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The Parliament of the Commonwealth of Australia

# Report 434

**Annual Public Hearing with the Commissioner of Taxation – 2012**

Joint Committee of Public Accounts and Audit

November 2012  
Canberra

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## Foreword

This report marks the tenth time the Joint Committee of Public Accounts and Audit (JCPAA) has conducted a public hearing with the Commissioner of Taxation, and is the first report made on an annual basis. From this regular parliamentary scrutiny the Committee's has seen positive improvements to the administration of Australia's tax system over time.

Regarding the responses to the Committee's previous report, the Committee was glad to see that the Australian Taxation Office (ATO) agreed to all related recommendations. The adoption of these recommendations has improved the ATO's reporting of compliance with its own service standards, as well as assisted the Committee's ongoing scrutiny of tax administration.

However, the Australian Government disagreed with the Committee's recommendation to publish ATO notifications regarding tax administration and legislative problems within 12 months of submission, along with publishing the subsequent actions taken. Although recognising that this recommendation may mean that sensitive information is realised to the public, the Committee remains convinced that the increased transparency and additional incentive for timely action following receipt of the ATO advice would be of benefit overall.

Considering this year's review, the Committee found that the administration of Australia's tax system remains robust.

Although the Committee's review covered a range of important areas, the following issues warrant additional comment:

- ATO interactions with small business and the taxation community of practice, inviting the Council of Small Business Australia, CPA Australia, and The Tax Institute to appear to discuss these matters;
- the ATO's compliance with its own service standards;
- key findings from the ATO's external scrutineers;
- the lack of a 'tax gap' estimate; and

- the question of broader tax reform.

The session held with small business and the community of practice was largely positive in identifying improvements made by the ATO over recent years to improve relationships with these groups.

Considering service standards, the Committee found some clear improvements in taxation administration over the last year, and was glad to hear of the positive attitude towards ATO service provision during the busy 'tax time' period. At times, this area had been one of underperformance in the past, so this positive feedback was welcome news.

Noting these positives, the Committee also found some deficiencies, in particular with the Commonwealth Ombudsman reporting that ATO complaints for the 2012-13 period were at a ten year high. Further, the Ombudsman reported of being able to identify some deficiencies in ATO complaint handling, and that the Ombudsman had actually referred matters back to the ATO for further consideration. The Committee was supportive of the Ombudsman doing this, but believes that wherever possible the ATO should be properly handling complaints in the first instance, rather than having deficiencies identified by an outside body.

It is also worthy to note the discussion that took place regarding calculation of the tax gap – the difference between the amount of tax payable if there was complete compliance, versus the amount actually collected. Despite the challenges in developing such an estimate, it is an important factor to calculate and the development of a practical methodology needs to be given more consideration in Australia. I look forward to seeing this work undertaken in response to the Committee's recommendation.

The hearing also very briefly discussed general tax reform issues; identifying the need to consider broadening the tax base, reducing compliance costs, and eliminating inefficient taxes. Further, the need to examine state taxes was also identified. These are all important issues that I feel should be examined and addressed as a priority.

In closing, I would like to acknowledge the departing Commissioner of Taxation, Mr Michael D'Ascenzo AO, and thank him for his cooperation throughout this process. It was clear from the public hearing that the Commissioner was held in high esteem by his colleagues, the scrutineers of the ATO, and the taxation community of practice. This high esteem was undoubtedly earned from the many improvements that have occurred in Australian tax administration under his watch.

Finally, I thank all witnesses, Committee members and the Secretariat for their assistance in the conduct of this public hearing and the preparation of this report.

Rob Oakeshott MP  
Chair







## Membership of the Committee

**Chair** Mr Robert Oakeshott MP

**Deputy Chair** Ms Yvette D'Ath MP

**Members** Hon Dick Adams MP

Mr Jamie Briggs MP

Ms Gai Brodtmann MP

Mr Darren Cheeseman MP

Mr Josh Frydenberg MP

Ms Deborah O'Neill MP

Ms Laura Smyth MP

Hon Alex Somlyay MP

Senator Mark Bishop

Senator Helen Kroger (30/09/10-13/09/12)

Senator Louise Pratt

Senator Anne Ruston (from 13/09/12)

Senator Dean Smith

Senator Matt Thistlethwaite

## Committee Secretariat

Secretary                      Mr David Brunoro

Senior Research Officer      Mr Shane Armstrong

Administrative Officer        Ms Louise Goss



## List of abbreviations

|        |  |
|--------|--|
| ABN    | Australian Business Number                   |
| ACN    | Australian Company Number                    |
| ANAO   | Australian National Audit Office             |
| ATO    | Australian Taxation Office                   |
| BAS    | Business Activity Statement                  |
| CIT    | Canberra Institute of Technology             |
| COSBOA | Council of Small Business of Australia       |
| GST    | Goods and Services Tax                       |
| IGT    | Inspector-General of Taxation                |
| JCPAA  | Joint Committee of Public Accounts and Audit |
| SMEs   | Small and Medium Enterprises                 |
| TAFE   | Technical and Further Education College      |





# List of recommendations

## 2 Theme 1 – Service Standards

### Recommendation 1

That the Australian Taxation Office and Commonwealth Ombudsman review all complaints rectified through the ‘last chance referral’ process to determine whether there are any systemic administrative deficiencies within Australian Taxation Office complaint review and handling processes.

That both organisations provide a joint response to the Committee briefly outlining their findings and the steps taken to rectify any systemic administrative deficiencies identified.

### Recommendation 2

That the Australian Taxation Office and Commonwealth Ombudsman examine why complainants are initially taking complaints to the Ombudsman, rather than approaching the Australian Taxation Office, and that both organisations take steps to ensure complaints are sent to the Australian Taxation Office in the first instance.

That both organisations provide a joint response to the Committee briefly outlining their findings and the steps taken to rectify the situation.

## 3 Theme 2 – Compliance

### Recommendation 3

That the Australian Taxation Office offer to provide assistance to professional organisations that provide online calculators relating to taxation to ensure these resources are based on accurate figures and assumptions, and that the Australian Taxation Office promote this service to these organisations.

#### Recommendation 4

That the Australian Taxation Office continue to promote its social media resources and to seek feedback from business consultative groups about the usefulness of these resources. Further, that the Australian Taxation Office determine and report on the effectiveness of these resources in its submission to next year's hearing.

### 4 Theme 3 – Policy development

#### Recommendation 5

That the Australian Taxation Office examine tax gap methodologies to produce a comprehensive national estimate, and report to the Joint Committee of Public Accounts and Audit on the positives and negatives of these methodologies and whether implementation is practical.

That this report form part of the Australian Taxation Office's submission to the Joint Committee of Public Accounts and Audit's 2013 Annual Public Hearing with the Commissioner of Taxation.

#### Recommendation 6

That the Australian Taxation Office publicly release its tax gap analysis relating to Goods and Services Tax collections when the analysis has been completed.

### 5 Theme 4 – External scrutiny

#### Recommendation 7

That the Australian Taxation Office publish information regarding the implementation of Joint Committee of Public Accounts and Audit recommendations on its website alongside those of other Australian Taxation Office scrutiny bodies.

## Introduction

### Background

- 1.1 The purpose of these hearings is to increase the scrutiny of the administration of the Australian Taxation Office (ATO) through receiving submissions from the ATO and other relevant bodies, and then conducting public hearings at which the Commissioner, scrutiny bodies and other relevant groups selected by the Joint Committee of Public Accounts and Audit (JCPAA) are in attendance to answer questions and to discuss tax administration more broadly.
- 1.2 This report is the first report into tax administration to be tabled since biannual hearings with the Commissioner of Taxation were conducted on an annual basis.
- 1.3 The introduction of regular public hearings into taxation administration resulted from an inquiry undertaken by the JCPAA in the 41<sup>st</sup> Parliament.
- 1.4 The inaugural annual public hearing was held on Friday 14 September 2012.

### The Committee's report

- 1.5 The Committee's report is structured as follows:
  - Chapter 2 – Service Standards
  - Chapter 3 – Compliance
  - Chapter 4 – Policy Development

- Chapter 5 – External Scrutiny

1.6 The following appendices provide additional information:

- Appendix A – List of public hearings and witnesses
- Appendix B – List of submissions

1.7 A copy of this report, transcripts of hearings and submissions are available on the Committee’s website: [www.aph.gov.au/jcpaa](http://www.aph.gov.au/jcpaa).



## Theme 1 – Service Standards

- 2.1 This chapter examines matters relating to ATO service standards, including:
- Complaint handling
  - Direct contact with taxpayers

### **Complaint handling**

- 2.2 The Committee always takes an interest in the ATO's complaint handling procedures and public perceptions around the services provided by the ATO. While complainants may be among the ATO's harshest critics, they are also taxpayers who have had considerable contact with the ATO and can provide valuable insights into how the ATO can improve its service standards to the benefit of both taxpayers and the ATO itself.

### **Complaints to Ombudsman at a 10 year high**

- 2.3 In its submission the Commonwealth Ombudsman reported that in 2011-12, there had been 2,717 complaints about the ATO, the highest number in 10 years, and a 4.7 per cent increase on the previous year, with ATO complaints comprising 12 per cent of all complaints received by the Ombudsman.
- 2.4 Further, the primary causes for complaint were:
- income tax refund delays;
  - other processing issues;
  - debt recovery actions;

- time taken in investigating unpaid superannuation entitlements;
- audit actions by the ATO, primarily relating to GST matters;
- superannuation excess contribution tax impositions; and
- delays in processing Australian Business Number applications.<sup>1</sup>

2.5 The Acting Ombudsman noted that in the two months of available data for 2012-13, there had been a noticeable decrease in ATO complaints, down approximately 10 per cent on the 2011-12 figures.<sup>2</sup> This period also took into account the traditionally busy 'tax time' period in which complaints tended to be higher due to increased taxpayer interaction with the ATO.

