



Australian Government
Australian Taxation Office

COMMISSIONER OF TAXATION

Ms Sharon Grierson MP
Chair
Joint Committee of Public Accounts and Audit
Parliament House
Canberra ACT 2600

Submission No: 1

Dear Ms Grierson

I am pleased to provide you the Tax Office's report to the JCPAA for discussion at the public hearing on Monday, 30 March 2009.

Our report covers our performance to date in 2008-09 and looks at some topics which may be of interest to the Committee. It specifically highlights our response to the global financial crisis and recent emergencies and our approach to provide an empathetic and more personalised approach to taxpayers, tax practitioners and business, whilst continuing our vigilance to counter increased compliance risks.

In keeping with our commitment to being open and accountable in the administration of the community's tax and superannuation systems, we are pleased to provide the Committee with our draft Corporate Plan for 2009-10 and to seek your feedback.

The draft Corporate Plan is an evolving document and once again this year it includes a multi-year view. The Plan provides a holistic view of our corporate priorities moving into 2010, our centenary year. It focuses on ensuring that we provide practical assistance to individuals, businesses and their agents, to help them comply with their obligations and receive their benefits. The plan does not seek to reflect every risk that we may face or every task that we do – these are picked up in a suite of other corporate planning documents that sit underneath our corporate plan and Strategic Statement 2006-10.

Overall, we are on target to broadly deliver our specific commitments to government. However, as reflected in the updated Economic and Fiscal Outlook tax receipt forecasts for 2008-09 were revised down by \$9.5 billion (since the Midyear Economic and Fiscal Outlook).

Another area of our continued focus will be closely managing our financial position which remains a challenge for us this year. The projected overspend this year is in the order of \$80 million. Coming at a time as it does when taxpayers are coming under pressure from the worsening global economic downturn and with generally increasing risk profiles, and administrative resource and IT constraints and capability issues, together mean that we can not do all that we would like to do. As in previous years our business model is based on risk management and a high dependence on IT and on-line solutions.

Once again, I look forward to benefiting from the Committee's insights on our performance and input on our priorities for the coming year.

Yours sincerely

Michael D'Ascenzo
Commissioner of Taxation

REPORT

JCPAA

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Our performance in 2008-09 and a look at some topical issues

30 March 2009



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LIST OF ATTACHMENTS

- Attachment 1: Draft Corporate Plan 2009-10
Attachment 2: Plenary Governance Forum – Corporate Plan 2008-09: Sub-Plan mid year performance report
Attachment 3: Tax Office Management Arrangements, Parts A and B

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<i>Tax basics for small business</i>	12
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CHAPTER 1: INTRODUCTION

This is our fifth report to Joint Committee of Public Audit and Accounts for its biannual meeting with the Commissioner of Taxation.

We are providing copies of our key corporate documents, including the draft 2009-10 Corporate Plan (Attachment 1), and Plenary Governance Forum – Corporate Plan 2008-09: Sub-plan mid year performance report (Attachment 2). We would welcome any feedback on these documents.

Several sections of this submission refer to the Outcome outputs framework for the Tax Office. This is the framework in the Portfolio Budget Statements that Commonwealth agencies use to frame their commitments to Government and report their performance.

The Tax Office outcome is: “Effectively manage and shape systems that support and fund services for Australians and give effect to social and economic policy through the tax and superannuation systems”.

Our approach to corporate planning and reporting aligns with the Australian National Audit Office’s better practice principles, government guidelines and our statutory obligations under the *Financial Management and Accountability Act 1997*. This enables us to be open and accountable to Government and the community.

OUR CORPORATE PLAN 2008-09 AND 2009-10

Our Corporate Plan 2008-09 provides a multi-year view of our corporate priorities. It focuses on strategy and capability, consistent with our *Strategic Statement 2006-10*, and is guided by our corporate values.

A copy of the draft Corporate Plan 2009-10 accompanies this report at Attachment 1.

CHAPTER 2: REPORTING ON PERFORMANCE

TRACKING PERFORMANCE

As part of our governance arrangements, we regularly review our overall performance against our commitments to our Corporate Plan, the Minister, Parliament and the community, and to identify any emerging priorities and risks. The Plenary Governance Forum is made up of the Commissioners and National Program Managers and meets twice a year (July and December).

The Plenary Governance Forum bases its assessment on:

- performance against the Corporate Plan by the Tax Office's six Sub-Plans (Compliance, Law, Operations, IT, People and Place, and Easier, cheaper and more personalised) and the Australian Valuation Office, and
- measuring conformance with our statutory and other obligations, overseen by an independent integrity advisor.

In December 2008 the Plenary Governance Forum reviewed our performance from 1 July to 31 October 2008, and sought to identify where we could improve and what emerging risks would challenge us in 2009. The Forum concluded that overall we were on target to deliver our specific commitments to government, despite pressure around superannuation guarantee and cash collection targets. It also agreed that we had met our corporate requirements over the year so far and that we are tracking fairly well against the corporate objectives for 2007-08 as they stood at that time. (The Plenary Governance Forum - Corporate Plan 2008-09: Sub-plan mid year performance report summary is at Attachment 2).

The Plenary Governance Forum is next due to meet in July this year when it will review our progress against the Corporate Plan and check that we have met our end of financial year performance against the Corporate Plan 2008-09. A summary of our performance will be provided to the Committee as soon as possible after the July meeting, and of course it will also be reflected in our Annual Report to Parliament.

EFFECTIVENESS INDICATORS

The Tax Office has four effectiveness indicators. To date for 2008-09, we are on track against these indicators which are outlined below:

1) Deliver to government

Consistent with continuing weak economic conditions, in the Updated Economic and Fiscal Outlook tax receipts forecasts for 2008-09 and 2009-10 were revised down by \$9.5 billion and \$22.6 billion respectively since the Mid-year Economic and Fiscal Outlook. The reductions arose primarily from lower expectations of company and goods and services tax receipts.

We have continued to provide significant input to policy and law development and implementation. Particular attention has been paid to measures in the Budget 2008-09, including the first home saver accounts as well as new measures under the Government's economic stimulus package such as the tax bonus.

Providing quality and timely advice to the Government (and Treasury) continues to be a focus. For example, we worked closely with Treasury on the economic financial outlooks and projected tax expenditures.

We are also continuing to work with Treasury on unintended consequences arising from the interaction of new and complex areas of the law.

As at end of February 2009, there were approximately 140 projects and 180 legislative measures (proposed and actual) reporting to our policy implementation forum.

2) Maintain community confidence

We have 27 service standards to measure how we perform in various areas of importance to taxpayers and their agents. As at 28 February 2009, year to date, we are meeting all service standards with the exception of 'paper tax returns - non individuals', 'paper amendments', 'complaints - initial contact' and 'audits finalised advice'.

