysis of the ATO's operations and interactions with taxpayers. There is the potential for public trust in the revenue administration to be unnecessarily diminished, if IGT's critique is not contextualised or constructive.
- 1.3 IGT is a public servant in a threefold sense. IGT must address the complaints made by individual members of the public, respond to the requests of the government and of the Parliament, and make recommendations for the improvement of revenue administration for the benefit of the community overall.
- 1.4 IGT's performance can impact, and potentially be influenced by, a wide variety of stakeholders. These include Treasury and its ministers, the ATO, the Tax Practitioners Board, the Board of Taxation, the Parliament and other oversight functions such as the Small Business Ombudsman and the Australian National Audit Office. Beyond government and its agencies, the stakeholders include professional and industry bodies and the taxpayer community at large.
- 1.5 Consequently, IGT's role can be politically sensitive. This requires IGT to carefully and strategically consider its public communication, and also requires that an equivalent amount of care should go into stakeholders' communications to IGT.
- 1.6 Achieving success is therefore a highly complex task for IGT, principally as a result of the multiplicity of stakeholders whose trust in the system is sought. Therefore great pragmatism is required in formulating recommendations and solutions that are workable. This should be far preferred to targeting an abstract ideal that would be unachievable in practice, leaving many stakeholders disappointed.

2. Comments for the inquiry

Recommended essential principles for the performance of the IGT

(A) Fair-mindedness

- 2.1 The IGT must be a fair-minded scrutineer. It should both criticise and praise the ATO where appropriate, but in a constructive and proportionate way. A disproportionate impression that the ATO may be underperforming or that the system is ‘broken’ should not be created on the basis of what may be a relatively small number of complaints.
- 2.2 Instead, the IGT must be capable of working *with* the ATO and other stakeholders. A forward-looking consensus has a greater influence on improving the tax administration than looking backward on individual complaints. Measured criticism and case-by-case resolutions are valuable.

(B) Robust but collaborative independence

- 2.3 The IGT must be independent of the ATO. However, the relationship between the IGT and ATO should not be adversarial. Instead the focus should be on collaboration towards fair and reasonable resolution of taxpayer complaints and systemic improvement in tax administration.

(C) Aiding the ATO’s reinvention

- 2.4 The environment in which the ATO operates continues to be highly dynamic, and so ongoing, positive transformation will be essential to the ATO’s performance. The ATO’s scrutineers must help the ATO look forward, and support the ongoing process of reinvention.

(D) Connecting complaints with systemic improvements

- 2.5 It is important to resolve individual complaints. However, it is even more important that the IGT can support the long-term improvement of Australia’s tax administration. Addressing a taxpayer’s complaint, and resolving the underlying cause of that complaint are matters which both require attention.

(E) Use of statistics in their proper context

- 2.6 Complaints about the ATO’s administration form a spectrum, at one end of which may be those instigated by taxpayers seeking to vent frustration, or to circumvent a fair and established process. At the other end are those highlighting genuine

maladministration and which may spare others an unjust outcome. Any description of complaints in aggregate numerical terms should therefore be accompanied by an analysis of the spectrum of the relative merit of those complaints.

(F) Supporting improvement in the ATO's use of discretionary powers

2.7 Where the IGT provides continuous feedback to the ATO on its use of discretion, this can serve to create more consistency in the exercise of discretion, providing more confidence for taxpayers in the administration of the system.

(G) Working with the ATO on complaint handling

2.8 A high level of cooperation in the handling of complaints is essential. This can limit uncertainty and support consistency. If the ATO and the IGT can form common views on the exercise of discretion, for example, this will create more consistent outcomes for the taxpayers who are impacted by discretionary decisions.

(H) Decisions on the performance of the IGT should be informed by an appreciation of the number, nature and outcome of the complaints the IGT handles

2.9 According to its annual report, the IGT received around 2,400 complaints in 2017-18 from a taxpayer population of several millions. Around 40 per cent were addressed by the provision of information, advice or assurance (rather than by conducting an investigation).

2.10 IGT resolved 86 per cent of investigations that it undertook during the year. High levels of satisfaction with the IGT's complaints handling service were recorded in 2017-18. This suggests that most of the relatively small number of complaints that are raised with the IGT are resolved satisfactorily and within a reasonable timeframe.¹

(I) Taxpayers should ideally seek resolution directly with the ATO before involving IGT

2.11 IGT would require significant additional resourcing if it were to become the first port of call for taxpayers experiencing difficulty with the revenue administration. In very many cases, this would not be the most efficient way to resolve the issue. A process whereby the IGT is scrutineer/reviewer of at least second resort is preferable.

¹ IGT 2017-18 Annual Report, pp. 24-26.

Recommended areas where the performance of the IGT can add further value to the quality of the administration of the tax system

Technology

2.12 Technology will drive substantial change in tax – through data analytics, pre-filing technology and other changes that are yet to have been considered. This will create risks and opportunities. The IGT will be needed to assist the ATO in ensuring change is undertaken at the “right speed” to reap benefits and ensure community support.

IGT advisory board

2.13 An advisory board for the IGT comprising retired tax administrators, professionals and individuals from civil society could be beneficial in shifting focus from the role played by the Inspector General personally. This role should retain its current status and purview, but the support of a small, independent group of advisors could enhance the sense of continuity and stability that would align well with achieving justified public trust in the administration of the revenue over the long term.

Whistleblower protection

2.14 The IGT should be made an “eligible recipient” for the purpose of the new whistleblower protection legislation which applies from 1 July 2019 (i.e. protections in relation to “whistleblower” disclosures made to the IGT should be broadly consistent with those relating to disclosures made to the ATO).