



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Reference: Certain taxation matters**

THURSDAY, 22 JUNE 2006

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**JOINT STATUTORY COMMITTEE OF  
PUBLIC ACCOUNTS AND AUDIT**

**Thursday, 22 June 2006**

**Members:** Mr Anthony Smith (*Chair*), Ms Grierson (*Deputy Chair*), Senators Mark Bishop, Hogg, Humphries, Murray, Nash and Watson and Mrs Bronwyn Bishop, Mr Broadbent, Dr Emerson, Dr Jensen, Miss Jackie Kelly, Ms King, Mr Laming, and Mr Tanner

**Members in attendance:** Senators Humphries, Murray and Watson and Mrs Bronwyn Bishop, Dr Emerson, Ms King and Mr Anthony Smith

**Terms of reference for the inquiry:**

To inquire into and report on:

Part A

The administration by the Australian Taxation Office (ATO) of the *Income Tax Assessment Act 1936* and *1997* (including the amendments contained in the *Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005*) with particular reference to compliance and the rulings regime, including the following:

- the impact of the interaction between self-assessment and complex legislation and rulings;
- the application of common standards of practice by the ATO across Australia;
- the level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge; and
- the operation and administration of the Pay As You Go (PAYG) system.

Part B

The Committee shall examine the application of the fringe benefit tax regime, including any “double taxation” consequences arising from the intersection of fringe benefits tax and family tax benefits.

**WITNESSES**

|  |          |
|--|----------|
| <b>D’ASCENZO, Mr Michael, Commissioner, Australian Taxation Office.....</b>  | <b>1</b> |
| <b>DOUGLAS, Mr Ian, Senior Adviser, Tax System Review Division, Department of the Treasury .....</b>                 | <b>1</b> |
| <b>FITZPATRICK, Mr Kevin, Acting Second Commissioner, Australian Taxation Office.....</b>                            | <b>1</b> |
| <b>GRANGER, Ms Jennie, Second Commissioner, Australian Taxation Office.....</b>                                      | <b>1</b> |
| <b>KONZA, Mr Mark, Deputy Commissioner, Small Business, Australian Taxation Office.....</b>                          | <b>1</b> |
| <b>MARTIN, Ms Stephanie, First Assistant Commissioner, Aggressive Tax Planning, Australian Taxation Office .....</b> | <b>1</b> |
| <b>McCULLOUGH, Mr Paul, General Manager, Tax System Review Division, Department of the Treasury .....</b>            | <b>1</b> |
| <b>VIVIAN, Ms Raelene, Deputy Commissioner, Superannuation, Australian Taxation Office .....</b>                     | <b>1</b> |



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**Committee met at 10.16 am**

**D'ASCENZO, Mr Michael, Commissioner, Australian Taxation Office**

**FITZPATRICK, Mr Kevin, Acting Second Commissioner, Australian Taxation Office**

**GRANGER, Ms Jennie, Second Commissioner, Australian Taxation Office**

**KONZA, Mr Mark, Deputy Commissioner, Small Business, Australian Taxation Office**

**MARTIN, Ms Stephanie, First Assistant Commissioner, Aggressive Tax Planning, Australian Taxation Office**

**VIVIAN, Ms Raelene, Deputy Commissioner, Superannuation, Australian Taxation Office**

**DOUGLAS, Mr Ian, Senior Adviser, Tax System Review Division, Department of the Treasury**

**McCULLOUGH, Mr Paul, General Manager, Tax System Review Division, Department of the Treasury**

**CHAIR (Mr Anthony Smith)**—I welcome everybody here to the committee's first public hearing for its inquiry into certain taxation matters within Australia. We will have other hearings around the country over the coming months. It is a number of years since this committee undertook a comprehensive review into tax administration and since then there has been legislative and administrative change to tax administration with the review of aspects of the income tax self-assessment undertaken by Treasury in 2004. The committee has resolved in this inquiry that it will focus on the Australian Taxation Office's administration of income tax legislation with particular reference to the compliance and rulings regime. The scope of the inquiry will include the interaction between self-assessment and complex legislation and rulings, common standards of practice by the ATO, penalties, the general interest charge and shortfall interest charge and the pay-as-you-go system.

I remind participants in the inquiry that the committee will be looking at policy and administration matters and is not seeking to act as a review panel for individual cases or grievances with the ATO. I also remind participants in the inquiry of the constraints on ATO officers under section 16 of the Income Tax Assessment Act in divulging information about the affairs of any person. Before beginning, I advise witnesses that the hearings today are legal proceedings of the parliament and they warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will attract parliamentary privilege. Only the committee can ask questions if this is to constitute formal proceedings of the parliament and attract parliamentary privilege. If others wish to raise issues for discussion, I ask that they direct comments to the committee. It will not be possible for participants directly to respond to each other.

I welcome representatives from the tax office and from Treasury to this morning's hearing. Whilst this is your first appearance in this inquiry, it probably won't be your last, so don't think that everything has to be crammed into today's schedule.

**Mr McCullough**—Thank you for the opportunity to appear before the committee today. Treasury has made a submission that documents some of the measures that the government has taken since 1996 to improve the administration of tax laws. Some of these measures seek to improve the framework within which the Australian Tax Office must operate, some go to questions of governance, some go to the balance of rights and responsibilities between individuals and the ATO, while others seek to make the experience of having to deal with tax responsibilities more palatable.

We appear here in joint session with the Commissioner of Taxation and his officers. While the ATO is part of the Treasury portfolio and on many occasions, on many things, the ATO and Treasury work closely together, it is important at the outset to note that our roles are separate and distinct. Treasury is primarily the adviser to government on policy, for the purposes of this hearing, tax policy, and has operational responsibility for instructing the Office of Parliamentary Counsel on the preparation of tax laws. The ATO, through a statutorily independent commissioner, is responsible for the general administration of those laws, which includes their enforcement and providing advice on the commissioner's interpretation of them, as well as the day-to-day collection of revenue.

The Treasury submission details a series of changes made by the government commencing with some fundamental changes to tax administration brought about in 1998 and shortly afterwards by the New Tax System. Although perhaps not the highest profile item in the ANTS document, chapter 4 of that document sets out the government's high-level strategy to make complying with tax obligations simpler and fairer. One plank of that strategy was to change the system of business registration to make it possible for businesses to deal with the whole of government with one business identifier. The Australian business number has since been adopted by all Commonwealth agencies and regulatory bodies, and there are plans currently in train to do more to increase its adoption by state, territory and local government bodies.

Another plank of the government strategy was to simplify and standardise business payment and reporting systems. The pay-as-you-go system introduced a comprehensive payment and reporting system for withholding amounts from payments to employees and other workers and for withholding amounts of tax on business and investment income. The PAYG system replaced nine former collection systems as well as the arrangements for provisional tax and three different payment arrangements for company instalments that existed previously.

The government also subsequently legislated for, and funded the ATO to introduce, a running balance account system so that a taxpayer's net tax position could be determined by reference to a single account. Another aspect of the government's strategy on tax administration, announced in ANTS originally and then built upon following the Ralph review of business taxation, was to improve the design of tax laws. As part of this, the government has adopted a commitment to consultation with the community in the design and development of tax laws and, in 2002, relocated responsibility for tax law design to Treasury.



The relocation of the tax law design function to the Treasury was intended to allow a whole-of-government perspective to be taken in tax law design that the ATO as a regulator might not best placed to implement. The government is also taking steps to make tax laws clearer and simpler, by removing thousands of pages of inoperative provisions from the statute books.