Overall, our performance shows that we managed our commitments to taxpayers while balancing resource pressures, systems issues, new policy implementation and increasing expectations from the community in the current economic environment. However, strategies to reduce an overspend in our budget may impact on end of year performance.

Results of our 2008 Community Perceptions Survey show the community is increasingly becoming more satisfied with the Tax Office over time with 80 per cent believing that overall we are doing a good job. Tax Agents were satisfied with the overall administration of the tax system (90.6 per cent) and management of tax compliance (89 per cent). The overall professionalism performance was 4.1 out of 5 representing a slight increase from previous surveys.

3) Improve ease of compliance

In responding to national disasters, we made it easier for taxpayers to claim donations under \$10, as well as bringing to attention the issues that underpin the Governments press release¹ on gift deductibility and fringe-benefits tax.

Annual compliance arrangements for income tax and GST were signed with a number of large corporates, promoting greater certainty in the management of their tax affairs.

Our first community approach in relation to debt means we continue to emphasise early intervention and engagement with the community, particularly where taxpayers are at risk of falling behind with their obligations or experiencing hardship. Given the economic climate we are taking an empathetic approach (while seeking to ensure there is a level playing field).

There has been a strong take-up rate of pre-filing by self-preparing taxpayers and their agents. Accompanying a growth in e-tax lodgments has been a 20 per cent increase in the use of pre-filing with approximately 70 per cent of all e-tax users choosing to pre-fill.

We continue to be a strong supporter of the Standard Business Reporting initiative.

¹ The Hon Chris Bowen MP, Media Release 101, 24 March 2009 www.assistant.treasurer.gov.au

4) Efficient, ethical and adaptive organisation

As at 28 February 2008, our operating expenditure was \$27.3 million over budget (1.4 per cent), consisting of an overspend of \$32.1 million on labour expenditure (2.6 per cent) partially offset by a \$4.8 million underspend on supplier expenditure (0.7 per cent).

We have applied to the Minister for Finance and Deregulation for an operating loss of up to \$80 million for 2008-09 which is approximately 2.8 per cent over budget, compared to 4.4 per cent over budget for 2007-08.

We have identified a range of strategies that can be employed to reduce the projected overspend. Information on these strategies is outlined under **ATO Financial Position**, at page 20 of this report.

We have continued to review and streamline a number of governance processes at the Tax Office level, including the development of products and tools to better meet the needs of business, including:

- developing a single ATO plan which provides a comprehensive view of all activities delivered by the agency
- providing consolidated reporting, removing the effects of siloed performance between our sub-plans, and
- reducing duplication of high-level committees and focussing their intent and purpose.

We are working to further integrate the feedback and intelligence gathered from our forums to shape an ongoing change agenda for the future direction of the ATO.

Our workforce and succession planning initiatives are building a culture that supports our corporate values and strategic areas of focus. Our corporate approach to workforce planning is helping to inform our resourcing needs and directions ATO, while ensuring sustainability in the workforce through talent management, retention and secondment policies and coaching and mentoring programs.

We delivered a number of initiatives to build capability sustainability, including development of a common capability framework and integrated curriculum to assure job readiness for our technical workforce. We will progressively enhance this for our full suite of skilling products.

In late 2008, we established a new high level committee responsible for organisational strategic issues in the domain of people, culture, values and integrity. The Committee meets quarterly and benefits from both internal and external perspectives, including the Commissioner as Chair, the Deputy Commissioner of the Australian Public Service Commission and Deputy Commonwealth Ombudsman the HR manager at Westpac and two professional HR consultants.

A copy of our Management Arrangements are included in this report at Attachment 3.

PERFORMANCE AGAINST OUTPUTS

Some particular aspects of this year's activities to date are discussed below.

OUTPUT 1: SHAPE, DESIGN AND BUILD ADMINISTRATIVE SYSTEMS

Implementing the Government's legislation program

The Tax Office has progressed the implementation of a range of new tax policy initiatives, including special proposals to provide assistance to the community as part of the government's response to the general financial crisis.

Significant work has been done on proposals like the bonus payments for working Australians, the new small business and general business tax break and the one-off 20 per cent Pay As You Go Instalment reduction for small businesses, to help implement the government's financial stimulus packages. These proposals are being implemented in very short timeframes.

We introduced administrative arrangements required to give effect to the Government's decision to impose the collection of excise duty on condensate produced after 13 May 2008.

Work continues on implementation of other proposals like the temporary residents superannuation proposal, the proposed new regime for tax agents, and excise measures such as alcopops, among others.

We continue to work with the Board of Taxation on a number of tax reviews being conducted by the Board.

Delivering our Change Program

As you know, the Change Program is part of our ongoing technology-enabled change agenda to continuously update our aging legacy IT systems to meet new legislative requirements, deal with the challenges of a more sophisticated external environment including the need for better analytics and to meet rising public expectations of better service delivery.

Implementation of the Change Program is broken down into three major releases. Release 1 and Release 2 were successfully implemented during 2005 and 2006-07 respectively. Our focus during 2008-09 has been on the progress of Release 3. Release 3 will integrate the way we manage our processing, people and technology across the ATO. A major replan of Release 3 was developed late last year to take into account learnings from other Change Program releases and to ensure that we deliver of new Government legislation that needed to be spliced into our delivery schedule, both of which extended our delivery timeframes for the program by 18 months.

Deliver of the various releases under Release 3 is continuing in accordance with the revised delivery plan. Our main achievements in Release 3 to date include:

- initial deployment of fringe benefits tax from March 2008 and full implementation in time for the 2009 fringe benefits tax processing season
- superannuation lost members register and outcome of lodgment report have been progressively deployed since September/October 2008

- design and build completion of the core solution to support superannuation co-contributions, superannuation holding account special account and member contribution statement processing, with a view to deployment by the end of February 2009
- completion of the high level design for the first home saver account scheme, additional superannuation functionality, and the interpretative advice solution with a view to business deployment commencing in July 2009, and
- completed design and most of the build for company tax solution, and near completion of the design for Individual Income Tax with a view to business deployment from January 2010.

Remaining Release 3 releases will be delivered in six monthly phases to ensure the delivery of quality products that are fully operational and provide the best possible client and community experience.

Extending our differentiation capability by enhanced use of analytics and risk profiling techniques

We are progressing our work to improve our manual and automatic systems to detect fraud and other non-compliance activity. We are using increasingly sophisticated analytical tools and techniques to detect and deal with suspect transactions, particularly where false identities are involved.

We have been very successful in our work with partner agencies in clamping down on attempts to create false identities for the purposes of defrauding the tax system. Our work continues around controls and improving our proof of identification framework and we are continuing to invest in our intelligence capabilities, including the analytical capabilities of our staff.

