



THE TAX INSTITUTE
THE MARK OF EXPERTISE

10 March 2016

Mr David Monk
Inquiry Secretary
Standing Committee on Tax and Revenue
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: taxrev.reps@aph.gov.au

Dear Mr Monk,

Inquiry into the External Scrutiny of the Australian Taxation Office

The Tax Institute welcomes the opportunity to provide a submission to the House of Representatives Standing Committee on Tax and Revenue (**Committee**) in relation to its Inquiry into the External Scrutiny of the Australian Taxation Office (**Inquiry**).

Executive summary

The present level of external scrutiny of the ATO is necessary as it contributes to the greater public accountability and transparency of the ATO's administration of the tax system. In particular, The Tax Institute strongly supports the funding of the ongoing role of the Inspector-General of Taxation as a key external scrutineer of the ATO.

This comes at a time where there is increasing public interest in tax issues and rapid changes to how the ATO deals with the public and intermediaries. In these circumstances, continuing checks and balances on ATO activities should at least be maintained, although they should be periodically monitored for their efficiency and effectiveness. In particular, to the extent necessary, overlapping roles of scrutineers should be avoided.

Overview of current level of external scrutiny

Key scrutineers of the ATO, in relation to taxation matters, are Inspector-General of Taxation (**IGT**), Australian National Audit Office (**ANAO**), the House of Representatives Tax and Revenue Committee, Senate Economics Legislation Committee, and the Senate Economics References Committee. The IGT took carriage of the handling of tax complaints from the Commonwealth Ombudsman in March 2015. In addition, we note that the government recently created a Small Business and Family Enterprise Ombudsman role who has broad scope to advocate on behalf of those segments.¹

The ATO Annual Report for 2014-15 shows that in that year, 4 performance audits of the ATO by the ANAO were tabled; 5 reports of IGT reviews were released, and the Commonwealth Ombudsman completed one review. The ATO also appeared in 2 hearings of the House of Representatives Tax and Revenue Committee in relation to its inquiry into the ATO Annual Report and 3 Senate Estimates hearings. This is in addition to other specific inquiries by these and other parliamentary committees such as the House of Representatives Tax and Revenue Committee's inquiry into Tax Disputes and the Senate Economics References Committee's inquiry into Corporate Tax Avoidance.

The Commissioner of Taxation, although being statutorily independent of the executive, is accountable to Parliament through an annual reporting function, and also participates in a number of consultative and internal committees.

Given the size of the ATO as an organisation and the critical role it plays in the collection of revenues, not only from taxpayer entities and child support, but also from excise and the regulatory role of superannuation supervision, one would expect that the current level of public scrutiny is not burdensome nor oppressive.

In fact, such public scrutiny of the executive arm of government should be encouraged for many reasons, least of which include being in the public interest.

To that end, the Tax Institute mirrors the remarks made by the Committee in its 2013 Annual Report of the ATO, at paragraph 2.158 where the Committee accepts that current levels of scrutiny are appropriate.²

Inspector-General of Taxation

The Tax Institute strongly supports the current role and responsibilities of IGT. A statutory officer with statutory powers of review into systemic issues and specific taxpayer complaints is essential, particularly at a time when the ATO is undergoing rapid change and the community has an increased interest in tax matters.

¹ See *Australian Small Business and Family Enterprise Ombudsman Act 2015* (Cth).

² House of Representatives Tax and Revenue Committee, *Review of the 2012-13 Australia Taxation Office: First Report* 27 March 2014.

The vast majority of the IGT's recommendations are implemented by the Commissioner, with the Commissioner providing detailed reasons why he disagrees with any recommendations. The ATO did not disagree with any of the 20 recommendations made by the IGT in relation to 5 reports publicly released in 2014-15.³ Examples of improvements to tax administration coming out of recent IGT reports include the following:

- *Review of the Administration of Public Binding Advice:* The report of this review was publicly released on 7 April 2009 with 7 recommendations. The ATO agreed or partially agreed with 6 recommendations and disagreed with 1. In 2014 the IGT conducted a review which found that the ATO had implemented the recommendations that it had agreed to. For example, the IGT recommended that the ATO should issue further public guidance on certain issues and the ATO subsequently updated its tax rulings and staff guidance material in relation to those specific issues.⁴
- *Review of Objections:* The report of this review was publicly released on 11 August 2009 with 11 recommendations directed to the ATO. The ATO agreed or partially agreed with 10 recommendations and disagreed with 1. In 2014 the IGT conducted a review which found that the ATO had implemented all but 1 of the recommendations it had agreed to. For example, the IGT recommended that the ATO should issue a comprehensive public statements on the ATO's approach to objections committing to certain critical elements for resolving objections (such as early engagement) and the ATO subsequently published a Dispute Management Plan 2012-13 with this elements.⁵
- *Review into the Administration of the Superannuation Guarantee Charge:* The report of this review was publicly released on 24 November 2010 with 10 recommendations directed to the ATO. The ATO agreed with 9 recommendations and disagreed with 1. In 2014 the IGT conducted a review which found that the ATO had implemented all of the recommendations it had agreed to. For example, the IGT recommended that the ATO better target high-risk employers with firmer action sooner, for instance through debt collection processes. The ATO subsequently commenced a 'Debt Right Now' process for SGC debt collection which proceeds to firmer action sooner for employers with high risk scores.⁶

One area where there is potential duplication is in the scrutiny roles of the IGT and the performance audits conducted by the ANAO. The ANAO conducts performance audits which are similar to reviews undertaken by the IGT. While we understand the IGT and ANAO do seek to coordinate their activities to prevent or minimise duplication, there would be merit in reviewing arrangements including whether it is cost efficient and value adding to have two Commonwealth agencies reviewing ATO performance.

³ Inspector-General of Taxation 2014-15 Annual Report at page 25 Table 4.

⁴ Inspector-General of Taxation *Follow up review into the Australia Taxation Office's implementation of agreed recommendations in five reports released between August 2009 and November 2010*, July 2014 page 9-14.

⁵ *Ibid* at page 15-32.

⁶ *Ibid* at page 75-85.

House of Representatives Tax and Revenue Committee

The Commissioner of Taxation appears biannually before this Committee in relation to its inquiry into the ATO Annual Report, having previously appeared before the Joint Committee of Public Accounts and Audit. The Committee has conducted a number of separate inquiries since its establishment in 2013, ensuring greater public accountability and transparency of the ATO's administration of the tax system.

Through this Committee, the ATO is given the opportunity to respond to an area of concern in the market, by outlining satisfactory solutions to areas posed by the Committee as requiring focus. The Committee is then able to follow up on progress in subsequent hearings. The Committee also provides a great platform for the public to bring issues at the coal face of tax administration to the attention of policymakers.

The Tax Institute supports the work of this Committee. We have noticed that its recommendations have significantly contributed to positive changes to the ATO's administration of the tax system, particularly in the areas of tax disputes and tax intermediaries. In the area of tax disputes, the ATO has implemented stronger internal protocols to improve the independence of officers handling objections and disputes. In the area of tax intermediaries, the Commissioner has committed to making significant improvements to tax agent online services by the end of this calendar year. In our view, the Committee's inquiries into tax disputes and the ATO Annual Report have been a catalyst for these positive changes.

We have appreciated the opportunity to participate in Committee hearings along with other key external stakeholders, and offer a unique perspective on the ATO's work. The Committee allows organisations such as ours to inform the public for the purpose of its scrutiny of the ATO.

There is some degree of overlap between the issues canvassed by this Committee and the IGT's reviews. However absent evidence of detrimental outcome for taxpayers and the tax administration it is our view that both forms of scrutiny should be maintained. The Committee offers a public forum but may not be able to canvass issues in as much depth as the IGT.

Senate Committees

In relation to Senate Committees, it is important to ensure that inquiries into certain aspects of tax administration are not duplicated or unnecessarily politicised.

We suggest that parliamentary committees be provided with periodic information on other inquiries into the tax system which have occurred or are ongoing at the time they consider their work programs. This would assist in avoiding duplication of inquiries.

The Senate Economics References Committee recently recommended as part of its inquiry into Corporate Tax Avoidance that a public register should be established of tax avoidance settlements reached with the ATO where the value of that settlement is over an agreed threshold.⁷ In our view, the review of settlements is best conducted by an

⁷ Report – Part 1 *You cannot tax what you cannot see* 18 August 2015 Recommendation 5 at paragraph 5.39.

apolitical and independent scrutineer such as the IGT. We also support the Commissioner's recent appointment of former Federal Court judge and President of the Administrative Appeals Tribunal to design an independent assurance process for settlements.⁸

If you would like to discuss this matter, please contact me or Tax Counsel, Thilini Wickramasuriya on [REDACTED].

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Arthur Athanasiou
President

⁸ Hansard Senate Estimates 10 February 2016 at page 47.