In 2003 the government established the Office of the Inspector-General of Taxation to review ATO systems and report to Treasury ministers. The work of the Inspector-General complements that of the Tax Ombudsman, who has the power to examine individual cases, and the Auditor-General, who examines the performance of the ATO as an agency of government against its statutory responsibilities.

In late 2003, the government commissioned the review of self-assessment, which required Treasury to examine aspects of the income tax self-assessment, focusing on whether the income tax laws achieved a fair balance between protecting the rights of individual taxpayers and protecting the revenue for the benefit of the whole community. The review issued a discussion paper for public comment in March 2004 and, following consideration of submissions, reported in August of that year. Shortly after, the government announced that it would adopt all of the report's recommendations, most of which have now been implemented.

The ROSA reforms were aimed at reducing uncertainty for taxpayers and the consequences that can arise from that uncertainty. To this end, the first tranche of the ROSA legislation provided for a lower rate of interest on underassessments of income tax for the period before a taxpayer is notified of their underassessment, and made refinements to the penalty regime, in particular, by removing the penalty for failing to follow a private ruling.

The second tranche of ROSA legislation enacted late last year increased taxpayer certainty by comprehensively redrafting the rulings provisions to allow tax office advice to be more timely, accessible and binding in a wider range of cases and reducing the period in which the ATO can amend assessments for about eight million individuals and over 700,000 businesses to more accurately reflect their risk profile and the revenue consequences of an error in that assessment. I note that two of the terms of reference for this inquiry go directly to issues examined in the ROSA review, and I look forward to being able to assist the committee by explaining the issues, considerations and conclusions of that report in response to any questions that committee members might have.

In addition to these measures, the government has further provided funding in recent budgets for Treasury to conduct a series of further reviews on issues arising from the ROSA report, including considering whether the ROSA are appropriately extended to other federally administered taxes; examining whether the 150 individual cases of open-ended periods for amending assessments that still exist in the law are still required; and reviewing the discretionary powers of the commissioner to determine aspects of taxpayers' liabilities and reviewing the form of taxpayer elections. Treasury has devoted the majority of a division of its revenue group—the tax system review division—to this type of work, and its activities are supplemented by other areas of Treasury where appropriate.

Beyond these ROSA measures, Treasury is pursuing a number of other reforms to improve the tax system as part of an ongoing program. Projects at various stages of completion include: the promoter penalties regime, which was passed by parliament quite recently, just earlier this year;

the repeal of inoperative tax law provisions that I mentioned earlier—and that is expected to reduce the income tax law by almost a third; a review of anti-avoidance legislation to identify redundant provisions; and, most particularly, a new legislative regime providing national oversight of tax agents and BAS form preparers in place of the current state based arrangements. Included in that package is a safe harbour for taxpayers from penalties for carelessly making false or misleading statements where they have demonstrated reasonable care by providing information to their tax agent. The government announced in the 2006-07 budget that the ATO would be given \$57.5 million over four years to implement this program.

Treasury notes the calls for further improvements in tax administration outcomes as expressed in a number of submissions. While no doubt more can be done and, indeed, more is being done, the reality is that quality reform of administrative systems cannot be rushed, especially if it is to be done with thorough consultation. There is also a need to manage the pace of future developments to allow adequate time for the ATO to plan for the implementation of new approaches and for tax practitioners to absorb the changes.

A number of the issues raised have been considered by government recently and are being considered in the course of the reviews and initiatives I have referred to. Given the recent nature of many of the reforms that have been undertaken, it may be some time before their impact will be fully evident. I look forward to being of assistance to the committee.

**Mr D'Ascenzo**—My statement is available for the committee. First is our commitment to the community. The quality of life enjoyed by Australians is underpinned by a myriad of government funded goods and services. Health, education, justice, general infrastructure, scientific research, emergency services, social security, defence and so many other vital aspects of our society are supported by the revenue raised through taxation. The tax system is also used to give effect to social and economic policy. It is an indispensable part of Australia's wellbeing. While the shape of the tax system is a matter for government, the Australian Taxation Office's responsibility is to administer the tax laws in a way that instils community confidence and encourages high levels of voluntary compliance.

Our commitment to the community is to administer the tax system fairly by helping taxpayers and their agents to understand their rights and responsibilities, making it as easy as possible for them to comply and supporting those who want to comply by ensuring that there are real and tangible risks for those who do not. This is all about fairness for taxpayers and a level playing field for business. In 2004-05 total net tax receipts were in the order of \$214 billion and, as the Commonwealth's second largest payer of benefits, we made over \$6 billion in transfer payments to the community.

We recognise that there are many different participants in the tax system, that different taxpayers may have their own set of circumstances and that some taxpayers take different postures in meeting their tax obligations. A key approach for us is to differentiate between taxpayers trying to do the right thing and those who are not. This perspective also underlies the Taxpayers' Charter and our compliance model, which require us to understand taxpayers' circumstances, behaviours and risk profiles so that we can develop appropriate and proportionate responses. Increasingly, we are working with representative bodies to help us codesign those responses. For example, we convene more than 70 formal consultative forums and actively seek to engage stakeholders in the care and management of the community's tax system.

Our risk management in the area of tax compliance and approaches to interfacing with taxpayers electronically, as well as our consultation, collaboration and codesign processes, are already well regarded by other revenue agencies. The leadership of the Australian Taxation Office in advancing tax administration is recognised internationally. Nevertheless, we are not complacent and continue to look for ways to add value to our community. We listen to others, including taxpayers, their representatives, parliament and those charged with the scrutiny of our operations. We seek to work with others to lift the bar on excellence in tax administration.

Much has changed since the Joint Committee of Public Accounts and Audit undertook its last comprehensive review of the tax office more than a decade ago. As a result of that review, the Taxpayers' Charter was created along with its associated complaints system, ensuring procedural fairness for taxpayers, along with an avenue to take action if dissatisfied with our dealings with them. Your report led to the creation of the taxation adviser to the Commonwealth Ombudsman, providing an independent avenue for taxpayers to raise their individual concerns, as well as the Small Taxation Claims Tribunal to provide an inexpensive review of small taxation disputes.

The tax office has also been subject to other reviews by this committee during this period. In particular, this committee regularly reviews audits of our systems and processes by the Australian National Audit Office. Reviews by this committee have been on areas such as our relationship with tax practitioners, our fraud prevention processes and our administration of taxation rulings. Your findings reflect a tax office that takes on board the insights of others and that learns and adapts. For example, in your report No. 390 of August 2002 in relation to public rulings, you said:

The Committee acknowledges the complex taxation matters dealt with and the rigorous review and approval processes employed by the ATO in issuing its public rulings.

In relation to private rulings, you said:

The Committee acknowledges the cooperative approach of the ATO and praises its willingness to move forward on issues brought to its attention. The Committee also notes the positive view of the ANAO in relation to the ATO's response to the audit process, the constructive approach it is taking in addressing some major issues and its implementation of both ANAO and Sherman report recommendations.

In August 2004 the ANAO reported to this committee that the ATO had fully implemented its recommendations in relation to taxation rulings and that the ATO had undertaken further improvements.