We are using a risk modelling approach to better target our treatment of taxpayers who have a debt by applying different strategies depending on their individual circumstances. By using this capability we can identify taxpayers who would benefit from our early contact, helping them to avoid problems further down the track.

An example of this is the pay as you go model which enables identification of missed payments and presents those cases for action within seven days of a missed payment event compared to the previous system which would report cases 4-6 weeks after payment ceased.

Work with Treasury and others in complex new areas of law

We continue to provide advice to Treasury about issues we discover in our administration of the tax and superannuation laws.

And we work closely with Treasury on new proposals being considered by government, including proposals like those listed above, to ensure they can be implemented sensibly and in ways so that the general community is able to deal with them (at minimum compliance costs).

The ATO works closely with other policy departments as well. For example, we have been working with the Department of Climate Change regarding the tax implications arising from the introduction of the Carbon Pollution Reduction Scheme.

OUTPUT 2: MANAGEMENT OF REVENUE COLLECTION AND TRANSFERS

Reducing the rate of growth of collectable debt

We have made considerable progress in recent years, reducing the rate of growth of collectable debt to 1.0 per cent (\$111 million) in 2007-08. This is significantly down from 27.7 per cent (\$2.08 billion) in 2004-05.

In 2007-08 we reduced the rate of growth of micro enterprise collectable debt by 1.0 per cent (\$70 million), income tax collectable debt by 5.4 per cent (\$200 million) and superannuation guarantee charge debt by 13.4 per cent (\$43 million).

Nonetheless, the current economic environment is placing substantial pressure on our goal of continuing to reduce the rate of growth of collectable debt and will make similar results more difficult to achieve going forward.

Our debt collection strategies are increasingly focussing on early intervention to provide more opportunities to engage with taxpayers and, in many instances, address tax debt earlier in the debt cycle, before it escalates and becomes unmanageable. For example, at 31 January 2009 there were 194,292 debt cases under arrangement worth \$2.5 billion. Compared with January 2008 this represents an increase of 17.8 per cent (29,303) in the number of debt cases under arrangement and an increase of 15.6 per cent (\$339 million) in the value of debt cases under arrangement.

Intervening early involves us contacting taxpayers with a debt as soon as possible. For business, we encourage those that are struggling to remain viable to contact us early to discuss assistance options. Dialler technology has enabled us to have 365,000 debt related conversations with taxpayers in the first six months of the 2008-09 financial year.

Our practical assistance to taxpayers includes:

- giving businesses more time to meet business activity statement and other lodgment obligations, without penalties
- allowing additional time to pay tax debts without any interest charge
- allowing taxpayers to pay their tax debt by instalments over an extended period of time, and
- remitting penalties and interest that may have been imposed.

We also have a dedicated hardship capability to investigate all avenues for taxpayers who need more than temporary assistance for short-term cash flow problems.

We are working with groups in the community to ensure broad but targeted coverage of our debt strategy. For example, our links with the Australian Financial Counselling and Credit Reform Association has meant that we can get involved in cases earlier, offering timely and personalised advice to those in need.

For the first half of 2008-09, we received 1,664 applications for release of tax debts worth \$61.9 million. This represents an increase of 61 per cent over the same period in the previous year. We have granted full releases in 927 cases worth \$23.5 million and partial release in 35 cases worth \$1.1 million. This means that for this period, we have granted full or partial remission in

57 per cent of cases. This compares to 50 per cent of cases for 2007-08, 49 per cent of cases in 2006-07 and 33 per cent of cases in 2005-06.

Other strategies to assist slowing collectable debt include:

- consulting with community, business and industry representatives to ensure we understand the challenges and pressures they face
- consulting with tax professionals and intermediaries to obtain intelligence on what emerging trends they are seeing, and
- identifying, through external research, characteristics of tax debtors to gain a better understanding of the factors shaping the incidence and level of small business tax debt.

Bankruptcies and liquidations

We take firmer action, including insolvency action, to collect debts where taxpayers choose not to work with the Tax Office, continually default on agreed payment arrangements or do not have the capacity to pay.

As bankruptcy and wind-up are events with implications for both a debtor and a creditor, the decision to initiate bankruptcy or wind-up action is not taken lightly. It is about fairness for taxpayers and ensuring that businesses can operate on a level playing field.

Since 2004-05, we have engaged external consultants to conduct independent reviews to test, among other things, whether the Tax Office's actions are leading to premature bankruptcy or wind-up. The eleven reviews to date found that in no cases did the Tax Office's actions lead to premature bankruptcy or wind-up. This provides assurance that the Tax Office gives taxpayers reasonable time and opportunity to settle their matters.

Most bankruptcies where the Tax Office is listed as a creditor are not initiated by the Tax Office. For example, in the six months to 31 December 2008 the Tax Office initiated only 11.6 per cent of bankruptcies where the Tax Office was a creditor and 2.5 per cent of total bankruptcies.

Most wind-ups where the Tax Office is listed as a creditor are not initiated by the Tax Office. For example, in the six months to 31 December 2008 the Tax Office initiated only 13.5 per cent of wind-ups where the Tax Office was a creditor and 8.3 per cent of total wind-ups.

OUTPUT 3: COMPLIANCE ASSURANCE AND SUPPORT FOR REVENUE COLLECTIONS

Project Wickenby

As at February 2009, Project Wickenby has raised \$287.31 million in tax liabilities, collected \$90.81 million in tax and restrained \$75.7 million worth of assets. An additional \$74.76 million has been achieved through increased tax collections by those who have been subject to action by the Wickenby taskforce, and we believe that there has been a wider deterrent effect. Forty people have been charged on indictable offences, 23 criminal investigations involving multiple parties are underway and three people have been convicted.

Small Business Assistance Program

Our Small Business Assistance Program operates to assist in improving businesses sustainability. In 2007-08 we helped 73,000 small businesses through on-site support, phone assistance and seminars. In the first seven months of 2009, we have already helped 48,000 small businesses through:

- 345 tax seminars and workshops in all capital cities and in many regional areas
- 5,246 business assistance on-site visits in which tax officers can answer questions and provide help with ways to manage records and paperwork, manage employer obligations, get connected to the business portal, and lodge correct activity statements on time
- 38,355 outbound education telephone calls to new and existing small businesses at key times in their business lifecycle
- our Regional and Remote Program which contracts 80 service providers covering 175 sites around Australia to provide access to our publications, our website and online transactions, and
- working with a broad range of organisations, such as Council of Small Business of Australia, Bendigo Bank, Beyondblue, Centrelink, Chambers of Commerce, and Business Enterprise Centres to provide support to small business.

We also provided general support including:

- information products, both paper and web, such as our *Tax basics for small business* publication (a copy of this publication has been provided with this report) and our *Employer Essentials* webpage
- phone services such as the Business Info line
- online services and support tools such as the Business Portal, tax calculators and free electronic record-keeping tool, e-Record and small business tax calendar.