## Ombudsman 'one last chance' referrals

2.6 The Committee was interested to hear of the new innovation of Ombudsman 'one last chance' referrals. A 'one last chance' referral process is used when a complainant takes a matter to the Ombudsman that has been considered and finalised by the ATO, but that the Ombudsman assess as one that could easily be resolved by the ATO.

2.7 The Ombudsman describes the process as follows:

Under this arrangement, we refer complaints to the ATO for action within 14 days, identifying the possible remedies. The ATO then reports back to us on what actions it took to resolve the complaint directly with the taxpayer. We then consider whether further action by this office is warranted. The process has proven to be effective where remedies can be provided in a few administrative steps without requiring an investigation. The ATO has demonstrated its capacity to satisfactorily resolve the large majority of referred complaints, without requiring further investigation by our office. Examples of the types of remedies provided by the ATO include:

- Sending forms or statements of account
- providing better explanations for its decisions and tax related matters
- processing payments.<sup>3</sup>

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1 Commonwealth Ombudsman, *Submission No. 4*, p. 3.

2 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 14 September 2012, p. 7.

3 Commonwealth Ombudsman, *Submission No. 4*, p. 3.

- 2.8 The submission notes that, as the ATO had generally resolved the large majority of cases that had undergone a 'last chance referral', the Ombudsman invited the ATO to initiate its own review into complaints where the ATO agreed that issues could be addressed.<sup>4</sup>
- 2.9 At the public hearing, the Committee asked the witnesses for more information on the 'last chance referral' system, including numbers on how many cases had been examined.
- 2.10 The ATO replied that there had been 41 such cases that had been through the process, with the Commissioner noting that having a 'different set of eyes' looking at a complaint sometimes enabled a remedy to a complaint to be easily identified.<sup>5</sup>
- 2.11 The Acting Ombudsman agreed with the Commissioner that 41 cases constituted a small proportion, but also noted that there were increasing numbers of taxpayers directly approaching the Ombudsman seeking remedy, rather than going to the ATO in the first instance, a matter that was of some concern. The Acting Ombudsman advised that her office would be doing some more analysis to try and determine why this was the case.<sup>6</sup>
- 2.12 In its submission, the Commonwealth Ombudsman reported that approximately 50 per cent of complaints relating to the ATO were coming directly to the Ombudsman rather than following the appropriate channel of seeking remedy from the ATO in the first instance. The Ombudsman noted that in these circumstances, complaints were transferred from the Ombudsman to the ATO, removing the need for the complainant to contact the ATO and repeat the complaint. The Ombudsman noted that there would be an investigation into whether this amount of complaints was disproportionate, and what factors drove this complainant behaviour.<sup>7</sup>

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4 Commonwealth Ombudsman, *Submission No. 4*, p. 3.

5 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 10.

6 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 14 September 2012, p. 10.

7 Commonwealth Ombudsman, *Submission No. 4*, p. 3.

## Direct contact with taxpayers

- 2.13 In its submission, the ATO notes that online interaction with the ATO continues to increase, with the ATO providing more and more services online for taxpayers.<sup>8</sup>
- 2.14 The ATO submission canvasses the use of technology in some detail throughout, noting the increase in employers and third parties providing data to the ATO to 'pre-fill' portions of a taxpayer's e-tax return, enabling taxpayers to more quickly complete and submit their returns.<sup>9</sup>
- 2.15 The ATO also notes that it is working to extend e-tax to non-Windows platforms, and, longer term, is looking to establish a web-based version of e-tax to ensure that e-tax is available to any taxpayer able to access the Internet.<sup>10</sup>

## Call centre response times

- 2.16 The ATO submission reports that staff working in call centres have now been trained across a broader range of areas, enabling them to be more likely to be able to answer a taxpayer's initial enquiries, reducing the need to transfer calls to other areas.<sup>11</sup>
- 2.17 Committee members noted the anecdotal evidence from the general public and constituents of slow response times when interacting with government agencies via phone.
- 2.18 The ATO replied that its standard for calls from tax practitioners were for 90 per cent of calls to be answered within two minutes, and for 80 per cent of calls from the general public to be answered within five minutes. The ATO noted that 92 to 93 per cent of tax practitioner calls were answered within the standard, and 84 per cent of general public calls were answered within the standard. It was further noted that the average wait time for general calls was less than three minutes during the tax season.<sup>12</sup>
- 2.19 The ATO reported that there were occasions in which there were delays in particular call queues:

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8 ATO, *Submission No. 1*, pp. 12-13.

9 ATO, *Submission No. 1*, p. 6.

10 ATO, *Submission No. 1*, p. 6.

11 ATO, *Submission No. 1*, p. 19.

12 Mr Ravello, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 18.

If you are ringing on a matter that is very narrow and very specific and we have a small number of staff on that queue – say, you have a specialist matter around excise, we might only have a limited number of staff in that queue. If there is a flood of calls that come in all at once you will actually get a blow-out of wait time in that specific queue. So we do tend to watch queues and we do tend to watch the general level. You will always get instances where there will be a blow-out in times, just because of the way we try to route calls to staff who are skilled to answer them. But, at a general level, the figures I mentioned earlier are what we have seen this year.<sup>13</sup>

## Service standards during tax time 2012

- 2.20 The Tax Institute reported that the 2012 tax time period had not yielded problems similar to previous years, and that it was satisfied with the ATO's approach to communication with tax agents.<sup>14</sup>
- 2.21 CPA Australia acknowledged that the processing of personal returns during 2012 tax time had been successful, and attributed this success to improved systems within the ATO, and investments in resources and making commitments to affected stakeholders.<sup>15</sup>
- 2.22 The discussion moved to service standards during 'tax time' the busiest period of the year for the ATO. The Acting Ombudsman reported to the Committee that while tax time had been a major source of complaint over the last two years, that there had been a considerable 'drop off' in tax time complaints for 2012.<sup>16</sup>
- 2.23 The Tax Institute praised the ATO's role in administering the tax system, and noted there was an open dialogue between tax professionals and the ATO.<sup>17</sup>

## Communicating in plain English

- 2.24 The ATO provided examples of the simplification of written communication to taxpayers at Attachment 6 of the ATO Submission. It also reported that letter templates were reviewed every two years to

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13 Mr Ravello, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 18.

14 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 21

15 Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 14 September 2012, p. 21.

16 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 14 September 2012, p. 18.

17 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 20.

ensure that content was clear and practical, and identified self-help options and highlighted review rights where available. Further, the ATO advised that written correspondence was evaluated by user testing at the ATO's Simulation Centre, and through consultative groups and the Commonwealth Ombudsman.<sup>18</sup>

- 2.25 When asked about ATO consultation with the Ombudsman's Office on the issue of communicating in plain English, the Acting Ombudsman replied that while there were some issues surrounding plain English communication still outstanding, her office had worked effectively with the ATO, and had found the ATO to be responsive. The Acting Ombudsman noted that written communication from the ATO was still a major cause of complaints to her office, and that it was still the most common remedy recommended by the office to resolve a complaint.<sup>19</sup>
- 2.26 The Commissioner noted that simplifying communications remained a focus for the ATO and noted the shift from a legalistic approach was indicated at least in part by the movement from providing private rulings to instead providing guidance material.<sup>20</sup>

## Committee Comment

- 2.27 It is of some concern that complaints made to the Commonwealth Ombudsman regarding the ATO are at a 10 year high, and rose by almost five per cent in the last year. While there is every possibility that this is just an aberration (something the partial figures provided for 2012-13 may suggest), the Committee welcomes further action from the ATO and the Commonwealth Ombudsman to investigate this issue, and looks forward to the findings.
- 2.28 The Committee notes with some interest the most common complaints received by the Ombudsman relating to the ATO, as many of these complaint topics are similar to those made to the offices of Members and Senators by constituents. Some of these issues are considered in this report, including unpaid superannuation entitlements, and approaches to debt recovery.

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18 ATO, *Submission No. 1*, p. 16.

19 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 14 September 2012, p. 17.

20 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 18.

- 2.29 The Committee notes the value in the Ombudsman 'one last chance' referrals process. The process serves two purposes – one narrow, and one broad. The narrow purpose is to attempt to provide remedy for a complainant, and to resolve their personal grievance. The second is that the process can serve as a mechanism to identify broader systemic deficiencies in the ATO's internal complaints handling processes.
- 2.30 The Committee notes the small number of complaints that are subject to 'one last chance' referrals, but also expresses concern that the Commonwealth Ombudsman is examining the way ATO officers are applying ATO rules and processes to handle complaints, and finding the ATO isn't applying its own procedures properly. Complainants already upset with the ATO would most likely take an even more dim view of ATO complaint handling processes if an outside organisation determined the ATO hadn't followed its own procedures properly.
- 2.31 Nonetheless, the Committee sees value in the 'one last chance' referral system, and would like to see it continue. Ideally the Commonwealth Ombudsman should apply the 'one last chance' process and determine that the ATO had implemented its procedures properly every single time, and the Committee hopes that this will soon be the case.
- 2.32 While the Committee understands the ATO handles a large volume of complaints every year, the ATO should use the deficiencies identified by the Commonwealth Ombudsman as an opportunity for further improvement.
- 2.33 In order to determine whether there are any broader systemic issues underlying the complaints rectified through the 'one last chance' referral process, the Committee resolves as follows:

### **Recommendation 1**

**That the Australian Taxation Office and Commonwealth Ombudsman review all complaints rectified through the 'last chance referral' process to determine whether there are any systemic administrative deficiencies within Australian Taxation Office complaint review and handling processes.**

**That both organisations provide a joint response to the Committee briefly outlining their findings and the steps taken to rectify any systemic administrative deficiencies identified.**

- 2.34 The Committee is also concerned that approximately 50 per cent of taxpayers are taking complaints directly to the Commonwealth Ombudsman in the first instance, when the correct procedure is for a complainant to exhaust all of their review options with the ATO before taking their case to the Ombudsman. Noting the investigation of the Ombudsman into this issue, the Committee is interested to find out whether this rate of misdirected complaints is consistent with other agencies, or if it is an aberration restricted to the ATO.
- 2.35 The Committee is pleased by the steps taken by the Commonwealth Ombudsman to direct complaints received in this way to the ATO for consideration and review, but nonetheless hopes to see taxpayers use the appropriate pathways to raise complaints with the ATO.