The tax office has also been subject to other reviews on matters within the terms of reference of this committee. For example, in 1998 and 2000 the Senate Economics References Committee considered and largely rejected claims of different treatment of the big end of town versus the small end of town. Even so, we revised our Code of Settlement Practice to take on board the committee's advice. In 1999 and 2000, the House of Representatives Standing Committee on Employment, Education and Workplace Relations considered aggressive tax planning, as did the Senate Select Committee on Superannuation and Financial Services. The Senate committee in its May 2001 report commended 'the efforts made by the ATO to identify and pursue both promoters of the schemes and taxpayers involved, and to educate investors about the key

features of aggressive tax planning.’ Similarly, the Australian National Audit Office in its audit report No. 23 of 2003-04 noted:

Aspects of the topic—

that is, aggressive tax planning—

have been reviewed previously ... There have been three reports by the Taxation Ombudsman ... The SERC’s—

that is, the Senate Economics Reference Committee’s—

extensive inquiry ... was reported in its Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection ...

and that was in three reports, June 2001, September 2001 and February 2002—

We found that the ATO’s strategy and approaches for managing aggressive tax planning, and the operational methods it employs, reflect the lessons it has learned from its experience with mass marketed schemes as well as from associated academic research work and reviews by the Taxation Ombudsman and the SERC.

As the opening statement made by Treasury highlights, the last decade has also seen fundamental changes to the tax system. In their implementation, they have challenged the capabilities of both the tax office and sections of the community. These include A New Tax System, which introduced a goods and services tax, as well as the Australian business number and new pay-as-you-go arrangements. The business tax review introduced new capital allowance and consolidation regimes, the review of international tax and the review of self-assessment. More recently, we have had changes to superannuation and the new promoter penalty regime and the government has announced a new regulatory framework for the tax profession.

The tax office’s role has been to implement those changes efficiently in a changing landscape in a way that reflects the legislative intent. Increasingly, it has sought to engage with relevant stakeholders to develop administrative arrangements that are designed from the outside in. This more emphatic user based approach has the potential to make it as easy as possible for taxpayers to comply and minimises red tape and taxpayer compliance costs. Throughout all this change, we have sought to be open, transparent and accountable.

Our contribution to the Commonwealth depends on the capabilities and values of all the participants in the tax system and particularly on the capabilities and values of our own people and systems. We are making a significant investment here in supporting businesses, tax professionals, bookkeepers, software developers and other intermediaries that contribute to its effective operation. As an organisation, we seek to live the Taxpayers’ Charter and its values of being fair but firm where necessary and in accordance with the law, open and transparent, professional, responsive and accountable, consultative, collaborative and willing to co-design. These strategies are complemented by a \$493 million change program to integrate our systems to make it easier for taxpayers and their agents to deal with us and to provide a better basis for differentiation in the management of tax risks.

On the face of it, our strategies appear to be working. The community, business and tax agents say we have improved our performance, according to recent surveys of these groups. Seventy-

three per cent of the 2005 community perception survey respondents agreed that, overall, they think that the tax office is doing a good job—up from 65 per cent in 2004. In March 2006, 85 per cent of business perceptions survey respondents also agreed with this statement, the highest level of agreement recorded over the history of the survey. Research conducted by NTS social research in 2006 found that we had improved in all areas that we measured in similar research in 2001 and that tax agents had seen huge improvements over the last two to three years. To me, these findings are really encouraging and are a reflection that, while we are still searching for opportunities to improve, we are on the right track. This inquiry offers the parliament, taxpayers and others, through their submissions and comment, the opportunity to have input, offer guidance and give endorsement to our directions for the future.

**CHAIR**—I thank both of you for those opening statements. As I indicated at the start of our first hearing, this is an opportunity for questions from all of the members present. No doubt there will be some questions for which you may not have the immediate information to hand, but we can get that from you in subsequent hearings, subsequent submissions and the like. We will now move through with a series of questions. I know Mrs Bishop has another appointment she needs to attend shortly, so we might kick off with her.

**Mrs BRONWYN BISHOP**—I will be coming back. It is just a very short appointment to see a school.

**Senator WATSON**—Do we have a system of first asking questions of Treasury or the tax office rather than going all over the place?

**Mrs BRONWYN BISHOP**—We can ask as we wish.

**CHAIR**—If Treasury want to add to a particular matter, they should feel free to do so, but there is a fairly neat divide there between policy and implementation.

**Mrs BRONWYN BISHOP**—I might begin with some general questions that relate to the overall performance and then I have specific ones I want to ask with regard to FBT and about EBAs. I might begin by asking if I could have a copy of the ATO's prosecution policy. I presume that you have one.

**Mr D'Ascenzo**—Yes, we have.

**Mrs BRONWYN BISHOP**—I would like a copy of that. Perhaps you could explain to me the way in which the tax office determines whether it will take carriage of a case where there is a major point of law to be determined. What discretion is exercised? How many of those cases have been taken in, say, the last three years? What is the policy of the tax office with regard to determining whether to take a matter on appeal? I ask those questions of you, Commissioner.

**Mr D'Ascenzo**—Is the first one the number of prosecution cases?

**Mrs BRONWYN BISHOP**—No, the number of cases that you have taken to determine an important point of law.

**Ms Granger**—A substantive tax case?

**Mrs BRONWYN BISHOP**—Yes.

**Mr D'Ascenzo**—So these are just cases that are in our litigation—

**Mrs BRONWYN BISHOP**—No. There is an obligation, which is usually not followed terribly well, that where a substantive point of law is to be determined the commissioner ought to take the case and not rely on the taxpayer having to find the resources to bring that case.

**Senator WATSON**—A test case.

**Mr Fitzpatrick**—There would be a test case funding.

**Mr D'Ascenzo**—That is the question I asked—test cases. We have an outline of the test case program.

**Mr Fitzpatrick**—Maybe I can help.

**Mrs BRONWYN BISHOP**—I would prefer the commissioner to tell me at the moment.

**Mr D'Ascenzo**—Can I get more information?

**Mr Fitzpatrick**—I do not have the number of cases we have actually funded in the last year.

**Mrs BRONWYN BISHOP**—Perhaps you can take that on notice—the number we have done in the last three years.

**Mr Fitzpatrick**—The numbers for which we have provided test case funding—is that the question?

**Mrs BRONWYN BISHOP**—Yes, and what happened to them, what the outcomes were.

**Mr Fitzpatrick**—Yes, we certainly have funded some cases; there is no doubt about that.

**Mrs BRONWYN BISHOP**—But if you do not have the details of the numbers, take it on notice.

**Mr Fitzpatrick**—Do we have the numbers? No.

**CHAIR**—Mrs Bishop says that you can take it on notice; it is better to take it on notice so that she can get the specific information.

**Mrs BRONWYN BISHOP**—Over the last three years. I also want to know what process the tax office goes through in determining whether or not to take the test case.

**Mr D'Ascenzo**—The taxpayer makes an application. The application is considered through the test case panel, which has external representatives. The commissioner usually accepts that

advice. There have been two situations where the commissioner has decided to press on and provide funding for taxpayers.

**Mrs BRONWYN BISHOP**—In that case, you might give me a list, also, of unsuccessful applications—

**Mr D'Ascenzo**—We can do that.

**Mrs BRONWYN BISHOP**—and the reasons why you declined—also how you decide whether or not to take a matter on appeal.

**Mr D'Ascenzo**—There again the process is that, when it has gone to appeal processes, we have external counsel involved, and we seek the advice of the external counsel about our chances of success. We also weigh up the importance of the matter, and decisions are made at senior levels in relation to that decision.

**Mrs BRONWYN BISHOP**—Do you keep records of how you make those determinations?

**Mr Fitzpatrick**—If I can help, we have a test case litigation program booklet which might assist you and the committee—

**Mrs BRONWYN BISHOP**—No, I do not think so. I want the information I have asked for.

**Mr Fitzpatrick**—As well as the numbers—we can provide the numbers. But this sets out the criteria and the process by which—

**CHAIR**—Perhaps you can provide both when you provide it.

**Mr D'Ascenzo**—It is with the pack that is already with the committee.

**Mr Fitzpatrick**—That outlines the process and the panel process criteria we look at in determining whether to fund cases on application. It also outlines cases where we can decide to fund from our own position, rather than waiting for an application from a taxpayer.