Our practical support includes:

- providing more information about payment options on www.ato.gov.au, and through newsletters and statements
- shifting taxpayers to BPAY as it gives them the choice to make payments anytime, 24 hours a day, 7 days a week
- adding a cash flow functionality to our free record keeping software, eRecord as well as providing a self-paced tutorial to assist businesses using eRecord
- appointed key relationship managers to the Council of Small Business of Australia and the Australian Chamber of Commerce and Industry, and
- preparation of benchmarks in conjunction with trade associations, to help tradespeople comply with their tax obligations.
- Providing practical guidance on making reasonable instalment variations in an uncertain and volatile environment (without a downside risk for taxpayers).

Working with tax agents and other intermediaries

We continue to work closely with tax agents and other intermediaries to support them in their important role in helping clients to comply with the tax and superannuation obligations, or to access benefits.

Currently there are around 26,000 registered tax agents who contact us for guidance and who lodge around 73 per cent of income tax returns for individuals and over 95 per cent of income tax returns for businesses.

We implemented improved phone services using experienced call centre staff and a booking service so agents speak to experienced staff at a time suitable to them for all capital gains tax enquiries. Subject to funding considerations we plan to will extend this service to goods and services tax and superannuation enquiries. We have also implemented interactive voice recording phone messaging to update agents on currently events, highlight existing services and improve awareness of new services as they become available. Tax agents having difficulties in meeting their lodgment programs are provided with tailored programs: over 300 agents have been assisted in this way in 2008-09. We have also implemented a personalised service by senior tax officers to senior tax agents to deal with complex and difficult matters. Since its roll out in December 2008, 104 agents have registered for the service.

Our marketing and education products launched during 2008-09 include:

- a new *Tax agent services*, launched in 2008, providing practitioners with information on our services (a copy of this publication has been provided with this report)
- *The Tax Agent Lodgment Program 2008-09*, developed in consultation with tax agents (available on the Tax Office website at www.ato.gov.au), and
- A new electronic guide for agents, *A Guide to technical assistance*, released in July 2008 (also available on the Tax Office website at www.ato.gov.au).

The Tax Agent Portal continues to be a key channel for agents. In the five years since it has been introduced, usage has grown by around 300 per cent, with some 12 million log-ins in 2007-08.

In November 2008, the Tax Issues Entry Systems was launched by the Assistant Treasurer. The Tax Issues Entry Systems is jointly managed by the Tax Office and the Treasury. It is a single entry point for tax professionals and the community to raise minor policy and administrative issues relating to the care and maintenance of the tax and superannuation systems.

Expanding pre-filling

For the 2008 tax year we expanded our pre-filling service for e-tax users to provide a comprehensive range of information including: taxpayer personal details; pay as you go summaries; Government payments (for example, Centrelink); interest income; dividend income; managed fund distributions; prior year deductions; family tax benefit claim status; baby bonus; Medicare levy related items; and medical expense information.

In e-tax 2008, a new alerts function was introduced to allow users to subscribe for SMS or email notification when more of their information becomes available for pre-filling.

Demand for pre-filling has far exceeded requests made last year:

- from 1 July to 31 October 2008 there were 1,706,118 requests through e-tax (up by 19.7 per cent on 2007), and
- from 1 July 2008 to 31 January 2009, there were 4,101,142 requests through the Tax Agent Portal (up by 143 per cent on 2007).

Annual Compliance Arrangements

Three annual compliance arrangements have been signed since October 2008. These include:

- the ANZ Bank (for income tax)
- the NSW state-owned energy corporation Integral Energy (for GST), and
- the Commonwealth Bank of Australia (for income tax).

The annual compliance arrangements provide increased certainty, strengthen compliance and reduce compliance costs for business. We are working with stakeholders to clarify key aspects of the annual compliance arrangements, share learnings with other tax administrations and ensure that early annual compliance arrangement adopters have a positive experience.

Abuse of the tax system, including phoenix arrangements

Our response to addressing phoenix risks has included:

- focussing on those who engage in high risk, serious phoenix activities through early intervention in relation to their current entities to ensure liabilities are kept up to date and paid on time, and where necessary referred for prosecution
- embarking on a targeted letter and phone campaign to deter those who may be at risk of engaging in new or emerging Phoenix activities, and
- improvements to efficiency and effectiveness through improved internal working processes and greater collaboration.

In the 2008-09, we finalised 162 group audits and raised \$18.5 million in tax and penalties.

In relation to abusive tax arrangements more broadly, we have taken an active approach to warn the community including:

- the issue of Taxpayer Alerts, importantly warnings to multinational business about shifting losses into Australia and capital gains tax avoidance by foreign residents. The timing of these alerts has been crucial in terms of the current financial crisis and prior to the end of the tax year for many of these large businesses, and
- active management of external communication through electronic and print media.

We have implemented and improved differentiated strategies including:

- Promoter Penalty regime – including risk reviews, audits and civil investigations. Our actions have led to the cessation of promotion activities in several instances and we have received a number of enforceable voluntary undertakings from promoters that are currently under consideration, and
- Offshore Voluntary Disclosure Initiative to enhance voluntary disclosures of tax haven schemes (which has recovered around \$20 million so far).

We have also invested in close working arrangements including:

- across agencies, including the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission on a range of abusive tax arrangements
- work undertaken in international forums including the Joint International Tax Shelter Centre and the Organisation for Economic Cooperation and Development's Forum on Tax Administration, and

- concluded the memorandum of understanding with New Zealand in relation to the Assistance in Collection treaty article. This memorandum of understanding came into force in September 2008. We have further progressed or commenced memorandum of understanding discussions with six other treaty partners.

Cash economy

Our work on developing trade benchmarks is continuing. Benchmarks are now available for eight industries including: concreting; floor sanding and polishing; metal roofing; painting; roof guttering; roof tiling; taxis; and timber floor installation. We will also shortly be releasing a benchmark on brick and block laying. We are publicising the benchmarks with relevant trade associations and the tax industry to encourage tradespeople to assess their circumstances, make changes where necessary and seek help if they need it.

During 2007-08 we contacted more than 68,000 businesses to check for non-compliant cash economy behaviours, and we undertook more than 7,300 reviews and audits. Our compliance activities have established more than \$100 million in total liabilities.

This year we will issue around 50,000 educational letters to tax practitioners and their clients who are identified as at risk of participating in the cash economy and we will contact 3,700 cash economy participants by phone or letter. We will advise them that data matching suggests they might not be accurately reporting all income and offer an opportunity to voluntarily adjust their situation.

We are matching data from State registries on acquisitions of luxury motor vehicles and marine vessels from information included in tax returns as one means to identify business operators whose consumption patterns may be supported by cash income that has not been declared. For the year to date, we have completed 1,062 cases resulting in \$1.3 million in liabilities.