### **Recommendation 2**

**That the Australian Taxation Office and Commonwealth Ombudsman examine why complainants are initially taking complaints to the Ombudsman, rather than approaching the Australian Taxation Office, and that both organisations take steps to ensure complaints are sent to the Australian Taxation Office in the first instance.**

**That both organisations provide a joint response to the Committee briefly outlining their findings and the steps taken to rectify the situation.**

- 2.36 Further enhancement of the ATO's capability to deliver services online should also be encouraged. Any steps that make it easier for taxpayers to both access and submit information are to be encouraged, and further simplification in dealing with the ATO will be welcomed by taxpayers.



Services like 'pre-filling' e-tax returns enable taxpayers to submit returns more quickly, and reduce the chances of data being entered incorrectly.

- 2.37 The project to make e-tax web-based, rather than software-based is also one that should be given a high priority. The introduction of smart phones and tablet computers has further diversified available computing platforms, and a web-based system will enable all users to submit returns online, not just those working with specific operating systems.
- 2.38 The Committee acknowledges the overwhelming positivity about ATO service delivery during 2012 tax time. All witnesses examined on this issue extended praise to the ATO's handling of the busiest time of the work year, and the Committee looks forward to the same standard being met or exceeded next year.
- 2.39 Plain English communication remains an issue of interest to the Committee. Communicating with taxpayers in plain English on complex matters like taxation is vital. As Australia becomes more diverse, it is more important than ever that taxpayers, especially small business owners, receive clear and concise written communication from the ATO wherever possible. The Committee was pleased to hear that the ATO tests its templates for written communication and also seeks to have the Commonwealth Ombudsman assess draft letters. This review process is valuable and should continue.
- 2.40 While witnesses and statistical measures identified this as a year of positives for the ATO when it comes to service standards, there is no room for complacency, and there are still areas in which the ATO can improve. The faults in complaint handling identified by the Commonwealth Ombudsman serve as a warning for the ATO, as does the record number of complaints made to the Ombudsman over the last year. However, the Committee remains hopeful that the ATO and Ombudsman will be able to determine why this was the case and to rectify the situation.



## Theme 2 – Compliance

- 3.1 This chapter examines matters relating to encouraging and enforcing compliance, including:
- Debt recovery and the global financial crisis
  - Small business services
  - Training for small business

### **Debt recovery and the global financial crisis**

- 3.2 Committee members have, over time, received anecdotal evidence from constituents that there have been changes in the way the ATO conducts its debt recovery operations, and took the opportunity at the public hearing to discuss the matter in further detail with the Commissioner of Taxation.
- 3.3 The Committee noted that the ATO had put in place more flexible debt recovery arrangements during the global financial crisis to support viable businesses in difficulty, and asked whether there had been any changes to debt recovery as the global economy had again begun to stabilise.
- 3.4 The ATO agreed that they had taken a decision at the start of the global financial crisis that they would try and help taxpayers where possible, by providing payment arrangements including, in some cases, interest free arrangements, to ensure businesses could continue to operate through short term financial difficulties, and that this approach hadn't changed.<sup>1</sup>

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<sup>1</sup> Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 11.

- 3.5 The Commissioner noted that while they have taken this approach, that in cases where a taxpayer had consistently defaulted on payment arrangements, other action had to be taken:

...in situations where keeping the business going may not be in the best interests of the people themselves, and certainly disadvantageous for other businesses that are paying their tax position - we have taken what we call firmer action which might include garnisheeing. You have seen an increase in liquidation, which we put into our report. But it is not so much that all of a sudden we are taking a different approach; we are just applying a tailored approach to the facts and circumstances of the taxpayer in the context of those broad principles.<sup>2</sup>

- 3.6 The ATO also advised that it had developed software resources to enable ATO staff to discuss with taxpayers their business position and to get a more objective assessment of continued viability. The Commissioner stated:

That has meant that, in some situations, we have actually said 'No, we really cannot give you a payment arrangement or defer firmer action because in some way we actually think that you might be trading in a position, perhaps, of insolvency.'<sup>3</sup>

- 3.7 The submission provided by the ATO noted that there has been an increase in the number of business wind-ups initiated by the ATO, rising from 2% of total bankruptcies and 10.9% of total wind-ups in 2010-11 to 2.3% of total bankruptcies and 14.4% of total wind-ups in 2011-12. The submission also noted that the ATO used external consultants to conduct independent reviews of ATO management of insolvency cases.<sup>4</sup>

- 3.8 The Committee asked whether there were circumstances in which the ATO would vary an agreed payment plan to more quickly pay off a tax debt without the consent of the taxpayer. The Commissioner replied that, to his knowledge this had not occurred, and it was "not a general occurrence."<sup>5</sup>

- 3.9 In considering the ATO's approach to debt management, specifically through the lens of small business, Mr John Malkovich gave the Committee a summary of his observations over time:

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2 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 12.

3 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 12.

4 ATO, *Submission No. 1*, p. 18.

5 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, pp. 27-28.

With debt management, initially there were issues with some people saying the ATO was a little too hard in approaching debt management. But that softened up a lot over the years and it's no longer one strike and you are out. We really pushed the issue that if you are a good taxpayer meeting your BAS [Business Activity Statement] on time and doing everything you should, if you do not get it in on time once then they do not come down on you hard. Instead you get a letter saying, 'You're a great taxpayer but you haven't got your BAS in on time this time, so make sure you do it next time.' I think that is a wonderful touch.<sup>6</sup>

## Small business services

### The ATO's 'No strings attached' small business advisory service

- 3.10 The ATO reports that it offers free, targeted, tailored small business assistance, and advises that information obtained as part of the service will not be used to commence an audit.<sup>7</sup>
- 3.11 The ATO had taken steps to promote the service, working with industry, trade and business associations. The ATO emphasises that businesses would not be subject to an audit if they were found to be operating contrary to their legislative obligations.
- 3.12 Mr John Malkovich described the service as 'fantastic' and stated:
- The ATO is going out to talk to small business people. Critical to that is that the ATO goes out and says they are not there to use this as a trigger to do an audit, but they are genuinely there to help with business processes, including ABN [Australian Business Number] registration, super, record keeping and things like that.<sup>8</sup>

## Small business benchmarking

- 3.13 The ATO noted in its submission that small business benchmarks were calculated by the ATO from information reported on tax returns and activity statements, and enabled businesses to compare their performance against similar businesses in their industry.

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6 Mr Malkovich, *Committee Hansard*, Canberra, 14 September 2012, p. 23.

7 ATO, *Submission No. 1*, p. 13.

8 Mr Malkovich, *Committee Hansard*, Canberra, 14 September 2012, p. 23.

- 3.14 The ATO calculates small business benchmarks calculated from income tax returns and activity statements of businesses operating in similar industries to assist businesses in comparing their performance against similar businesses. 66 per cent of tax agents surveyed by the ATO refer small business benchmarking to clients.<sup>9</sup>
- 3.15 It was further noted that benchmarking enabled the ATO to identify businesses that may be avoiding tax obligations by failing to report income, and that businesses significantly outside their benchmarks may attract the attention of the ATO.<sup>10</sup>
- 3.16 The Committee was also advised that small business benchmarking had shown changes in taxpayer behaviour – ATO targeting of six industries had shown significant increases in the number of businesses that now report income in the same range as their industry peers, when they previously reported income below that of other similar businesses.<sup>11</sup>

### The ATO's philosophical approach to supporting small business

- 3.17 The ATO outlined its philosophical approach towards small business:

The heart of what we do is helping businesses understanding their rights and obligations and making it easy as possible for businesses to properly participate in Australia's tax and superannuation systems. We recognise the diversity of small business and tailor our services accordingly.<sup>12</sup>

- 3.18 The ATO described its approach to businesses in short term financial difficulty as 'empathetic', and that it sought to support businesses through tangible assistance such as business assistance visits.<sup>13</sup>
- 3.19 The Committee was advised that these business assistance visits were targeted at businesses in financial difficulty, and had led to a reduction in compliance costs for all businesses visited. Further, these visits had resulted in increased responsiveness on behalf of the part of small business - in 2010-11:
- the average time for visited businesses to lodge activity statements was reduced by 11 days;

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9 ATO, *Submission No. 1*, p. 21.

10 ATO, *Submission No. 1*, p. 22.

11 ATO, *Submission No. 1*, p. 22.

12 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 1.