**Mrs BRONWYN BISHOP**—That is why I want the lists of when we have done it and the ones you have rejected, as well.

**Mr Fitzpatrick**—In our annual report of last year I notice that we have outlined the cases for that particular year, but we can provide you with the figures for the last three years, as you have requested.

**Mrs BRONWYN BISHOP**—Up to date—at the current time.

**Mr D'Ascenzo**—And the report is also in the pack in our submission to you.

**CHAIR**—Thank you for that.

**Mrs BRONWYN BISHOP**—Also—and it may be in the annual report; you may disclose this—what is the amount of money that taxpayers overpay each year that you then give back to them?

**Mr D'Ascenzo**—Is this in relation to the amount of refunds, people claiming deductions, which is netted off their assessable income and they are entitled to refunds? I think we do have that figure. I think it is in the pack provided to you. It is in our report of 5 April 2006 to you.

**Mrs BRONWYN BISHOP**—Who is that report to?

**Mr D'Ascenzo**—This committee. The total net amount refunded is \$50.6 billion.

**CHAIR**—What page are you at?

**Mr D'Ascenzo**—I am on page 4. It is a snapshot. It is \$50.6 billion, but it is across all taxes. That would include GST refunds.

**Mrs BRONWYN BISHOP**—No, that is not the figure I want. I want the amount of money paid by individual taxpayers for their overpayment—not GST. I think what you have given is pretty high.

**CHAIR**—Mrs Bishop, are you talking about PAYE returns?

**Mrs BRONWYN BISHOP**—The old sort of PAYEs, which are the PAYGs these days, yes.

**Ms Granger**—In the last annual report, the last published figures we have for 2004-05 was \$15.1 billion.

**Mrs BRONWYN BISHOP**—Is that a fairly consistent figure that people overpay every year?

**Ms Granger**—The amount each year has risen. If you look at that table—we did a snapshot from 1993 to 2005—you can see that the figures are growing in terms of refunds, if you like. It varies because it is not just a question of what is the gap between what is withheld from salaries. There have been a number of initiatives from government that have added to what might be in the mix—for example, baby bonus is in a number of years. It depends very much on those sorts of things, which can also add to what might generate an individual refund. The other thing that has varied over that time—

**Mrs BRONWYN BISHOP**—Why would the baby bonus affect that?

**Ms Granger**—The refund is the net of the tax payable, less not just any deductions but also any offsets to it. So, if you claim that—

**Mrs BRONWYN BISHOP**—What is the figure?

**Ms Granger**—It is \$15.1 billion.



**Mrs BRONWYN BISHOP**—But isn't that a fairly consistent figure, somewhere between \$13 billion and, say, \$16 billion?

**Ms Granger**—I do not have each year here, but since 1993 it has grown from \$7.8 billion to \$15.1 billion, but then so has the population and so has—

**CHAIR**—Are you able to provide us—and I do not expect you to do this off the top of your head; it is an important question—with the figures that Mrs Bishop is raising and give them to us as a percentage of revenue or a percentage of income tax take? The budget has probably doubled in size since 1993; the economy has more than doubled in size.

**Ms Granger**—Yes—and what you can claim and what other benefits you may get have changed in that mix. But we can do it around individuals, particularly, that you are interested in.

**Mrs BRONWYN BISHOP**—Yes.

**Mr Konza**—It is a matter of government policy, as well, in certain areas—for example, family tax benefit and the private health insurance rebate being two prime examples—that taxpayers have maximum choice available about the channels through which they get access to those benefits. Choosing to claim them as a lump sum in your tax return also feeds into those figures.

**Mrs BRONWYN BISHOP**—That is a very interesting question. How many choose to do it as part of their tax return and how many people choose to take it more readily—speedily?

**Ms Granger**—I do not have the latest figures. Again, we can get those for you. Instead of speculating, I will get the figures for you.

**Mrs BRONWYN BISHOP**—But the money that the good old taxpayer pays over by way of overpayment of taxation revenue is really like an interest-free loan to the government, isn't it?

**Mr Konza**—It need not be. If they are aware that they will be entitled to pay less tax, they can arrange with their employer to get less tax taken out, or with us—

**Mrs BRONWYN BISHOP**—I know that, but they do not. A lot of them use it as a savings measure.

**Mr Konza**—That is exactly right.

**Mrs BRONWYN BISHOP**—But they do not get any money for their money. They could just as easily put it in a bank account and at least get something.

**Mr Fitzpatrick**—Some like their refund at the end of the year.

**Mrs BRONWYN BISHOP**—I am aware of that, but the government benefits from that liking because it does not have to pay interest on the money.

**Ms Granger**—On page 19 of that same report there is some detail around the number of individuals currently getting a refund: of those paying tax, it is 78 per cent. The other thing that may be of interest to you there is those comments in relation to preference for a refund, because, as Mr Konza said, you can adjust and finetune what is being withheld from your pay. But we did some research a few years ago—and it did surprise us—around whether, if it was very small amounts, people would prefer not to be lodging tax returns. The answer came back that, even if it was only a \$10 refund, they would prefer to have a refund, in general, but if it was a \$10 debt it would be okay not to lodge a tax return. We can make that research available—it is on our web site—if you are interested in seeing the figures on that.

**Mrs BRONWYN BISHOP**—It is part of the national psyche that if they get it off the taxman they are doing well.

**Ms Granger**—I personally like to have a refund at the end of the year.

**Mrs BRONWYN BISHOP**—I want to ask the next question generally about administration. I think you have an executive performance bonus scheme for executives, Commissioner, don't you?

**Mr D'Ascenzo**—We do for SES and EL2s, which is the classification just below the SES.

**CHAIR**—What are they these days? I have lost track. What does that mean? What is an EL? I hear all these acronyms, but I—

**Mr D'Ascenzo**—The SES starts at assistant commissioner. You have assistant commissioner and then you have first assistant commissioner, second commissioner and the commissioner. There are sometimes some gradings between those, but those are the four basic classifications. Just below that is the executive level 2, which in the old classification would have been your class 10 and 11.

**Ms Granger**—To give you an idea of scale, our staffing is around 21,000 or 22,000 people. These are not exact figures, but the SES is around 200 and the EL2s I think are around 1,500, so that gives you a sense of the numbers in the organisation. Again, those figures are in our annual report.

**Mrs BRONWYN BISHOP**—So those people get a performance bonus scheme. What are the criteria for receiving that bonus?

**Mr D'Ascenzo**—They have to meet a range of organisational requirements, but it is broken up into two things. One is the 'what'—in other words, how they have carried out substantively the requirements of their job in terms of actually doing the job—and the other part of it is a 'how', which says that the way you do it has to instil community confidence. We break up our determination into both a 'what'—in other words, there are tasks that you need to perform; you need to perform those efficiently and you need to achieve the outcomes in the performance of those job requirements—and a 'how', which is just as important, which is about how you do it, the way you do it in terms of relationships with others and whether you instil community confidence in terms of professionalism. So both aspects are covered.

**Mrs BRONWYN BISHOP**—Is collection of revenue—that is, how successful they are at collecting revenue—part of those criteria?

**Mr D'Ascenzo**—No, it is not part of the criteria other than that, if they are in collection areas, their carrying out of their activities would be important.