OUTPUT 4: COMPLIANCE ASSURANCE AND SUPPORT FOR TRANSFERS AND REGULATION OF SUPERANNUATION FUNDS

First Home Saver Accounts

The First Home Saver Accounts will be available from financial institutions (including banks and superannuation funds) on 1 October 2009.

Our implementation of the First Home Saver Accounts initiative is on track. We have been working with Treasury on the administrative aspects of the law and policy of this measure. We are also working with other regulators, including the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority, in relation to compliance and consumer protection. In addition, we are working with State and Territory revenue offices to explore the potential for joint compliance activities.

We are building into our Change Program the computer system to support first home saver accounts. The first phase of the system is scheduled for delivery in July 2009.

Supporting an effective superannuation system for Australia

We are conducting routine superannuation guarantee and Choice compliance checks while looking at employers who are not complying with pay as you go withholding obligations. We have seen a high level of compliance by employers with Choice, but superannuation guarantee continues to experience poor record keeping, administration issues and cash flow or debt issues. In light of the current global financial crisis we anticipate that some employers will seek ways to circumvent superannuation guarantee payments.

As the economy worsens more employers are likely to not meet their tax obligations on time. In order to guard against this, we are visiting some 8,000 employers who have been identified as being high risk. As well as their tax issues we will be providing them with information about their superannuation obligations, and taking corrective action where necessary. We find that early intervention is the best way to keep people in business.

We have established four new superannuation guarantee bilateral agreements with Korea, Greece, Germany and Japan, and have commenced negotiations with Canada.

We have collaborated and improved our relationships with: the Superannuation Consultative Committee, Treasury, the superannuation and banking industries, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, and the Australian Crime Commission.

We have established a Memorandum of Understanding with the Department of Immigration and Citizenship on the temporary residents measure to ensure a whole-of-Government approach. We are also consulting with industry in relation to the temporary residents measure to minimise the impact of change on them.

We continue to develop web-based tools and calculators to assist employers and employees with superannuation guarantee including a superannuation guarantee charge calculator to make it easier for employers to meet their superannuation guarantee obligations. We also published *Paying super*, a handy reference to assist employers on understand their superannuation guarantee obligations and how to meet them.

We have launched a new suite of self-managed super funds publications which provide information tailored to the life cycle of a self-managed super fund – from considering a self-managed super fund, to winding up a fund, to assist trustees and their advisors. Copies of these publications have been provided with this report.

We have improved the provision of advice to meet the growing needs of the community including specific guidance on in-house assets and other regulatory issues.

We recently launched an electronic Superannuation Auditor Tool (eSAT) on our website to assist auditors. We are reviewing and auditing around 960 approved auditors this financial year. Approximately 14 approved auditors will be referred to their professional bodies.

We are continuing to detect and respond to an increasing number of identified illegal early release schemes and super funds. We have taken immediate action against these funds including suppressing them from our *Super fund lookup* tool which effectively stops rollover of more retirement benefits into the fund. We have also commenced freezing identified bank accounts associated with these illegal arrangements. So far during 2008-09 we have:

- suppressed 204 funds from Super Lookup
- frozen 14 bank accounts, and
- identified 12 promoters and allocated 84 illegal early release self-managed super funds for audit action.

We are also implementing new strategies to respond to the increased numbers of funds and individuals involved in illegal early release and to reduce the opportunities for this behaviour to occur in the first place.

OUTPUT 5: SERVICES TO GOVERNMENTS AND AGENCIES

Meeting our commitments under Memorandums of Understanding

During 2008-09 we signed seven memoranda of understanding with the Department of Environment, Water, Heritage and the Arts; Medicare Australia; Centrelink and Department of Health and Ageing.

There are currently 31 memoranda of understanding in development, of which 21 are for new arrangements. This includes a number to support new Government proposals and one for the whole-of-government initiative regarding Australian Government Online Service Point.

A new memoranda of understanding is being drafted for the Heads of Commonwealth Operational Law Enforcement Agencies Joint Capability Project.

Australian Business Register

We are the custodian of the Australian Business Register and its associated Australian Business Number, the key identifier for business in a range of dealings

During 2008-09 we have delivered on two important initiatives which allow us to more effectively allocate resources, set priorities and make plans which take into account whole-of-government outcomes.

Firstly, we will be providing partner agencies with a copy of the first stand-alone performance report on the Australian Business Register for 2007-08. The aim of the report is to provide greater detail on our performance as custodians of the Australian Business Register and to facilitate dialogue with other agencies.

Secondly, from 1 December 2008, a number of important Australian Business Register functions were drawn into one area within the Tax Office to provide a singular focus on the work of the Australian Business Register. These new arrangements will allow the Australian Business Register to operate more effectively and efficiently in the administration of the register while at the same time benefiting from its close relationship with the Tax Office.

Other important achievements during the year include:

- the formation of an inter-agency board to advise on the operation on the Australian Business Register and progress it as a whole-of-government resource (due to meet in March 2009)

- approval for the establishment of a national registration system that enables Australian Business Number and business name registration in a single transaction (the new registration system will be in operation from March 2011), and
- the participation in Australian Business Register information sessions of about 300 representatives from various government agencies.

Some key achievements in the first six months of 2008-09 include:

- 93 per cent of Australian Business Number registrations were submitted online
- more than 60 per cent of businesses that registered online received their Australian Business Number immediately
- we processed over 205,000 registrations for Australian Business Numbers, while also undertaking a significant review of the integrity of our information in readiness for the standard business reporting, and
- more than 188,000 Australian Business Numbers were cancelled in the first wave of the 2008-09 Registrar-initiated cancellation program (these entities were no longer entitled to an Australian Business Number).

Working with other agencies on the emissions trading scheme

Our role in the implementation of the Carbon Pollution Reduction Scheme (formerly referred to as the Emissions Trading Scheme) includes:

- general administration of the tax aspects of trading in emission permits and in secondary and derivative markets
- providing assistance through the tax system for low and middle income households, and
- fuel tax assistance to business.

We are working closely with Treasury to identify and resolve a number of tax technical issues associated with the scheme and commenting on the drafting of the legislation.

External scrutineers

The following external scrutineers' reports have been released since the last biannual hearing in October 2008:

Australian National Audit Office (ANAO)

The ANAO tabled two performance reports on 22 December 2008 (Report No. 16) and 11 March 2009 (Report No. 25):

- *Audit Report No. 16: The Australian Taxation Office's Administration of Business Continuity Management – Report 16 2008-09*, and
- *Audit Report No. 25: Green procurement and sustainable office management – Report 25 2008-09 (cross agency)*.

We accepted all 11 of the ANAOs recommendations in these two reports that were relevant to the Tax Office.