13 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

- visited businesses made 13 per cent more electronic lodgements;
  - they had lower tax debt on average than the broader small business population; and
  - were less likely to be subject to further compliance action.<sup>14</sup>
- 3.20 Related to this, the ATO informed the Committee that strategies focused at certain groups of businesses yielded similar results. In 2011-12, the ATO provided information to cafes and restaurants, real estate services and carpentry services. As a result, voluntary statements lodged for these targeted industries increased on average by over 15 per cent in the relevant period.<sup>15</sup>
- 3.21 Looking further at the issue of supporting viable businesses in short-term difficulty, the ATO also supported businesses to avoid bankruptcy or insolvency by using interest-free activity statement payment arrangements where it was appropriate to do so.<sup>16</sup> The Commissioner noted there were 152,007 small business payment arrangements to the value of \$1.45 billion in effect at 30 June 2012.<sup>17</sup>
- 3.22 The ATO also discussed the way it informs business of significant reforms. Tools available to the ANAO included:
- a funded media campaign;
  - targeted, direct mail to employers; and
  - targeted, direct mail to intermediaries, such as accountants and software providers.<sup>18</sup>
- 3.23 It was also noted that the ATO distributed a monthly small business newsletter that reached approximately 1.4 million businesses, and also used its Online Small Business Forum to disseminate information to business operators.<sup>19</sup>

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14 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

15 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

16 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

17 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

18 Mr Peterson, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 19.

19 Mr Quigley, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 19.

## Simplifying lodgement for small business

- 3.24 The ATO reported in its submission that a review was currently underway which sought to find avenues to simplify lodgement processes for medium, small and micro businesses.
- 3.25 The ATO announced that the process would consider opportunities to leverage data matching to automate components of various business returns through pre-filing. It also identified the following measures aimed at reducing the amount of information a business is expected to provide in its annual return:
- removing around 30 labels from the annual returns;
  - halving the length of the capital gains tax schedule;
  - deleting the capital allowances schedule;
  - deleting the personal services income schedule; and
  - reallocating a number of labels from the tax returns to the international dealings schedule to better target the collection of that information.<sup>20</sup>

## The small business commissioner

- 3.26 At the public hearing, the Tax Institute advised the Committee that while the Government had announced the creation of a small business commissioner position, that it had not yet been filled, and that it would be beneficial if the position functioned as a single point of contact for small business.<sup>21</sup>
- 3.27 The Tax Institute identified the role a small business commissioner could play as a focal point for regulatory matters; a role that was identified at an event run in conjunction with the Council of Small Business of Australia (COSBOA) earlier in the year:

COSBOA and the Tax Institute earlier this year held what was effectively a small business roundtable and we discussed not only tax but all of the different regulatory issues that small business face. Not only is it a challenge for small business to meet those, but in raising concerns there are about 16 different departments for them to go to. That is unsustainable. So the small business

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<sup>20</sup> ATO, *Submission No. 1*, p. 18.

<sup>21</sup> Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 28.



commissioner position, when it is filled, I think will be an important liaison point and intermediary for small business.<sup>22</sup>

- 3.28 The Federal Government has since appointed Mr Mark Brennan to the role of Australian Small Business Commissioner, noting the role of the Commissioner is to provide information, advice, advocacy and representation of small business interests within the Australian Government.<sup>23</sup>

## Training for small businesses

### Proposal for mandatory training

- 3.29 John Malkovich spoke to the Committee about the value of a basic knowledge of business fundamentals before a new business owner starts out:

I think for people starting off initially their biggest driver to get out there is to make money. So, with anything else that is above and beyond that, they think, 'I'll just put that on the backburner for now.'

...As to getting them to do a course, I have thought about this quite a bit and discussed it with some of my colleagues. Before you can get an ABN, an ACN [Australian Company Number], a business name or anything like that, there could be a form that you complete that asks for ID, what industry you are going into and says, 'Fantastic. Have you finished the compulsory course in business fundamentals are your local TAFE [Technical and Further Education] or CIT [Canberra Institute of Technology]? If you haven't, why not?' You could also get some recognition for prior learning.

...Show them how profit and loss work. Explain to them that it does not matter what the profit and loss are; it is what the cash flow is doing and whether or not the money is coming in. A simple thing is having an offset account where you put one-tenth

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22 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 28.

23 DIISRTE, Australian Small Business Commissioner, <http://www.innovation.gov.au/SMALLBUSINESS/SMALLBUSINESSCOMMISSIONER/Pages/default.aspx> (accessed 18 October 2012).

of your takings in as your GST so you can meet your obligations. It is simple things like that...

...with that extra knowledge, they are in a better position to run a more successful business. They are in a better position to realise that they have obligations to the Australian government to pay their tax...

...The benefit is that, when they know all of that, they are less likely to default on tax payment. Later, if they do get a letter from the ATO saying they have not done something, ignorance is no excuse, because they have done the course and know that they needed to pay tax and pay their GST. So those are the real benefits of it.

- 3.30 The ATO reported on its program called Right from the Start, a web-based program with tailored information about small business support offered by the ATO, including tips and fact sheets. The Committee was advised that the ATO had been trying to expand its communication with small business and to promote knowledge of its online resources.<sup>24</sup>

### ATO online resources

- 3.31 The ATO also outlined the electronic tools and calculators it provided on ato.gov.au to enable small businesses to self-assess or calculate tax obligations or entitlements, and also to access guidance tailored to their small business requirements. The ATO outlined several key online tools for small business, with all established tools having anywhere from 13,000 to 129,000 views over the first five months of 2012:

- Is your business tax-ready?
- GST property tool
- Research and development tool
- Employee/contractor decision tool
- Building and construction industry – employee/contractor decision tool
- Capital Gains Tax small business concessions tool
- Payment arrangement calculator.

- 3.32 Philip Halton of COSBOA reported that in his role with the Australian Livestock and Rural Transporters Association they had worked to ensure

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24 Mr Quigley, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 26.

that its members were able to use various price calculators to assist them in understanding potential costs to assist with setting appropriate prices for services. It was also noted that COSBOA had created a calculator to assist businesses in estimating their costs after the introduction for the price on carbon.<sup>25</sup>

- 3.33 Paul Drum of CPA Australia informed the Committee that his organization had been conducting webinars and providing podcasts using its own facilities to enable the ATO to engage with tax professionals through a conduit other than the ATO website.<sup>26</sup>

## The ATO and social media

- 3.34 The ATO's submission reports on its use of social media, with the ATO describing the benefits of social media to improving compliance:

Social media enables us to provide practical guidance and information in a time, manner, and place suitable to taxpayers. These tools are a valuable alternative for taxpayers, giving them the ability to receive a response from us in a manner and location convenient to them. The channels also enable us to scan social media comments and conversations to understand how the community perceives us, what issues are a priority for the community, and to respond accordingly.<sup>27</sup>

- 3.35 The submission also outlined the status of the ATO's social accounts as at 9 August 2012:

- Facebook – launched 1 July 2011, 2,110 'likes'
- Twitter - launched 1 March 2010, 9,749 'followers'
- YouTube – launched July 2011, almost 100 videos uploaded, and more than 197,258 views of ATO.

- 3.36 Additionally, the ATO advised that it used its Twitter page to provide the latest information on new measures, changes to legislation, reminders, information on system outages, and scams.<sup>28</sup>

- 3.37 In its appearance before the Committee, the ATO noted that its presence on social media was still relatively small.<sup>29</sup>

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25 Mr Halton, COSBOA, *Committee Hansard*, Canberra, 14 September 2012, p. 26.

26 Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 14 September 2012, p. 26.

27 ATO, *Submission No. 1*, p. 15.

28 ATO, *Submission No. 1*, p. 15.

29 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 27.

- 3.38 Considering rural and regional Australia, COSBOA noted that in these areas, traditional social networks were still the most trusted source of information.<sup>30</sup> In response, the Commissioner agreed, and reported that this was one of the reasons the ATO sought to provide information through representative bodies, journals and contacts, and to try and engage the public where possible through representative bodies.<sup>31</sup>

## Committee Comment

- 3.39 The Committee notes the assurances from the Commissioner that there has been ‘no change’<sup>32</sup> in the ATO’s approach to debt recovery as the pressures from the global financial crisis have eased. There are clear benefits from the ATO adopting a flexible approach to debt recovery, and this approach is preferred to a punitive approach in which businesses are closed, and jobs are lost.
- 3.40 The Committee is also interested to see the improved analytical systems that enable the ATO to detect businesses that may be close to insolvency. Assessing struggling businesses to determine their viability provides an increased level of support for both business owners and their employees and creditors. It also serves to protect the tax base.
- 3.41 It is pleasing to hear of initiatives like the ‘no strings attached’ small business advisory service being used to provide a concrete example to small business that the ATO believes a collaborative approach to compliance is beneficial. The statistics that show increased compliance after a visit indicate that the service is a valuable one that has clear benefits both to small business and to the ATO itself.
- 3.42 Small business benchmarking is another ATO initiative that has clear benefits both for business and for the ATO. By assisting businesses to compare themselves with their contemporaries, small business owners are able to see areas in which they can improve their performance and increase their profits. Side benefits for the ATO of identifying businesses that may be performing outside their sector benchmark and therefore may not be fully compliant is obvious and is an initiative supported by the Committee.

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30 Mr Halton, COSBOA, *Committee Hansard*, Canberra, 14 September 2012, p. 27.

31 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 27.

32 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 11.