**Mrs BRONWYN BISHOP**—So if they are in a collection area it would be connected?

**Mr D'Ascenzo**—No, not in terms of the numbers. But let us say that you were to do 10 field visits. If you do not do the 10 field visits, that would not be appropriate, and if you—

**Mrs BRONWYN BISHOP**—Is a field visit a spot check?

**Mr D'Ascenzo**—No, we have moved away from spot checks, because spot checks impose a lot of burden on the honest taxpayers.

**Mrs BRONWYN BISHOP**—So you now give them notice?

**Mr D'Ascenzo**—No, we try to work out where our risks are, and then we use our resources to address risk. When we address risk, it can be risk in terms of revenue but it can also be a risk in terms of taxpayers not understanding the law. In other words, our compliance model says, 'What are the causes for noncompliance?' and then you try to address those causes. If the cause is that this segment of taxpayers, who are perhaps making mistakes, are doing that because they do not understand their obligations, then our help and advisory functions are used. On the other hand, we have situations where people are, in our compliance model, 'playing the game', and with those we take firmer action and we seek to address it through audits or other enforcement activities.

**CHAIR**—When you say you don't do a spot check generally, how would a field trip occur, typically?

**Mr D'Ascenzo**—Others can describe it more closely than I, but often when we get involved in projects it does not start from the taxpayer; it starts from a risk analysis. We analyse an area of risk, and we say: what's the appropriate treatment for that area of risk?

**Mrs BRONWYN BISHOP**—How do you determine an area of risk?

**Mr D'Ascenzo**—That is why we have a whole range of sophisticated risk management processes for analysing and using data that is provided to us. A whole range of factors go into identifying whether things are working well or not.

**Ms Granger**—Obviously it varies depending on which segment you are looking at. I will use large corporates and individuals as a starting place, as two extremes of what we look at. With our large corporates, one of the things we do, particularly these days, rather than going straight to what might be the issue, is we profile what is happening economically against the trends we are seeing and what is being lodged to see if the effective tax rates are looking somewhere near what the economic performance is. We also know there are areas that are particular opportunities or tempting areas, if you like. So for example, when you are going into business across borders,

where will I pay my tax if there are different tax rates? Examples are when there are restructures going on, but particularly when industries are going into significant profits. One of the things we have announced—quite an obvious one in this sense—is we will be looking more closely at the resources sector this year, not just at the large end, but also at the individual end. It is those things. Also feeding into that mix is our history of what we have seen in previous audits.

**Mrs BRONWYN BISHOP**—What about small business, for instance? The tax office made a statement that it was going to attack small business, and it was a pretty aggressive statement.

**Ms Granger**—I am fairly sure we didn't say 'attack'—

**Mrs BRONWYN BISHOP**—Maybe that was the interpretation by the newspapers of it. They got the impression they were under the hammer. A lot of them feel they are under the hammer still. So when you choose a segment of small business that you are going to really latch onto and pursue—you are probably doing one now, are you?

**Ms Granger**—We are doing a number.

**Mrs BRONWYN BISHOP**—Which ones are you doing?

**Ms Granger**—Can I add something else to illustrate again some of the things the commissioner was telling you. At the individuals end, the profiling we can do there is we can pattern quite successfully electronically. Looking across the trends in tax returns is one of the way we look at that. So, for example, with what we announce in relation to work related expenses and what we will look at there each year, it is fairly easy to see a trend changing for particular occupations. That is how we select some of our occupations each year as well as if we see rising skill shortages, for example, and increasing incomes—those sorts of things. As you would know, a lot of the other work that we do is around data-matching and where we see things undisclosed.

**Mrs BRONWYN BISHOP**—With all that collecting, you must have enough information to publish the gap between what you should collect and what you in fact collect.

**Ms Granger**—It depends on what you are calling 'gap'. We do publish what we are seeing and we do talk about where we are concerned and what will attract our attention.

**Mrs BRONWYN BISHOP**—No, what you should collect and what you do collect, like you used to prior to 1987, I think. If the government decided that it wanted you to publish the gap, it sounds to me as though you would have enough data to do it.

**Ms Granger**—I am not sure what you are actually putting into the calculation of gap. From our perspective, we actually do pay attention to a number of studies that are done by experts around tax gap. You would probably know if you have had a look at those that they range in estimates anywhere between two and 15 per cent. Our job is to target where the risk is and address that.

**Mrs BRONWYN BISHOP**—But you used to publish once upon a time what the gap figure was.

**Ms Granger**—I am sorry, I was not in the tax office, or certainly I was not aware of that. It was before my time.

**Mrs BRONWYN BISHOP**—I am sure somebody would remember it.

**Ms Granger**—Would you like Mr Konza to talk about the small business risk assessment?

**CHAIR**—Or do you want to address that when you get back?

**Mrs BRONWYN BISHOP**—I might address that when I get back. I have to go and see a school.

**CHAIR**—Okay. It is an appropriate time to move the questioning on.

**Dr EMERSON**—Could you just explain the concept of the tax gap for us?

**Ms Granger**—Yes. One of the things that is a problem in this is people's definition of 'tax gap'. In Australia and in the media what we tend to mean when we talk about tax gap is the cash economy. Most tax administrations doing international work talk about what they think is the gap between revenue collected and total revenue that might be payable. The definition they use for that is 'tax paid on time'. So included in what they are doing will be late filed returns, incorrect returns and non-payment of tax—all elements of it. So there are two definitions floating around in the community, which was why I was asking the questions. What people tend to be asking us when they talk about tax gap is: what we think is in the cash economy and whether we can successfully target that.

**Dr EMERSON**—I think you said there were three examples including late payment of tax. That is not cash economy, as such; it is noncompliance through perhaps avoidance or ignorance or whatever in the formal part of the economy.

**Ms Granger**—Yes.

**Dr EMERSON**—Do you break down conceptually between that part of the gap which is associated with noncompliance, even though the activity is in the formal sector but, for example, through avoidance activities or delays on the one hand and, on the other hand, cash economy activity which is just not in the tax net?

**Ms Granger**—In terms of cash economy, we do not do a formal estimate of that. The methodology—and Mr Konza can go into more detail—that tax administrations have tried to use there is totally randomised audits across the community. There are two issues for us in terms of doing that. Firstly, that means we are going to bother people who are not noncompliant. Secondly, it takes a very large amount of your audit program to do that, and that has been what other administrations that have gone down that track have struggled with. When we are talking about what measurements we could do ourselves, they are around that random audit process. From our perspective, we believe we are developing good risk identification processes to know where to target. The other problem with a measure like that is that it does not tell you where to look, because it is random. So in a sense, while it might give you a number within a tolerance and upset some community members, it is not going to give you an answer.

**Dr EMERSON**—Just to clarify a point I think you made, you are not seeking to estimate the size of the cash economy, you are trying to pick up estimates through this auditing process of noncompliance that is associated with the cash economy. Is that right? A lot of academic work has gone into seeking to estimate the total size of the cash economy.

**Ms Granger**—Yes.

**Mr D'Ascenzo**—I might just go back historically. Mrs Bishop said that we used to publish the tax gap. I do not think we actually did publish the tax gap. We did conduct some programs where we dissected the economy and did some random audits, which started to build up some sort of a picture of tax gap type statistics which was similar to the US experience at that time—it is currently being re-raised in the US. We found that to be very unproductive. We found it to be very good if you were coming at it from an academic perspective—and I do not mean that in a bad sense.