There are currently five ANAO audits underway, one of these is a cross agency audit:

- Tax Office management of serious non-compliance
- Tax Office implementation of the Change Program: a strategic overview of benefits and costs
- Tax Office use of double taxation agreement information
- Tax Office administration of the petroleum resource rent tax, and
- The management and processing of annual leave (cross agency).

Commonwealth Ombudsman

The Commonwealth Ombudsman completed a research project relating to Superannuation Guarantee in January 2009 (the report was not released publicly). We agreed with all four recommendations made by the Ombudsman.

The Commonwealth Ombudsman also released a report relating to practices and procedures for re-raising written-off debts on 27 March 2009. We agreed wholly or in part with all six recommendations made by the Ombudsman.

There are currently two Ombudsman reviews underway involving the Tax Office:

- Review into the administration of Compensation for Detriment caused by Defective Administration Scheme, and
- Tax Office practices and procedures regarding the use of unannounced access powers.

Inspector-General of Taxation

One Inspector-General of Taxation report was released on 29 October 2008 relating to the *Improvements to tax administration arising from the Inspector-General of Taxation's case study reviews of the Tax Office's management of major, complex issues*. Work is underway to make the improvements agreed to in the report.

There are currently four Inspector-General of Taxation reviews underway involving the Tax Office:

- Review into the underlying causes and the management of objections to Tax Office decisions
- Review into aspects of the Tax Office settlement of active compliance activities
- Review into the Tax Office administration of private binding advice, and
- Review into the non-lodgment of income tax returns.

The Inspector-General released his work program for 2009-10 on 10 March 2009. It includes a review into the implications of any delayed or changed ATO advice on significant issues which will be undertaken at the direction of the Assistant Treasurer. The Inspector-General will also undertake a review of the private binding rulings system. Other reviews on the work program relate to our administration of the superannuation guarantee charge, our practices for finalising large company audits, our compliance focus on small to medium enterprises and the efficiency of our compliance and regulatory approaches to self managed super funds.

CHAPTER 5: TOPICAL ISSUES

OUR FINANCIAL POSITION

In October last year, we reported to the Committee on the challenges we face over the coming years as we seek to balance our responsibility to implement productivity improvements, deliver on a substantial program of new measures as well as continue to implement our transformational Change Program.

While we have made every effort to operate within our budget in 2008-09 we are currently forecasting an operating loss of around \$80 million for 2008-09. We have sought approval from the Minister for Finance and Deregulation for an operating loss of up to \$80 million.

We have identified a range of short term strategies to assist us in managing the budget pressures we are facing in 2008-09. Some of these strategies include encouraging staff to take annual leave, reducing recruitment, reducing expenditure on travel and consultants and making some tough decisions about the early termination of some non-ongoing staff.

In addition to these short term strategies we are continuing to invest in a number of other initiatives aimed at improving our efficiency and effectiveness in the medium to long term as well as helping us to manage our financial performance.

These longer term strategies include:

- reviewing corporate functions to increase efficiency in the delivery of these services
- reviewing core business processes and product cycle times in compliance areas with a focus on improved case selection, and
- strategies to improve the efficient handling of calls and reducing overall call volumes in our call centres through enhanced call demand management and other improvements.

OUR RESPONSE TO THE GLOBAL FINANCIAL CRISIS

The economic downturn is having a profound effect on all levels of society, and like many others, the tax administration has to respond quickly to remain effective. Whilst we have already been taking steps to assist small business in particular, such as being more sympathetic to time to pay requests, we are developing wide ranging strategies to rapidly shift, within the bounds of our legislative powers, to a mindset of a more purposeful and sustained focus on providing practical assistance to taxpayers.

Our strategies will be guided by the application to the taxpayer's situation of our corporate values, which support themes such as:

- prevention is better than the cure, hence early engagement where difficulties might arise for taxpayers
- more appropriate effectiveness measures
- trying to get people over the line (and keep them in the system) where possible
- more personalised differentiation and understanding the help needed from the taxpayer's perspective, and

- alertness to increased compliance risks, including putting our more flags (eg taxpayer alerts) in areas of risk.

OUR RESPONSE TO THE VICTORIAN BUSHFIRES AND THE QUEENSLAND AND NEW SOUTH WALES FLOODS

To those affected by the recent Victorian bushfires and Queensland and New South Wales floods, we have told them not to worry about tax matters and that we will work with them to help meet any upcoming obligation. Our assistance extends to people such as business owners whose main income is derived from the affected areas as well as volunteers and those involved in support services.

We have put in place arrangements to help individuals and business impacted by these disasters including:

- suspending correspondence and planned contacts to people and businesses in affected areas immediately after the bushfires. In early March, as the flood waters receded and we began to receive requests for refunds and information, we resumed our correspondence with these people, including sending out refunds and payment advice notices
- manual intervention to remove any mail-outs that were going to be delivered to people in the affected areas
- when we resumed correspondence with people and businesses in the affected areas, working with Australia Post to ensure the mail we send is redirected to nominated addresses or can be picked up at local post offices and mobile post offices
- fast tracking refunds and giving these people extra time to pay debts by instalments and without interest charges
- giving people and small businesses more time to meet activity statements and other lodgment obligations without penalties
- a dedicated ATO emergency hotline for people to contact us when they are ready to discuss their circumstances and the best way for us to help them
- offering visits from field officers to help people reconcile lost records, and
- helping them claim tax hardship concessions.

We have also put special arrangements in place for those affected who have not lodged their 2007-08 tax return. People in those areas have up to 30 June 2010 to lodge and will still receive the Government's tax bonus payments (if otherwise eligible).

We have released information through the media on tips for claiming donations to emergency relief funds. We are working with Deductible Gift Recipients to assist them with the setting up and implementation of special purpose funds. We have also been working with business and other organisations who wish to make special arrangements for helping those affected in the community or are undertaking fundraising activities.

We have responded to requests from local communities to attend meetings with people and small businesses to discuss their tax concerns. We are consulting with these communities regarding the support they may require.

We have established a special high level project team to work with other government agencies at the federal, state and local level to streamline support to affected communities and to assist them with technical matters arising from these events. An advisory committee headed by four Deputy Commissioners in the Tax Office has also been established to help guide the development and implementation of a whole of Tax Office response to disaster management.

Our website, www.ato.gov.au, includes comprehensive information for individuals, business and tax agents affected by natural disasters and those looking to assist victims of the disaster.

A plan is being developed from our response to the current situation to ensure a rapid targeted Tax Office response in the event of future disasters.

PAYMENT OF TAX BONUS

Our preparations to make tax bonus payments under the Government's Household Stimulus (Tax Bonus) Initiative from early April 2009 are underway.

In the main, people will not have to do anything to receive the payment if they have already lodged their 2007-08 tax return (although there are special provisions for the victims of recent natural disasters – see above). We will use this information to determine who is eligible and the best way to get the money to them. For those who have not lodged their 2007-08 tax return, they must lodge by 30 June 2009 to receive the bonus. People who needed to advise us of any changes to their bank account or address details were given until 15 March 2009 to let us know.