- 3.43 The Committee was interested to hear that 66 per cent of tax agents that were aware of small business benchmarking had recommended it to their clients. The Committee believes that number can be built upon and is interested to see if the ATO can increase this figure in next year's submission.
- 3.44 Business assistance visits for businesses struggling to meet their compliance obligations also demonstrate the ATO's commitment to ensuring compliance through cooperative rather than punitive measures. By engaging businesses having difficulties with compliance, the ATO is able to intervene earlier to assist these businesses and to attempt to maintain their viability.
- 3.45 The Committee does acknowledge, however, that the ATO can, and does take more serious action where it is warranted. In his appearance before the Committee, the Commissioner reported that in cases where a taxpayer had consistently defaulted on payment arrangements, other action had to be taken, and the Committee acknowledges and supports the use of these measures where it is required. Further, the Committee notes the comments of the Commissioner that the ATO is unable to support businesses that are clearly not viable, and supports the Commissioner's comments.
- 3.46 The measures canvassed above, should provide sufficient evidence that the ATO's actions match their rhetoric when looking at the philosophical approach they take to engaging small business. The adoption of a proactive, rather than punitive approach is one that should be praised, and the Committee hopes to see the ATO continue to think in this way to encourage compliance, and to use punitive measures only when required.
- 3.47 The Committee also notes the ATO's review to further simplify lodgement for businesses, and is pleased to see pre-filing also move to the business sector from the personal income tax sector.
- 3.48 The suggestion that there be mandatory training for new business owners was one that interested the Committee, as it clearly came from considerable thought over ways to improve compliance. The Committee believes that anyone starting a new business with no previous experience should enter into the process understanding all of their responsibilities, and that they should draw from available assistance to ensure they will comply with their tax obligations.
- 3.49 However, the Committee is not convinced that compulsory training prior to engaging in business is the way to go, as it would slow down the ability to start new businesses. The Committee was also satisfied that the ATO provided adequate checklists and training resources for new business

owners, and that there were also professional organisations that could be contacted that would extend assistance. ATO resources on starting a new business are easy to find on its website, however, the ATO could emphasise these resources more, and strongly recommend that new business owners properly go through these resources prior to opening their businesses.

- 3.50 In a related issue, the Committee was interested to hear that other organisations were providing calculators similar to those provided by the ATO, but targeted at specific industries. This valuable support provided by professional organisations could be better supported by the ATO, and the ATO should encourage organisations to make sure the underlying assumptions and figures that inform these calculators are accurate.

### **Recommendation 3**

**That the Australian Taxation Office offer to provide assistance to professional organisations that provide online calculators relating to taxation to ensure these resources are based on accurate figures and assumptions, and that the Australian Taxation Office promote this service to these organisations.**

- 3.51 The Committee was interested to hear the ways in which the ATO interacts with taxpayers through social media. Its explanation of how it uses its Twitter account was informative, and the Committee notes the immediacy of this method of communication.
- 3.52 The Committee sees a lot of value in the ATO's YouTube channel as a way of providing easy to understand advice to taxpayers. The ability to easily provide information in different languages for business owners and taxpayers of non English speaking backgrounds is of significant value and can only assist with ensuring increased compliance.
- 3.53 Touching briefly on Facebook, which is the most popular social networking tool in Australia, the Committee notes the relatively low number of subscribers compared to the ATO Twitter account. The Committee notes the format of Facebook requires users to "like" corporate pages. As this is the case, the Committee suggests that the ATO consider renaming their page to make it more appealing to users and to more accurately reflect the purpose of the ATO's social media accounts.
- 3.54 The Committee sees promotion of social media as an area that could be improved upon by the ATO, as its subscription rates are quite low

compared with the number of taxpayers and businesses in Australia. Accordingly, the Committee recommends:

#### **Recommendation 4**

**That the Australian Taxation Office continue to promote its social media resources and to seek feedback from business consultative groups about the usefulness of these resources. Further, that the Australian Taxation Office determine and report on the effectiveness of these resources in its submission to next year's hearing.**





## Theme 3 – Policy Development

- 4.1 This chapter examines matters relating to policy development, including:
- Superannuation administration
  - Foreign investment and revenue leakage
  - The tax gap
  - Private rulings
  - The ATO's role in shaping legislation

### **Superannuation administration**

#### **Employer superannuation guarantee charge obligations**

- 4.2 The Committee asked the ATO about monitoring, auditing and prosecutions in relation to superannuation guarantee obligations on employers.
- 4.3 The Commissioner of Taxation replied that most employers do voluntarily pay their superannuation contributions, and that while complaints about superannuation not being paid were 'important', that they made up a low proportion on aggregate, making up only 0.17 per cent of the Australian workforce.<sup>1</sup> Further, it was noted that complaint levels related to the superannuation guarantee charge had been steady since 2007-08.<sup>2</sup>

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1 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 7.

2 Mr Peterson, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 8.

- 4.4 The ATO noted that of that 0.17 per cent of employees that lodged a complaint, approximately a third of complaints did not result in a liability being raised because there had been a misunderstanding, superannuation may have been paid into an account the employee hadn't looked at, or the employee was not eligible for superannuation.<sup>3</sup>
- 4.5 The Commissioner also reported on recent trends in casework and collection:
- Last year, in 2011-12, we had 19,440 complaints. That was up from about 18,000 in 2010-11. In 2010-11 we raised super guarantee liabilities of something like half a billion dollars, of which we collected just under \$300 million – \$291 million. We were able to transfer to employees \$269 million last year. This year, in 2011-12, which is the current closed year, we raised \$553 million in super guarantee. We are bringing back into the net half a billion dollars a year. We collected \$314 million and were able to put into employee accounts \$293 million. We did something like 11,000 cases to 30 June 2012. We also did some proactive work which bought in \$143 million in 2011-12.<sup>4</sup>
- 4.6 The ATO indicated that it had 711 full time equivalent employees on superannuation guarantee and choice initiatives, and that just under 250 of those employees were specifically engaged on superannuation guarantee audits.<sup>5</sup>
- 4.7 It was reported to the Committee that when the ATO started a complaint case relating to the superannuation guarantee, it would risk rate the employer by examining whether there had been previous complaints, whether the ATO had previously raised assessments, and the compliance history of the business. If the employer was rated anything other than 'low', the ATO would look at the complaint, and also all of the other employees across the business.<sup>6</sup>
- 4.8 The Inspector-General of Taxation reported that he had conducted a review of the superannuation guarantee back in 2010, titled *Review into the ATO's administration of the Superannuation Guarantee Charge*.<sup>7</sup>

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3 Mr Peterson, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 7.

4 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 7.

5 Mr Peterson, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 7.

6 Mr Peterson, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 8.

7 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 8.

- 4.9 The Committee reviewed the recommendations made by the Inspector-General in his report<sup>8</sup>, and was pleased to see that, for the most part, these recommendations had been implemented.
- 4.10 Examining the three recommendations directed to Government, recommendations 2 and 3 were adopted, and recommendation 11 was adopted in part. As a result, it is now law that:
- employers report on an employee's payslip the amount of superannuation paid into the employee's account;
  - superannuation funds notify an employee on a quarterly basis if superannuation is not paid into an account; and
  - if a company fails and owes superannuation to employees, that the directors of the company are made strictly liable for the unpaid superannuation liabilities of the company.<sup>9</sup>
- 4.11 The Inspector-General of Taxation emphasised the value of the Government adopting his recommendation concerning payslip reporting, noting that it would bring potential superannuation payment irregularities to an employee's attention more quickly.<sup>10</sup>
- 4.12 However, the Inspector-General also cautioned about increased regulatory burdens for employers, noting the balance that needed to be struck:
- All of this needs to be balanced because with the tax system there are so many issues. When you start wanting all this extra reporting, you have the small business community then complaining that there is too much red tape. There is a very fine balance to be reached. For example, if I said that there should be more audits there, I am sure that the small business community might also have something to say about that. All of this is a delicate balance and there are not necessarily quick fixes.<sup>11</sup>
- 4.13 Examining the recommendations directed to the ATO, the vast majority of these were adopted. The one recommendation not adopted by the ATO
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8 IGT, *Review into the ATO's administration of the Superannuation Guarantee Charge*, March 2010, pp. 8-15.  
[http://www.igt.gov.au/content/reports/super\\_guarantee/superannuation\\_guarantee.pdf](http://www.igt.gov.au/content/reports/super_guarantee/superannuation_guarantee.pdf), (Accessed 10 October 2012)

9 Assistant Treasurer The Hon. Bill Shorten MP, *Government and Inspector-General of Taxation See Eye-to-Eye on Providing Strongest Ever Protection for Workers' Super*,  
<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/016.htm&pageID=003&min=brs&Year=&DocType> (Accessed 10 October 2012).

10 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 8.

11 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 9.

(recommendation 4), is however already largely occurring, and that other portions of the recommendation would require a reallocation of resources that would not be beneficial to the operations of the ATO.<sup>12</sup>

## Foreign investment and revenue leakage

4.14 During the public hearing, the Committee asked the Commissioner of Taxation whether there was revenue leakage out of Australia when foreign capital entered and exited the country, and whether the Australian tax system was being exploited by foreign sovereign or corporate structures.