**Dr EMERSON**—Yes, I know what you mean. But for your operational purposes, it did not help.

**Mr D'Ascenzo**—For our operational purposes it was very expensive. Our philosophy has moved from doing that to trying not to bother honest taxpayers, being as invisible as we can to people who are trying to do the right thing, unless they need help or assistance, and just trying to refine our risk processes to identify areas of risk. That is where some of the extra work that we are doing in capturing information through our systems and using analytics and data matching comes in. To me that seems more productive than random arrangements.

**CHAIR**—On that subject, taking Ms Granger's earlier point, if you have a scattered broad-brush approach that takes your resources away from that—

**Mr D'Ascenzo**—The theory sometimes is that, if you can build up a picture of the economy, you can sometimes find out which area is at risk. It achieves the same outcome as our risk profiles only in a much more elongated way. Our historical experience has been that, when we did that, the random statistical work took us so long that it was out of date by the time we wanted to use it.

**Dr EMERSON**—Could you provide, on notice—you will not have it here—estimates of the expected returns, let us say, per million dollars of extra resources going to the tax office in the various segments? Obviously, we are going to get different dollar returns because that is what your risk assessment process is all about.

**Mr D'Ascenzo**—That is exactly right. We can provide that to you.

**Dr EMERSON**—That would be very helpful. I remember your annual report last year said something like you have established a serious noncompliance unit, and unfortunately there has been no shortage of business, including extra investment in the noncompliance area.

**Mr D'Ascenzo**—We will try to do that break-up for you. Just to finalise the tax gap research issues, what ultimately persuaded me that that might not be the best way of doing it was a newsagent. I was in charge of the area that was looking at it at the time. He said to me: 'Your

people audited me. They did a good job, they were very professional and I did not have a problem, but I am really dark on the tax office and I will remain dark forever on them.' When I asked why, he said, 'Because you audited me and I have been trying to do the right thing, but you did not audit the person across the street, who is a crook.' So there is a perception there that, if you just do randoms and you pick the wrong people, it actually reduces community confidence rather than increases it.

The other side of it is the dollar take. I tried to make the point, perhaps obliquely, in my opening statement that I do not see our enforcement action as a dollar return. In other words, for all our compliance activities and collection efforts, we might get \$4 billion to \$5 billion. We collect around \$215 billion, so the whole idea of—

**CHAIR**—It is less than two per cent.

**Mr D'Ascenzo**—The whole idea of enforcement is the shock behind voluntary compliance. In other words, it is a question of fairness for the community to say, 'It's fair enough for you to pay your tax because you're not going to be personally disadvantaged or your business is not going to be disadvantaged because there is a real risk from others.'

**Dr EMERSON**—So by protecting the revenue base you get as much as you would by collecting extra revenue.

**Mr D'Ascenzo**—Very much so. That is a very important philosophy, which I do not think many people quite understand. It is all about—

**Dr EMERSON**—Integrity and tax morality.

**Mr D'Ascenzo**—Integrity in the system. We use a lot of resources for what might sound like a big dollar return, but the big dollar return comes from taxpayers doing the right thing and paying their tax and that revenue coming into the system. A role for us which is just as important is to protect those taxpayers by saying, 'For those people who try to put you at a disadvantage, there is some level of accountability through some sensible programs that can be done.' The other side of it is acknowledging that you have so many people who do want to do the right thing. That means that we need to ensure we invest very heavily in making it as easy as possible for people to comply.

**Dr EMERSON**—When were private binding rulings first issued?

**Mr D'Ascenzo**—We introduced a system of private binding rulings back in 1992. It came out of a project that was set up following the move to self-assessment around 1986 and 1987. We had a project that was called the self-assessment priority task. The government released a number of blue papers on proposals for making it fairer and more certain for taxpayers. One of those was to have a private ruling regime. The private ruling regime was an option for taxpayers to be assessed. In other words, it made assessment optional for taxpayers, if they wished. In the pre self-assessment mode, you could provide a full and true disclosure in your return and the tax office would assess you. The private ruling said, 'If you are genuinely uncertain about the matter, give us a full and true disclosure and then we will assess you on that issue.' It was an optional system of assessment for taxpayers.

**Dr EMERSON**—You had a major review and streamlining and rationalisation of that private binding ruling system. Would you be able to provide the committee with the aggregate number of private binding rulings from 1992 through to the present for the different taxes in relation to income tax and fringe benefits tax? Would you apply them to fringe benefits tax?

**Mr D'Ascenzo**—We do for fringe benefits tax.

**Dr EMERSON**—Would you also supply them in relation to the GST and any other—

**CHAIR**—You do not want that by 5 o'clock, do you?

**Dr EMERSON**—No; tomorrow morning would be fine.

**Mr D'Ascenzo**—That will not be too difficult to obtain. We can do that.

**Dr EMERSON**—I assume it will show a growth in private binding rulings and then perhaps some plateauing or reduction. That is what I am after.

**Mr D'Ascenzo**—It has actually remained reasonably stable. It has usually been around the 15,000 a year aggregate.

**Dr EMERSON**—There was a huge surge in 2000 associated with the GST, where there were 80,000-odd. You would expect that.

**Mr D'Ascenzo**—That is right.

**Dr EMERSON**—That is why I think it is fair to ask for the disaggregation.

**CHAIR**—Yes. Perhaps if you take Dr Emerson's question, which is a good one, even if it is by way of an additional submission.

**Mr Fitzpatrick**—Do you want the numbers for each year?

**Dr EMERSON**—Each year, please, yes.

**CHAIR**—Am I right, Dr Emerson, in thinking that you prefer—for the use of all the committee members—a substantive response and, if that takes a bit more time, that is fine.

**Dr EMERSON**—Yes. It is not desperately urgent.

**Mr D'Ascenzo**—I think we will be able to do that quite quickly. As Ms Granger said, I am not sure about the split between FBT and income tax. That might be lumped into—

**CHAIR**—Just see what you can do.



**Ms Granger**—Just as a little background, it might be interesting for you to know that this year so far there have been 12,500 requests. Most of them are from individual taxpayers. That compares to 11 million phone calls. So the contact with the office—

**Dr EMERSON**—It might also help, Mr Chair, if we also get public rulings, because I think there is substitutability between the public rulings in that if public rulings are issued a whole lot of people do not have to ring up and say—

**Mr D'Ascenzo**—That is the intention. That has run in the order of about 100 public rulings a year.

**Mr Fitzpatrick**—I think we have figures in our submission on numbers of public rulings.

**CHAIR**—But could you, just for our ease, put it together with the other material? It would be handy to have it in one document.

**Dr EMERSON**—Have you had difficulties in terms of tax compliance through tax agents? If I can quickly describe the background to that, there is an assumption, I assume, on the part of the tax office and certainly of people who get an agent to do their work that, once they sign their name, that is it and the tax office itself will say: 'This has come from an agent. Agents know what they are doing, so we do not really need to do much or any audit activity in terms of risk areas.' Has that proved to be the case, or has there been, in a sense, a false confidence where agents have perhaps not in aggregate been totally virtuous in terms of compliance?

**Mr D'Ascenzo**—I start from the proposition that tax agents have been a very positive influence on tax compliance. I think that the tax office helping tax agents and supporting them does allow us to touch many more taxpayers than we could otherwise do on an individual basis. This is one reason why I am very positive about the government's announcement for a review of standards of the tax profession. In my view, if you have a more regulated and capable tax profession it can be a very helpful part of the system. I am working very closely with the tax professional bodies to see what we can do to ensure that occurs. I think the professional bodies would also say to you that the standards across the tax agent community vary. We have programs which identify the claims made by clients of tax agents and we use the outliers as a risk assessment process.