To assist taxpayers and tax agents we have:

- established a tax bonus hotline
- made e-tax available for self preparers that have not lodged their 2008 tax return
- engaged key tax practitioner representatives to assist in the development of support arrangements for tax practitioners
- developed instructions to tax practitioners on how to access and update eligible client lists
- provided an interactive voice response for taxpayers to provide their bank account details, and
- developing a change of address online facility.

We expect to distribute around \$8.2 billion to 8.7 million Australians.

PROPOSED CHANGES TO THE REGISTER OF PRIVATE BINDING RULINGS

Earlier this month, the Commissioner announced that after consultation with tax professionals he will maintain the register of private binding rulings in its current form.

The register was introduced in early 2001 as an integrity and transparency measure following recommendations from an internal review of the private rulings system. It was never intended to be a research tool or to be a source of advice or guidance. The register is an historical record of advice that has been provided and contains over 80,000 edited versions of private binding rulings issued since April 2001, and as it is not updated, it could actually be misleading.

The ATO's precedent database which includes ATO Interpretative Decisions is available and has always been recommended as appropriate for research and guidance purposes.

In November 2008, the Commissioner informed the peak professional consultative forum, the National Tax Liaison Group, that he was considering reducing the content of the register to the subject heading and reference number.

Following further consultation with NTLG members, it was decided to retain the register in its current form, with the National Tax Liaison Group agreeing to help practitioners become better aware of and use our more authoritative guidance material such as interpretative decisions, and of the risks associated with edited version of private rulings.

PROGRESS ON IMPLEMENTATION OF JCPAA REPORT 410: TAX ADMINISTRATION RECOMMENDATIONS

Of the 11 administrative recommendations contained in the Committee's *Report 410: Tax Administration* and directed to the Tax Office, we have completed seven and are progressing to the completion of four. A summary of the status of the recommendations is included below:

Recommendation 1

The Commissioner of Taxation continue to make himself available twice a year to attend public hearings on the administration of the tax system with the JCPAA in order to promote an open dialogue between the ATO and the Parliament.

Completed: The Commissioner has agreed to make himself available twice a year to share with the Committee and through the Committee with the wider community, information and an early picture of emerging risks and priorities and to seek input through the biannual hearings.

Recommendation 9

The ATO, in its annual report, compare its performance in relation to the 28 day service standard for private ruling requests with information on total elapsed time for these applications.

Completed: We have, in our 2007-08 annual report, released details of total elapsed time for private ruling applications. This has been published alongside the performance against the service standards for private rulings for the reader to compare.

Recommendation 10

The ATO divide the 'larger businesses' category used for its performance reporting of the timeliness of private rulings into 'medium businesses' and 'large businesses'.

Completed: We have, in our 2007-08 annual report, divided the 'larger businesses' category used for performance reporting of the timeliness of private rulings into 'small to medium enterprises' and 'large businesses'. These categories correspond with the Tax Office market segments.

Recommendation 11

Where the ATO has concerns about a judicial decision, it should publicly announce these concerns in the decision impact statement and commit to resolving the issue within 12 months through one or a combination of the following public actions:

- *abiding by the initial decision*

- *appealing the decision and abiding by any subsequent decision*
- *referring the issue to Treasury as a policy matter.*

Completed: We will follow the thrust of the recommendation except in a very rare case (such as where the High Court agreed to review the validity of the Curran scheme) where we might seek to have a single judge decision considered by a higher court in another case. This position is in line with advice from the Solicitor General. We do not publicly announce concerns about judicial decisions in decision impact statements. These statements provide our views about the implications of decisions but do not include any comments about legislative policy issues. We also invariably advise Treasury on such issues.

Recommendation 12

The ATO develop a policy to support decisions involving periods of grace where it changes its view of the law. Unless there are exceptional circumstances, no period of grace should exceed 12 months.

In progress: We will adjust the Practice Statement Law Administration (PSLA 2008/12) as necessary. It is expected that the adjustments to PSLA 2008/12 will be completed by the end of April 2009.

Recommendation 13

The ATO establish and monitor compliance of protocols for determining when an investigation is an audit, when the audit commences, and when the ATO should inform the taxpayer of the audit.

In progress: We are reviewing all audit products and protocols for clarity and will continue to work with external stakeholders to make sure these are clear, appropriate, workable and understood. This work is expected to be completed by the end of September 2009 with ongoing consultation with external stakeholders to address any concerns raised.

Recommendation 14

The ATO amend its policies to limit the practice of issues assessments that are contingent on each other, and specify in what circumstances such assessments may be validly issued. In the absence of administrative change, the Government introduce legislation to this effect.

In progress: We are currently undertaking a review of our Practice Statement Law Administration (PSLA 2006/7) on alternative assessments to limit the circumstances where they should apply.

Recommendation 15

The ATO increase its benchmark for the technical quality reviews of penalty and other debt decisions.

Completed: We support the principle behind the recommendation. However, the benchmarks already apply uniformly across the system. The existing technical quality review process applies the same benchmarks to penalty and debt decisions as applies to other matters.

Recommendation 16

The ATO explain the reasoning behind its settlement offers for large scale disputes in its public statements.

Completed: We have, through publication of the Practice Statement Law Administration (PSLA 2007/6) and information regarding widely-based settlements (published on our website), explained the reasoning behind our settlement offers for large scale disputes. A process to publish decisions of the Widely Based Settlement Panel to our website on an ongoing basis has also been established.

Recommendation 17

The ATO publish in its annual report additional statistics in relation to settlements, such as the revenue collected through settlements and the proportion of amended assessments that taxpayers agree to pay. The ATO should also comment on significant variations across business lines.

Completed: We delivered on this recommendation in our 2007-08 annual report.

Recommendation 18

The ATO include in its annual report performance information about the amount of revenue collected through penalties and interest and the amount of revenue (divided between penalties and interest) remitted back to taxpayers. Where appropriate, this should be accompanied by discussion.

In progress: Subject to our system capacity, we will be seeking to increasing our reporting of penalties and interest in the 2008-09 annual report on a Tax Office-wide basis to include: penalties accrued; interest accrued; penalties remitted; interest remitted; penalties collected; and interest collected.

TAXATION RULINGS SINCE OCTOBER 2008

A summary of draft and final taxation rulings issued since April 2008 which may be of interest to the Committee are outlined below:

Draft Taxation Ruling

GSTR 2008/D4 Goods and services tax: cancellation fees
Issued: 19 October 2008

This draft Ruling considers the goods and services tax consequences resulting from payments made when an arrangement under which a particular supply was intended to be made (intended supply) does not proceed or does not proceed in the manner originally contemplated. These payments can include the forfeiture of all or part of the consideration for the intended supply. These payments are referred to in this draft Ruling as 'cancellation fees'.