4.15 The Commissioner replied that he was unaware of any circumstances in which this had occurred when involving sovereign structures, noting Australian laws dealing with capital inflows were complex and cover a range of contexts.<sup>13</sup>

4.16 He noted that in relation to capital gains tax, there was a foreign investment concession in terms of not having to pay capital gains tax except in relation to land-rich companies. Further, the Commissioner advised that international tax arrangements had been reviewed relatively recently.<sup>14</sup>

4.17 Looking at the issue of revenue leakage, the Commissioner noted there were always risks with dealings that occurred offshore or were conducted with offshore arrangements. He identified the role of the ATO as follows:

Our role is to work out whether or not there has been abuse of the existing law in some way, and we have seen arrangements that involve international legs that tried to apply situations that do not reflect the underlying economic substance of the transaction.<sup>15</sup>

4.18 The Commissioner also noted two recent public determinations that covered arrangements involving leveraged buyouts by overseas investors:

A leveraged buyout is when someone gets a big loan, buys out a shareholding in Australia and then divests some of the Australian

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12 IGT, *Review into the ATO's administration of the Superannuation Guarantee Charge*, March 2010, p. 10.  
[http://www.igt.gov.au/content/reports/super\\_guarantee/superannuation\\_guarantee.pdf](http://www.igt.gov.au/content/reports/super_guarantee/superannuation_guarantee.pdf),  
(Accessed 10 October 2012)

13 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, pp. 13-14.

14 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 14.

15 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 14.

assets and uses the proceeds to pay back that loan. Where they do it as a matter of business – this operates in terms of offshore private equity firms for instance – they do it on a regular basis and their modus operandi is to buy companies and divest of those companies in a short time, we have maintained our position that we think that is on revenue account. So they are liable to Australian tax if that occurs. What often occurs in some of these arrangements is that they try to take advantage of what benefits exist in terms of the treaty network around the world.<sup>16</sup>

- 4.19 The Commissioner concluded by noting that such ‘treaty shopping’ was subject to the ATO’s general anti-avoidance rules.<sup>17</sup>
- 4.20 The Deputy Inspector-General of Taxation noted that there was an inherent tension between what Australia wanted to do, and what other jurisdictions did, and that the aim was to try and reduce any overall tax that was unnecessary in cross-border transactions, and that there was always some tension in dealing with other jurisdictions to ensure that everyone perceives there to be a fair system and that there is a ‘fair game’ being played between jurisdictions.<sup>18</sup>
- 4.21 The Inspector-General noted that there was always going to be some revenue leakage in foreign transactions, but that there was a balance to be struck in considering these issues:
- ...at the end of the day you want to make sure that there is not leakage that is really hurting the country. But, on the other hand, as a Prime Minister of another country has said, we want the world to know we are open to business. So there is a delicate balance to be reached here.<sup>19</sup>
- 4.22 The Commissioner of Taxation agreed for the need for balance, and that Australia had to bear in mind the fact that it was an open, small economy in a global world, and that it was a capital-hungry country seeking to sell its resources, and it had to work within that context.<sup>20</sup>

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16 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 14.

17 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 14.

18 Mr McLoughlin, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 15.

19 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 15.

20 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 15.

## The tax gap

- 4.23 The Committee has previously taken an interest in the tax gap. The tax gap can be defined as the difference between the amount of tax payable if there was complete compliance with tax laws in a defined period, and the amount actually collected for that period. There is no generally recognised formula for calculating the tax gap.

## Methodologies to measure the tax gap

- 4.24 The ATO reports a growing interest in measurement of tax gaps internationally, and that work is being done that may lead to better methodologies. Further, different countries favour different approaches. The United States focuses on non-filing, under reported income, and underpayment of tax. The United Kingdom takes a 'top-down' approach, comparing actual revenue with what might be expected from a comparison with national accounts. The ATO takes a similar approach when looking at indirect taxation.
- 4.25 It was unclear whether the ATO calculates a comprehensive national tax gap estimate.
- 4.26 The Commissioner informed the Committee that there had been some tax gap analysis conducted using a 'top-down' approach, in the area of the GST. He expressed optimism that this analysis would be made public in time, and that preliminary work had suggested the tax gap in this area was small compared to most modern countries, and that it was also trending downward.<sup>21</sup>
- 4.27 In relation to direct taxation, the ATO has started to use a 'bottom-up' approach, estimating components of the tax gap using surveys and administrative and operational data. The ATO indicates that it will continue to follow developments overseas with interest.<sup>22</sup>
- 4.28 The Inspector-General of Taxation advised that to do full tax gap analysis, random audits would need to be conducted to provide an untainted dataset, but noted this would have a significant impact on the Commissioner of Taxation's resources, moving resources from conducting audits that may raise some revenue to audits that would not be able to raise any revenue at all. However, the Inspector-General also noted the usefulness of tax gap analysis, and that even though gap analysis may

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21 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 4.

22 ATO, *Submission No. 1*, p. 24.

provide an imprecise figure, that some measure was better than no measure at all.<sup>23</sup>

- 4.29 The ATO noted the differences between gap analysis and the definition of the tax gap in Australia and other jurisdictions. It reported that in Australia, the term tended to mean people who didn't submit returns and operated in the cash economy, whereas many international measures included timeliness of lodgement and debt repayment, and the accuracy of returns. Further, Australia's system of full lodgement of returns for all income earners was not the case internationally. The Committee heard that to obtain a robust sample with which to do gap analysis, approximately 40,000 random audits would be required.<sup>24</sup>
- 4.30 The Commissioner also noted the work the ATO did with Treasury to forecast expected revenue. He advised that Treasury had models of the economy that were used to indicate the level of tax that should be collected, and that the ATO worked closely with the parameters created by this modelling.<sup>25</sup>

## Private rulings

- 4.31 The Committee has also previously taken an interest in the ATO's provision of private rulings. A private ruling sets out the Commissioner of Taxation's opinion about the way a tax law applies, or would apply, to a taxpayer in relation to a specified scheme or circumstance. The Commissioner of Taxation must administer the law in the way set out in the ruling, unless the ruling is found to be incorrect and applying the law correctly would lead to a better outcome for the taxpayer.<sup>26</sup>
- 4.32 The Committee asked about developments surrounding private rulings. The ATO replied that there had been a slight reduction in the number of private rulings sought recently, and that most businesses were happy with the guidance provided by the ATO. The Commissioner advised that private rulings were primarily used for cases that are genuinely contentious, but that the ATO had focused on improving its guidance materials:

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23 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 16.

24 Ms Granger, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 16.

25 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 17.

26 ATO, *How to apply for a private ruling*, <http://www.ato.gov.au/businesses/content.aspx?menuid=0&doc=/content/34047.htm&page=2&H2> (accessed 12 October 2012).

We have a lot of guidance materials and we have stepped up practical plans and common-sense rules of thumb that most taxpayers follow and which usually get them the right sort of answer.<sup>27</sup>

- 4.33 The Second Commissioner noted there had been a major review and re-engineering of the private rulings process, as the ATO had struggled with timeliness of rulings, rather than quality, but that the process had yielded improvements in timeliness and maintenance of quality. She further advised that the ATO would prefer more people, if they required definitive answers, to use the private ruling system to secure certainty.<sup>28</sup>
- 4.34 The Committee was also advised that there tended to be more ruling requests when new provisions were enacted rather than when there were periods in which taxation legislation was relatively settled.<sup>29</sup>
- 4.35 The Committee asked whether private rulings were being codified, with the ATO advising:

Part of our process is to look at ruling requests from two angles. One is: is it telling us there is a need for education, or is there a risk that we will need to do further reviews? The preference is to opt for education if we can. [Secondly] ...is there something here that could be codified in a public ruling, a class ruling, or some other product. Rulings are not always the answer to what's being asked; sometimes it is something like a simple checklist, but it can be a whole range of things.<sup>30</sup>

## **The ATO's role in shaping legislation**

### **Increased consultation between the ATO and Treasury**

- 4.36 The ATO noted that a closer relationship with Treasury in discussing proposed tax legislation had yielded significant benefits:

I strongly believe our early involvement in policy and law design helps ensure that implementation and ongoing administration

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27 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 10.

28 Ms Granger, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 10.

29 Ms Granger, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 11.

30 Ms Granger, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 11.



issues, as well as compliance costs for the community, are taken into account during the development process.<sup>31</sup>

4.37 The ATO also noted the existing protocol between Treasury and the ATO had recently been revised to encourage greater cooperation and consideration of practical implementation during the law designing process. It was further noted that the protocol was consistent with a number of other government initiatives designed to support greater consideration of the implementation issues at the Cabinet stage of decision making.<sup>32</sup>

4.38 Mr John Malkovich, a long standing member on several ATO forums noted the benefits of greater Treasury involvement to understand the practical application of legislation:

...I talk to a lot of people who say: 'The last thing I feel like doing is sitting down and doing any books, reading brochures, or doing this. I just wish I didn't need to do it. What can we do to simplify it?' If Treasury heard that sort of feedback on what some of the hurdles are for small business people before anything becomes law, before it becomes policy and before the ATO needs to administer it that would help immensely. A lot of the time the ATO says 'We only administer it. There is only so much we can do,' and they go back to Treasury and say, 'What can be done?' But I think if it were done earlier on it would make things a lot easier.<sup>33</sup>

4.39 COSBOA reported to the Committee that it had noticed the increased coordination and cooperation between the ATO and Treasury, noting that Treasury was openly working through policy propositions to understand the practical implications of legislative changes, and that this visible liaison had contributed to marked improvements in outcomes for small businesses.<sup>34</sup>

4.40 In reply, the ATO noted there had been Treasury participation in the Commissioner's Small Business Consultative Forum, and that Treasury had found their involvement with the forum useful. Further, Treasury was involved as an observer at the National Tax Liaison Group meeting.<sup>35</sup>

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31 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 2.

32 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 10.

33 Mr Malkovich, *Committee Hansard*, Canberra, 14 September 2012, p. 23.

34 Mr Halton, COSBOA, *Committee Hansard*, Canberra, 14 September 2012, p. 21.

35 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 24.