**Dr EMERSON**—That is how you do it.

**Mr D'Ascenzo**—In other words, if you are a particular tax agent in a particular area with a certain type of clientele and it is outside the norm for tax agents in that area, we would go and talk to them and maybe investigate their clients.

**Dr EMERSON**—Talk to them?

**Mr D'Ascenzo**—We would talk to the tax agent first to find out what the reason is, but then that could be followed up with other action if necessary. It is very much a targeted area.

**CHAIR**—This is going back to your research on the cross-matching and so on.

**Mr D'Ascenzo**—It goes back to identifying risks.

**Dr EMERSON**—I will illustrate with an example that everyone will be able to understand. Suppose a particular taxpayer bought a computer—they are a microbusiness—for the home office but in fact it is for the kids to play games on. That person then says to the tax agent, 'This is 70 per cent business use, so I will claim the 70 per cent, thank you very much.' He goes to the tax agent. What is the tax agent going to do? They say, 'My client says it is 70 per cent.' Then it goes to the tax office. That is an avoidance activity. Is there a false expectation on the part of that person that they will not be audited because they have got the shield of the tax agent—'If I can get away with it with the tax agent then I'm home free'?

**Ms Granger**—If I understand your example, you are saying if I lie to the tax agent I will be safe.

**Dr EMERSON**—If I lie to the agent, the agent carries that lie forward with the agent's good reputation to the tax office. The agent does so in good faith. The agent does not actually say to the taxpayer, 'Tell me a porky.' Is that in fact not a secure route to tax avoidance?

**Ms Granger**—I would be the last one to say that we detect every single unusual claim out there, but as the commissioner says—

**Dr EMERSON**—So that is the outliers.

**Ms Granger**—We pattern for outliers if your claim looks very unusual. At the agent level we are scrutinising the pattern across the practice and if it looks unusual compared to other practices it can lead to us checking if there is something the agent does not understand about how to apply that or if this is noncompliance, and then we visit.

**CHAIR**—Let us take Dr Emerson's example. One area where you would be able to cross-match would be motor vehicle claims. There would be a band of percentage but then you would get someone where you would say, 'This person must never drive anywhere privately; they must get public transport.'

**Ms Granger**—You will hear in our tax time messages very clear warnings that particularly travel, computing and particular self-education expenses, year in year out, are areas we look at. We will also indicate particular occupations. But it is, exactly, looking at some of those trends for maybe private travel to and from work, those sorts of things, things that are unusual for particular occupations.

**Dr EMERSON**—Do you come to an understanding with the tax agents overall as to what would constitute a reasonable claim such that the agent can then advise the taxpayer: 'You'll get away with 40 per cent but nothing more.'

**Ms Granger**—No.

**Dr EMERSON**—You do not do that?

**Ms Granger**—No. We have been going down the path of doing more and being very overt about what sorts of things will attract our attention. There are a few examples where we have also said—and I am anxious to have Mr Konza have a chance to have a go here—

**CHAIR**—The inquiry will go for a while.

**Ms Granger**—I think he has some interesting things for you to hear. We may say that you are at high risk of audit if there are particular characteristics. We have just done that around service entities, for example. That has been a bit of a change in practice for us. It is something that is still debated by other administrations. Some have the view that the more overt you are, the more people will take advantage of it. Our view is that the more we say what will attract our attention—and it is not necessarily a dollar figure like that, but we try to give a sense of what the material is—the more that will influence people to reasonable levels of compliance. I have to emphasise that also, as you would have heard from us before, we are not funded to do everything.

**Dr EMERSON**—No, I understand that you target your compliance work.

**Ms Granger**—We must look at what is material. If it gets too nitty-gritty, that in itself will—

**Dr EMERSON**—Indeed, you could end up spending more money than you get.

**Ms Granger**—It is not going to be professional.

**Mr D'Ascenzo**—That is another point to emphasise. The reality is that you have to take some sensible approaches about what is going to be cost effective for the community in terms of follow-up. With regard to the example you gave, Dr Emerson, of the person who might be lying about their usage, often that becomes cumulative because they lie about this year's use and then they lie about—

**Dr EMERSON**—They get away with it and they become bolder?

**Mr D'Ascenzo**—Then all of a sudden you get a much bigger claim and it starts to come onto our radar.

**Dr EMERSON**—I have some quick questions. Some of them will be on notice. Mr D'Ascenzo, when we last had long discussions it was on mass marketed arrangements, particularly the employee benefit arrangements.

**Mr D'Ascenzo**—That is right.

**Dr EMERSON**—You may have to take this on notice. Could you let us know how that is now going and whether you feel confident that you have got over the top of it?

**Mr D'Ascenzo**—Ms Martin has the details. My summation of it is that, of the cases that we had at that time—that is, taxpayer cases—90 per cent of those are now behind us.

**CHAIR**—Can I make a suggestion. It is a good question and one that most members would be interested in. With these requests, and you are likely to get more through the day, if you are able to wrap them up in an additional supplementary submission then we will see every question—

**Mr D'Ascenzo**—I am happy not to have the full discussion now.

**Ms Granger**—We have given you one supplementary submission.

**CHAIR**—Yes, that is in there, but I am saying that this would be general, with the other questions as they come.

**Mr D'Ascenzo**—We will do that.

**CHAIR**—It would be easier because members who are not here will be able to match the answers to questions on notice asked in today's proceedings—on 22 June.

**Mr Konza**—There is a lot of detail in our supplementary submission on the EBA numbers.

**Mr D'Ascenzo**—The point that I was making was that 90 per cent of taxpayer cases have now finalised. We have won all of the cases in terms of the substantive matters. Really, it is behind us.

**Dr EMERSON**—Okay. Could you just summarise, although I know it is in the law, the circumstances in which both the general interest charge and the penalty tax are applied?

**Mr D'Ascenzo**—The penalty tax is what we call a shortfall penalty. That has to do with people's culpabilities. The law itself sets this out. It says that if you have exercised reasonable care and if it is a very large adjustment—that is, over I think \$40,000 or \$20,000 in tax—then you also have to have a reasonably arguable position. In other words, it has to be reasonably arguable. If you meet both of those criteria, the culpability penalty is zero. If you did not exercise reasonable care or you do not have a reasonably arguable position for large adjustments, the penalty rate is 25 per cent. If you are reckless in the way that you fill in your return, it is 50 per cent. If you have intentional disregard, it is 75 per cent. There are some ups and downs, such as if you act cooperatively or if you act in an obstructionist way. If you make a voluntary disclosure it is a reduction of 85 per cent of whatever the penalty rate is. That is the culpability penalty. The general interest charge is applied by law.

**Dr EMERSON**—Yes. I am less interested in that. I am really more interested in the penalty tax regime.

**Mr D'Ascenzo**—I think there have been some recent changes which are quite significant in the general interest charge area. The general interest charge operates from when you should have paid the tax.

**Dr EMERSON**—Yes, I understand that.

**Mr D'Ascenzo**—But people may say, and in some cases it is quite an appropriate outcome: 'I just didn't know that I had to pay it. I made a mistake. I thought I had done the right thing.' The

high interest rate GIC, which was an incentive for people to pay their tax, does not really quite work out as an incentive if you did not know that you had to pay the tax. So the government has reduced the tax from 2004-05 for shortfalls—

**Dr EMERSON**—The charge?

**Mr D'Ascenzo**—Yes, the charge—from the GIC rate to a lower rate. The general interest charge applies from after the due date of payment going forward—that is the interest you pay for late payment of your tax obligations. The commissioner does not have a discretion in terms of the imposition of those penalties but does have a discretion to remit in appropriate circumstances. Generally, the appropriate circumstances will be where the cause of the delay has been contributed to by the Commonwealth.