The draft Ruling also focuses on arrangements that are cancelled by or on behalf of a recipient or intended recipient (in this draft Ruling referred to as a customer). A supplier may also cancel an arrangement. However, in the latter case a cancellation fee is usually not charged. Therefore, this draft Ruling does not deal with cancellations made by a supplier except in relation to a ticketed arrangement for the supply of performances, events or similar arrangements.

In considering the goods and services tax consequences of cancellation fees, this draft Ruling principally examines whether there is a supply for which a cancellation fee is consideration. The

draft Ruling also discusses the interaction between security deposits and cancellation fees as well as the circumstances in which a cancellation fee is not consideration for a supply.

Market segments affected: Individual, Micro Enterprises, Small and Medium Enterprises, Large Business

Draft Taxation Ruling

SGR 2008/D2 **Superannuation guarantee: meaning of the terms 'ordinary time earnings' and 'salary or wages'**

Issued: **05 November 2008**

This draft Ruling explains what is 'ordinary time earnings' as defined in subsection 6(1) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA). The definition of 'ordinary time earnings' is relevant to employers for the purpose of calculating the minimum level of superannuation support required for individual employees under the SGAA.

As a consequence of amendments to the SGAA which apply from 1 July 2008 the amount against which an employer calculates the contribution necessary to meet their superannuation guarantee obligations in respect of an employee is standardised to ordinary time earnings for all employees.

This draft Ruling also explains the meaning of 'salary or wages' as defined in section 11 of the SGAA. The definition of 'salary or wages' is relevant to employers in calculating the superannuation guarantee shortfall of individual employees where an employer has not provided the required minimum level of superannuation support.

Market segments affected: Individual, Micro Enterprises, Small and Medium Enterprises

Draft Taxation Ruling

WETR 2008/D1 **Wine equalisation tax: the operation of the wine equalisation tax system**

Issued: **17 December 2008**

The *A New Tax System (Wine Equalisation Tax) Act 1999* deals with tax on sales, importations and certain other dealings with wine which take place on or after 1 July 2000. The tax on wine is referred to in this draft Ruling as the wine tax although it is also known as the wine equalisation tax.

This draft Ruling explains how the wine tax system operates and which alcoholic products are covered by the wine tax.

This draft Ruling, when finalised, will replace Wine Equalisation Tax Ruling WETR 2004/1 Wine equalisation tax: the operation of the wine equalisation tax system.

Market segments affected: Individuals, Micro Enterprises, Small and Medium Enterprises

Draft Taxation Ruling

WETR 2008/D2 **Wine equalisation tax: operation of producer rebate for other than New Zealand participants**

Issued: **17 December 2008**

The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) deals with a tax on sales, importations and certain other dealings with wine which take place on or after 1 July 2000.

The WET Act provides for a producer rebate in the form of a wine tax credit from 1 October 2004. This draft Ruling explains how the wine tax producer rebate operates for producers of wine other than New Zealand participants. This draft Ruling also explains eligibility to claim the rebate, how the rebate is calculated and when and how a claim for the rebate may be made.

Market segments affected: Individuals, Micro Enterprises, Small and Medium Enterprises

Taxation Ruling

TR 2008/9 **Income tax: meaning of 'Australian superannuation fund' in subsection 295-95(2) of the *Income Tax Assessment Act 1997***

Issued: **10 December 2008**

This Ruling sets out the Commissioner's interpretation of the definition of 'Australian superannuation fund' in subsection 295-95(2) of the *Income Tax Assessment Act 1997* (ITAA 1997). The definition of 'Australian superannuation fund' is relevant in determining whether a superannuation fund is a 'complying superannuation fund' for the purposes of the *Superannuation Industry (Supervision) Act 1993* (SISA). Superannuation funds that are complying superannuation funds are eligible for concessional tax treatment. The definition of 'Australian superannuation fund' is applicable from 1 July 2007.

There are three tests that a fund must satisfy in order to be treated as an 'Australian superannuation fund' as defined in subsection 295-95(2) of the ITAA 1997. While this Ruling discusses all three tests contained in subsection 295-95(2), a particular focus of the Ruling will be a consideration of the 'central management and control' test.

This Ruling applies to funds that are 'superannuation funds' as defined in section 10 of the SISA. It is otherwise beyond the scope of the Ruling to discuss the meaning of 'superannuation fund'.

Market segments affected: Individuals, Micro Enterprises, Small and Medium Enterprises

Draft Taxation Ruling

TR 2008/D8 **Income tax: application of section 177EA of the *Income Tax Assessment Act 1936* to non-share distributions on certain 'dollar value' convertible notes**

Issued: **17 December 2008**

This draft Ruling considers the application of section 177EA of the *Income Tax Assessment Act 1936* (ITAA 1936) to arrangements involving certain 'dollar value' convertible notes that are non-share equity interests.

This draft Ruling is concerned with arrangements where a company issues a certain type of 'dollar value' convertible note. These notes are classified as non-share equity interests by application of Division 974 of the *Income Tax Assessment Act 1997* (ITAA 1997), essentially because the issuer may choose to convert the notes into ordinary shares that are equity interests in the issuer rather than to repay the issue price. The notes are expected to yield frankable periodic returns that are non-share dividends in the legal form of interest.

This draft Ruling applies to taxpayers that are issuers or holders of the convertible notes described above if the holders would obtain or might reasonably be expected to obtain an imputation benefit from a non-share distribution in respect of those convertible notes.

Market segments affected: Individuals, Micro Enterprises, Small and Medium Enterprises

Taxation Ruling

SMSFR 2009/1 **Self Managed Superannuation Funds: business real property for the purposes of the *Superannuation Industry (Supervision) Act 1993***

Issued: **28 January 2009**

This Ruling explains the meaning and application of the term *business real property* in relation to self managed superannuation funds (SMSFs) for the purposes of the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations*.

The term *business real property* is defined in subsection 66(5) and is used in concessional rules dealing with whether SMSF trustees or investment managers can acquire assets from, invest in, or enter lease arrangements with or in relation to related parties.

Market segments affected: Individuals, Micro Enterprises, Small and Medium Enterprises

PUBLICATION OF TAXATION STATISTICS 2006-07 AND MAKING IT EASIER TO COMPLY

We recently released two of our key publications. The latest edition of *Taxation Statistics 2006-07* provides more detailed information about Australia's tax, superannuation and excise systems.

Our annual publication *Making it easier to comply 2008-09* was published for the first time through our website only, which will enable us to make regular, ongoing updates. This publication outlines the major improvements we are implementing to make it easier, cheaper and more personalised for people to interact with us. An advance copy of this publication was sent to the Committee last week for information.