- 4.41 The Second Commissioner reported that while Treasury was a comparably small agency, they had sought to consciously engage the ATO at senior levels, and had also started their own consultative forum to meet with key members of the tax industry for 'frank and confidential discussions' on key issues.<sup>36</sup>
- 4.42 The Tax Institute supported the remarks of the Second Commissioner, agreeing that Treasury had increased its consultation following a strategic review.<sup>37</sup>
- 4.43 The Commissioner of Taxation noted the importance of his role in relation to Treasury:

In terms of the advice, part of the role – and it is not a role associated with the application of the law to taxpayers – is to see how the tax provisions and the superannuation provisions are working on the ground. There is an implicit responsibility, albeit not under the independence rules, to advise Treasury and the government of the day about what we are seeing on the ground. That is a very strong and important role of the commissioner. When we play this role, we play it wearing a different hat; we play the role wearing a hat as an advisor to the government through Treasury on what we are seeing in the marketplace.<sup>38</sup>

## Government Response to Recommendation 2 of *JCPAA Report 426*

- 4.44 In its last report on tax administration, the JCPAA recommended that ATO notifications to the Government, either directly or through Treasury, on tax policy and legislative problems be made public within 12 months of submission, along with the Government's response. The Government responded, disagreeing with the recommendation, stating:

There is a significant risk that publishing ATO notifications to the Government about potential legislative problems could lead to uncertainty and confusion in the taxpaying community about how the ATO will administer the existing laws. Dialogue between the ATO, Treasury and the Government may canvass a range of issues

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36 Ms Granger, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 24.

37 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 14 September 2012, p. 24.

38 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 3.

which could colour the interpretation of the existing law and existing ATO published views.<sup>39</sup>

- 4.45 At his appearance before the Committee, the Commissioner was asked for his opinion on the Government response, with the Commissioner noting the matter was one for the Government, and that his statutory responsibility was to remain independent of decisions made by the Government:

The Australian system gives the Commissioner the opportunity to make those decisions with integrity in accordance with the law in a way that meets the statutory responsibilities that are on the Commissioner.

...it is my experience that this Government and successive governments have been very careful in not impeding the statutory independence of the Commissioner in relation to the application of the law to various taxpayers nor regarding the risk management choices that we make in terms of how we allocate our resources. I can state quite categorically that the level of independence in Australia is very strong and very rigorously protected.<sup>40</sup>

- 4.46 In considering the Government response further, the Committee inquired as to the volume of advice provided to government that could be considered to be technical, with the Commissioner replying:

The majority of them are of a technical nature, but they all build in terms of the ongoing legislative workload that a government might have. It would need to make choices in terms of whether or not it decides to accept advice that we provide through Treasury and when that can happen. Sometimes minor changes can take a long time. The more significant ones from the Government's perspective are done more quickly.<sup>41</sup>

## Committee Comment

- 4.47 The Committee remains concerned that failure to comply with the superannuation guarantee charge remains a problem for working

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39 Australian Government, *Australian Government Response to Joint Parliamentary Committee of Public Accounts and Audit report: Report 426 - Ninth Biannual Hearing with the Commissioner of Taxation Recommendations 2 and 3*, p. 2.

40 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 3.

41 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 14 September 2012, p. 4.

Australians. Ensuring employers pay into employee superannuation is of critical importance, as losing a job and finding no superannuation has been paid into an account has the potential to be devastating. However, the Committee notes that this remains an issue because of unaware or unscrupulous employers. The Committee was pleased to hear that complaints in this area had been steady, and compromised a small percentage of the Australian workforce.

- 4.48 The Committee notes the resources put in place to address superannuation guarantee charge issues, as well as the way in which the ATO deals with these issues, risk rating employers who have been subject to a complaint, and conducting further investigations when justified.
- 4.49 Additionally, the Committee notes the Auditor-General's statement that he was considering adding examination of the superannuation guarantee charge to his forward planning program.<sup>42</sup>
- 4.50 The example raised by the Inspector-General of Taxation surrounding payslip reporting of superannuation payments serves as a good example of the Inspector-General identifying systemic issues and recommending changes that assist all taxpayers.
- 4.51 Considering the positive reception of the recommendations of the Inspector-General of Taxation in his *Review into the ATO's administration of the Superannuation Guarantee Charge*, the implementation of the majority of recommendations, and the rationale behind the rejection of recommendation 4, the Committee is of the opinion that there is no need to specifically encourage further implementation of these particular recommendations.
- 4.52 With regard to the tax gap, the Committee would also like to see more work done on tax gap analysis. While the evidence presented to the Committee doesn't suggest that Australia has a significant tax gap, it would still like to see more work done in this area.
- 4.53 The Committee notes that requiring a sample of approximately 40,000 random audits would make comprehensive gap analysis difficult in several ways. However, the Committee does not believe that a large tranche of random audits is the only way to conduct some meaningful analysis of the tax gap.
- 4.54 The Committee wishes to see more information on gap analysis measurement in next year's submission, and resolves as follows:
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42 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 14 September 2012, p. 8.

**Recommendation 5**

**That the Australian Taxation Office examine tax gap methodologies to produce a comprehensive national estimate, and report to the Joint Committee of Public Accounts and Audit on the positives and negatives of these methodologies and whether implementation is practical.**

**That this report form part of the Australian Taxation Office's submission to the Joint Committee of Public Accounts and Audit's 2013 Annual Public Hearing with the Commissioner of Taxation.**

- 4.55 The Committee was pleased to hear that the ATO had done some tax gap analysis related to GST collections, and would like to see this document made public as soon as it is finalised.

**Recommendation 6**

**That the Australian Taxation Office publicly release its tax gap analysis relating to Goods and Services Tax collections when the analysis has been completed.**

- 4.56 Looking at the issue of private rulings, the Committee was pleased to hear there has been some levelling of the playing field in the use of private rulings, with a move to guidance materials, rather than making determinations for individual taxpayers. While there is a place for private rulings, in the interests of openness, all taxpayers should generally be subject to the same provisions.
- 4.57 The Committee was also extremely pleased to see improved cooperation between the ATO and the Treasury on both revenue analysis and policy development. ATO involvement in evaluation of legislation allows for the practical implications of legislation to be considered, and should generally lead to better outcomes for Treasury, the Australian Taxation Office, and, most importantly taxpayers in general.
- 4.58 The recent adoption of a new protocol to provide a framework for working arrangements between the Treasury and the ATO provides an important formal mechanism to guide interactions between the organisations, and should support greater collaboration.

- 4.59 The Committee notes the response of the Commissioner of Taxation to its queries about the Government Response to *JCPAA Report 426*, and supports the statutory independence of the Commissioner of Taxation.
- 4.60 However, the Committee voices its dissatisfaction with the response made by the Government. Although the Government Response highlights the potential for taxpayer confusion, it fails to acknowledge or consider the potential benefits of transparency and showing the continuous improvements made to the tax system.
- 4.61 While the position of the Government is understandable, the Committee believes taxpayers can determine the difference between formal statements made by the ATO to taxpayers, and advice to Government from the ATO that may never become law. Further, the Committee believes that taxpayers would understand the risks involved in relying on information from the ATO that had not become law.
- 4.62 Further, the Committee notes the Commissioner's statement that the majority of advice provided to government regarding legislation is technical in nature.
- 4.63 However, at this stage, the Committee falls short of reiterating its recommendation, acknowledging the formal position of the Government on this matter. The Committee believes that the principles of increased transparency and demonstrated improvements should be further considered by the Government in relation to ATO notifications.

## Theme 4 – External Scrutiny

- 5.1 This chapter examines matters relating to bodies that directly scrutinise the ATO, namely:
- Inspector-General of Taxation
  - Commonwealth Ombudsman
  - Australian National Audit Office

### **General**

#### **Scrutiny bodies on ato.gov.au**

- 5.2 The ATO has greatly increased the visibility of performance information on its website in response to recommendations by the Committee. The Committee's previous report recommended that the ATO increase the visibility of its 'traffic light' reporting system, which lists its achievements against benchmarks. The recommendation which was adopted and implemented by the ATO, and has enabled users to quickly determine whether the ATO is meeting its service standards.
- 5.3 The ATO advised in its submission that its Audit Committee oversees implementation of recommendations made by external scrutiny bodies, and that it receives quarterly reports on the progress of implementation of these recommendations.

- 5.4 The ATO also reported in its submission that it planned to publish information about the implementation of recommendations from its scrutiny bodies on its website.<sup>1</sup>

## Inspector-General of Taxation

### Recent reviews

- 5.5 The Inspector-General of Taxation reported on the reviews conducted over the last year, and briefly outlined his findings.
- 5.6 In a review into the administration of class rulings: The Inspector-General found class rulings to be a useful element of the tax system, but a number of areas for improvement were identified.
- 5.7 Reviewing ATO compliance approaches to Small and Medium Enterprises [SMEs] and high-wealth individuals, recommendations were primarily focused on improving ATO staff capability, which was found to be the main underlying challenge. Further, the ATO agreed to replace its *Wealthy and Wise* booklet, aimed at high wealth individuals, with a booklet covering ATO compliance approaches to the entire SME and high-wealth individual markets, giving taxpayers and advisers a better understanding of the processes and means of holding ATO officers to account when expectations were not met.<sup>2</sup>
- 5.8 Further, the Inspector-General noted two more reviews had been completed but not yet released – the ATO's use of benchmarking to target the cash economy, and improving the self-assessment system.<sup>3</sup>

### Forward work program

- 5.9 Each year, the Inspector-General of Taxation publishes a forward work program which outlines areas he intends to review. Each review is subject to resourcing priorities, and the potential for ministerial direction to review a particular matter of concern.<sup>4</sup>

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1 ATO, *Submission No. 1*, p. 28.

