

SUBMISSION NO. 2
Name withheld

Committee Secretary

In the upcoming Biannual Public Hearing with the Commissioner of Taxation the Committee might like to ask the Commissioner why he communicates only with government (Treasury), and not with Parliament as a whole, on specific legislative problems that affect his administration of the tax acts.

The ATO's Protocol with Treasury is set out on the ATO's website, which makes clear that the ATO notifies Treasury of legislative problems the Commissioner encounters. The communications (by way of Minutes to Treasury) are kept secret from Parliament as a whole. This secrecy is inconsistent with the doctrine of separation of powers, the ATO being a statutory agency independent of government, and the Commissioner's reporting obligations to Parliament. This is an obligation to be open, transparent and accountable to Parliament as a whole, not just to the Treasurer.

The Commissioner is responsible to all of Parliament, not just government. By communicating legislative problems and impediments to Treasury alone, the Commissioner is effectively denying the whole of Parliament the opportunity to consider, discuss and debate them and to possibly introduce Bills, such as private members' Bills, to remedy them.

The relevant passages from the ATO website are reproduced below. They are also contained in the following link:

<http://www.aph.gov.au/house/committee/jcpaa/taxationbiannual0911/sub1app1-9.pdf>

In the interests of maintaining my privacy I wish my name to be withheld from any public disclosure of the above submission.

Your sincerely

For enacted law

The Tax Office has the role of interpreting enacted tax law (subject to the courts) in order to administer them.

In forming its view on the interpretation of enacted law, the Tax Office routinely consults Treasury, the professions,

affected taxpayers and the public.

Circumstances in which the Tax Office may consult Treasury during the course of its interpretation of enacted

law include:

(i)

Where more than one possible interpretation is open. In these circumstances the Tax Office may invite Treasury's

comments on the purpose or object of the legislative provisions in question.

(ii)

Where, having settled on its interpretation, the Tax Office is concerned that the law may give rise to unintended

consequences, for example, unnecessary compliance costs or inappropriate outcomes.

In these circumstances the Tax

Office may notify Treasury and Treasury may advise the Minister accordingly, or the Tax Office may advise the Minister

directly in consultation with Treasury where appropriate.

What weight can be given to Treasury's views on purpose or object?

Any comments Treasury provides to the Tax Office are not determinative. The Tax Office can, nevertheless, consider

Treasury's view along with the views of other stakeholders in arriving at an interpretation which, as far as possible, is

consistent with the purpose or object of the law, given the words of the law and its statutory context.

Communications between the Tax Office and Treasury on tax and superannuation matters are confidential as they are,

effectively, in the nature of communications between an agency and the government.

To facilitate the purposive approach to interpretation, when developing legislation and treaties, Treasury will seek to

ensure the purpose or object of provisions is explicitly outlined on the face of the law or tax treaty and reinforced in

publicly available extrinsic material, such as explanatory memoranda and second reading speeches.

Advice to the Minister

The Tax Office will advise the Minister on administration matters in consultation with Treasury.