2 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 6.

3 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 6.

4 IGT, *Submission No. 5*, p. 4.



- 5.10 The Inspector-General advised the Committee that he had embarked on a public consultation process prior to releasing his forward work program. He noted the value of such a process, reporting that grassroots consultation drew his attention to issues that may otherwise not have been considered, and that the use of an open process ensured that resources were maximized in delivering improvements.<sup>5</sup>
- 5.11 The Inspector-General advised there had been approximately 70 submissions made by the public, that consultation meetings had been held, and that newspaper advertisements had been placed to promote the consultation process.<sup>6</sup>
- 5.12 The Committee asked about the key themes that had already been identified through the public consultation process, with the Inspector-General identifying the following:
- The ATO's risk engine: the risk assessment process the ATO uses to focus its compliance activity
  - Delayed income tax returns
  - ATO administration of penalties
  - ATO administration of general anti-avoidance provisions
  - ATO compliance approach to transfer pricing
  - Excess superannuation contributions.<sup>7</sup>
- 5.13 The Committee is interested in the conduct of the Inspector-General's public consultation process in preparing his work program, and would appreciate a brief review of the process and the comments of the Inspector-General on the value of the process.

## Australian National Audit Office

- 5.14 The Australian National Audit Office (ANAO) acts as a scrutineer of the ATO by auditing the ATO's annual financial statements, and by undertaking independent performance audits that seek to evaluate the efficiency and effectiveness of ATO administration.

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5 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 6.

6 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 13.

7 Mr Noroozi, IGT, *Committee Hansard*, Canberra, 14 September 2012, p. 13.

- 5.15 The ANAO reported on the implementation of a recommendation that the three external scrutiny agencies of the ATO (the ANAO, the Inspector-General of Taxation, and the Commonwealth Ombudsman) engage in more strategic planning and information sharing. The Committee was advised that the agencies had committed to a three-way meeting as part of each agency's planning processes. Further, the purpose of the meeting was to promote, where possible, information sharing arrangements, and consideration of the impact of scrutiny body review activities on ATO resources.<sup>8</sup>
- 5.16 In its submission, the ATO advised that the audits conducted in the last year presented the view that the ATO's governance structures were sound, and that its approach to revenue collection remained consistent with international practice. Indeed, the Organisation for Economic Cooperation and Development sometimes refers to the ATO as a model revenue collection agency.<sup>9</sup>

## Recent reviews

- 5.17 The Committee was advised that over the last year, the ANAO had conducted five performance audits into ATO administration, looking at:
- *The management of compliance in the small to medium enterprises market*
  - *Administration of Project Wickenby*
  - *Interpretive assistance for self-managed superannuation funds*
  - *Implementation of the Small Business Superannuation Clearing House*
  - *The engagement of external debt collection arrangements.*<sup>10</sup>
- 5.18 Further, at the time of the public hearing, the Auditor-General advised that the audit on the ATO's financial statements for 2011-12 was progressing, and that the audit had found:
- The ATO has designed and implemented governance arrangements, a financial reporting regime and an internal control system to provide reasonable assurance about the achievement of ATO's business objectives.
- ...The ATO has made a concerted effort to address significant, moderate and legislative compliance audit findings previously

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8 ANAO, *Submission No. 6*, p. 1.

9 ANAO, *Submission No. 6*, p. 1.

10 ATO, *Submission No. 1*, p. 28.

reported to Parliament. From June 2004 to June 2012, the number of significant and moderate risk findings has steadily declined to the point where there is only one outstanding legislative matter.<sup>11</sup>

- 5.19 In his appearance before the Committee, the Auditor-General reiterated that he had seen continuous improvement in terms of ATO administration through the period of his, and the Commissioner of Taxation's incumbency.<sup>12</sup>

## Commonwealth Ombudsman

- 5.20 Most of the issues raised by the Commonwealth Ombudsman are examined in detail in Chapter 2 of this report, as they relate directly to service standards and complaints about ATO handling of individual complaints.
- 5.21 In its submission, the Commonwealth Ombudsman outlined the areas the ATO can continue to improve to improve its complaint handling capabilities:
- building its analytical capability;
  - making better use of intelligence from complaints in policy, service design and implementation;
  - making executive officers accountable for resolving the root-cause of complaints; and
  - undertaking more first contact resolution.<sup>13</sup>
- 5.22 The submission from the Commonwealth Ombudsman also identifies specific matters of interest that were encountered over the previous year. These included an increase in income tax return integrity checking by the ATO, and complaints about an ATO decision relating to the Superannuation Excess Contributions Tax.<sup>14</sup>
- 5.23 In her appearance before the Committee, the Acting Ombudsman reported that the relationship between her office and the ATO had

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11 ANAO, *Submission No. 6*, p. 2.

12 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 14 September 2012, p. 6.

13 Commonwealth Ombudsman, *Submission No. 4*, p. 3.

14 Commonwealth Ombudsman, *Submission No. 4*, pp. 4-7.

improved markedly over the last two years, and that she was very happy that issues that had been raised by her office were being resolved.<sup>15</sup>

## Committee Comment

- 5.24 The Committee welcomes the ATO proposal to report progress against the recommendations made by its scrutiny bodies through a single page on the ATO website. Providing a 'one stop shop' enables users to identify current issues that have been identified by scrutineers, and whether these issues are being acted upon by the ATO. Further, the Committee would also welcome being included on such a portal. This increases visibility of the work of all bodies that scrutinise tax administration, and enables users to actively monitor the progress of the implementation of recommendations over time.

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### Recommendation 7

**That the Australian Taxation Office publish information regarding the implementation of Joint Committee of Public Accounts and Audit recommendations on its website alongside those of other Australian Taxation Office scrutiny bodies.**

- 5.25 The Committee was pleased to hear about the public consultation process entered into by the Inspector-General of Taxation in preparing his annual work program. For members of the general public, the Inspector-General is probably the least well known scrutiny body of the ATO, and the Inspector-General's responsibility for examining systemic tax administration issues makes a public consultation process more valuable.
- 5.26 This process increases the sources from which the Inspector-General draws his information, and also informs the public of the important role he plays. While the Inspector-General may seek contributions from individual taxpayers, he only uses these to identify broader systemic issues that may not have been brought to his attention any other way.
- 5.27 The Committee also believes the delineation of responsibilities between the Inspector-General of Taxation and the Commonwealth Ombudsman is an extremely valuable one. Maintaining separate scrutiny bodies to

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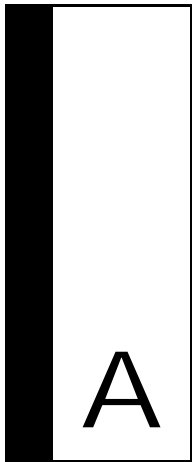
15 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 14 September 2012, p. 7.

address both systemic and individual issues provides a more comprehensive scrutiny regime than to have a single body to examine administration of the tax system.

- 5.28 At the same time, the Committee notes the benefits in collaboration and coordination between the ATO's scrutiny bodies, which provides opportunities to examine potential information sharing arrangements, and consideration of the impact of scrutiny body review activities on ATO resources.
- 5.29 The Committee notes the broadly positive comments from scrutiny bodies at this year's public hearing, and is pleased to hear that there is closer engagement between the ATO and its scrutiny bodies.
- 5.30 However, the Committee also notes that the Commonwealth Ombudsman is the scrutiny body that identifies the most problems with ATO. This may suggest that while the ATO may be satisfactorily addressing systemic issues, and may have appropriate internal management systems in place, there may still be deficiencies with the way some individual taxpayer cases are handled. The Committee looks forward to seeing a reduction in individual complaints, and less use of the 'one last chance' referral process in next year's submissions.

Robert Oakeshott MP  
Committee Chair  
November 2012





## Appendix A – Submissions

- 1 Australian Taxation Office
- 1.1 Australian Taxation Office  
(Supplementary to Submission No. 1)
- 2 CONFIDENTIAL
- 3 Name Withheld
- 4 Office of the Commonwealth Ombudsman
- 5 Office of the Inspector-General of Taxation
- 6 Australian National Audit Office
- 6.1 Australian National Audit Office  
(Supplementary to Submission No. 6)







## Appendix B – Public Hearing

**Friday, 14 September 2012 - CANBERRA**

### **Individuals**

Mr John Malkovich

### **Australian National Audit Office**

Mr Mark Harradine, Executive Director, Performance Audit Services Group

Mr Ian McPhee, Auditor-General

### **Australian Taxation Office**

Mr Michael D'Ascenzo, Commissioner of Taxation

Ms Jennie Granger, Second Commissioner

Mr Brett Peterson, Assistant Deputy Commissioner

Mr Bruce Quigley, Second Commissioner

Mr Robert Ravello, Chief Finance Officer

### **Council of Small Business Australia**

Mr Philip Halton, Executive Director, Australian Livestock and Rural Transporters Association

### **CPA Australia**

Mr Paul Drum, Head of Business and Investment Policy

### **Office of the Commonwealth Ombudsman**

Ms Alison Larkins, Acting Ombudsman

**Office of the Inspector-General of Taxation**

Mr Andrew McLoughlin, Deputy Inspector-General of Taxation

Mr Ali Noroozi, Inspector-General of Taxation

**The Tax Institute**

Ms Stephanie Caredes, Tax Counsel

Mr Robert Jeremenko, Senior Tax Counsel