**Mr Fitzpatrick**—In chapter 5 of our submission we set out the penalties and interest charges regime and how it works, along the lines Michael has just outlined. There is also a practice statement that we issued—2006/2—which sets out the penalty regime and the circumstances under which we would usually provide remission of that penalty. It is quite detailed guidance.

**Dr EMERSON**—I am conscious that other committee members want to ask questions. Would you be able to give us, for the latest available tax year, the revenue obtained from businesses with turnover of less than \$2 million, which is what you described as micro business?

**Mr D'Ascenzo**—Would that be in the annual report? We can provide it to you.

**Dr EMERSON**—We get the 2003-4 tax statistics, but they are pretty old.

**CHAIR**—Just to save time, could you provide it on notice or refer us to where it is?

**Mr D'Ascenzo**—We can do that.

**Senator WATSON**—I would like to congratulate the commissioner on a very friendly submission, friendly not only to the committee but also to taxpayers of Australia. Congratulations on your achievements: the recognition that our Australian Taxation Office is regarded as world class and to be followed by other countries around the world. It is great to have that recognition. It is also important that we put that on the public record. It is also interesting to note the culture that is emerging in this country, despite a few notable exceptions—and there will always be those. We are fortunate in this country that, by and large, we have a culture of doing the right thing. I will come back to that later. What encourage me are the procedural fairness, courtesy and integrity that underpin your administration. I note the improvement in the trend in terms of going out and independently getting assessments of your performance. It is not jumping all over the place, which means that all areas must be reasonably consistent in moving forward in that area.

You say you are raising the bar for tax agents. Given the geography of our country and the dispersal of tax agents between rural, remote and suburban areas, how are we going to ensure that that bar is not being raised too high in respect of people's needs in relation to what people do? If you are going to go to a very complex thing you would expect people to move into more

complex advice. I would not like to see people ruled out simply because they have old qualifications but are still doing the right thing.

**Mr D'Ascenzo**—Raising the bar was more to do with tax administration more generally. I do believe that the capability of the tax profession is very important in that area. My work with the CEOs of the accounting bodies, for example, is all about what we can do to try to help people get over that bar. I do have some statistics about the geographic location of tax agents. This was a survey that we did together with the professional bodies. It told us that the demographic trends were of an ageing tax agent workforce, mostly male. Their overall satisfaction with their role as tax practitioners increased from 40 per cent in 2003 to 65 per cent in 2005. There is a little more optimism in the system than there used to be. The general population of tax agents are working an average of 49.1 hours per week, 26 per cent are working 51 to 60 hours per week and nine per cent are working more than 60 hours per week.

Again, the difficult calls on tax agents which occurred with the massive tax changes that we had have stabilised. There are a growing number of bookkeepers to support the profession. Because of the ageing population, 24 per cent of tax agents expected in 2005 to leave the profession within two to three years including 17 per cent who were retiring. But, that being said, over the last year there was a 1.05 per cent increase in tax agent numbers overall, so there are some new entrants coming in. Tax agents are having difficulties in recruiting staff. I think there is a level of shortage in the professional ranks. I do not have here the demographics for urban and rural distribution although I am sure the fuller report will have them. I will attach our actual research in this area of statistics on tax agents to the follow-up for this committee.

**Senator WATSON**—Would that be suitable for incorporation in *Hansard* or not—is it a document?

**Mr D'Ascenzo**—It is just my brief.

**CHAIR**—You can provide it later.

**Senator WATSON**—It will be very interesting.

**Mr D'Ascenzo**—It does give a bit of a split. I think it comes down to this sort of philosophy, that trying to improve the capabilities of the tax profession, including the tax profession working in the tax office, is an important part of good tax administration and good for the community. If people have difficulties, as in anything else, then I think the role for the tax office should be to see what we can do to help them get over the line if they wish to. That goes for taxpayers as well as tax agents. If we can get people over the line who want to do the right thing, you have them in the system in a way that they feel part of the system; they do not feel ostracised or segregated. They see a system that is able to support them in their day-to-day affairs. We start with that proposition. It may be that some cannot or do not want to make that jump. Again, in that sort of situation, whether it be tax agents or taxpayers, I do not think it is in the best interests of the community to design a system that allows people who either cannot or do not want to improve to do that. Given the demographics, our first proposition will be to try to support tax agents. It is a policy of: 'Let us help you if we can.' I think the tax agent portal has been seen as revolutionising the way that tax agents carry out their affairs. I am committed to trying to provide further support to them. So if there are areas that require some focal attention—

**Senator WATSON**—Including giving additional time to lodge information?

**Mr D'Ascenzo**—This year's lodgment program is a good example. Firstly, we made it a whole of lodgment program. In other words, we tried to cover all the lodgment requirements of an agent, not just income tax or BAS. Secondly, we have helped even to the extent of saying, 'If you have a heavy onus in terms of private ruling requests and you have to lodge the private ruling requests on behalf of your clients, we are happy to talk to you about giving you some extensions of time.'

Tax agents also said to us, 'We're finding that some people want to come back and get back into the system.' So we are saying, 'If you can bring people back into the system we will give you a one-for-one, like-for-like deferral on your lodgment programs.' On a daily basis, our lodgment people would give a range of deferrals to people who need them for relevant circumstances. But I have to say there are some tax agents who, whether it is because they take on too much or their business processes are not right, struggle year in, year out. There is a limit to the extent to which you can defer lodgment programs, particularly those with a revenue outcome for the community, into the never-never. Sometimes we have the same ones having the same difficulties and when we talk to them the issue is: 'Well, I'm having difficulties recruiting new staff,' which they are. Sometimes they have a strong allegiance to their client base and they are worried that if they do not do it they will have difficulties getting others to do it. But ultimately their structure is not going to be able to be such that it will allow them to do things in a business like and reasonable way.

**Senator WATSON**—So you give them a reasonable time for transition?

**Mr D'Ascenzo**—Yes. I have seen case histories of tax agents who, year in, year out, fail to meet their programs, get extensions and fail to meet the extensions. One of the things that we are trying to do with the tax profession is build in best work practice. Sometimes it is a question of how they run their business. What we are trying to do is give them some best practice guides about how you could run your business and how you could make some rational decisions about managing heavy workloads and your obligations as a professional. But we do not start off with trying to make it hard for people; we try to get them over the line if we can.

**Senator WATSON**—Private rulings are always very helpful. They have been a source of some problems for the tax office where other people have used one person's private ruling or another person's situation. If a person gets a private ruling, that applies just for one particular year. What happens if, for example, the circumstances are identical in the second year? Does one have to get a second ruling? Take, for example, a payment to the same institution for the same reasons et cetera. Can one rely on that first ruling?

**Mr D'Ascenzo**—Firstly, a private ruling does apply only to the person who applies for it, so others really do not have any protection from the fact that there is a private ruling.

**Senator WATSON**—They do not have any protection?

**Mr D'Ascenzo**—No. This is other people that are not the recipients of the ruling.

**Senator WATSON**—That is right.

**Mr D'Ascenzo**—They do not have the protection of that ruling. Say you are the taxpayer and you have asked for a private ruling and you get a private ruling. Sometimes such rulings are more than one year; in other words, sometimes taxpayers ask for a ruling that covers the situation over two years or three years. In other words, you can have a ruling request that covers more than one year. Provided the facts and circumstances remain the same, that ruling will bind to you in all those years.

**Senator WATSON**—I realise that.

**Mr D'Ascenzo**—If you have only applied for one year, once that lapses you no longer have the protection of the private ruling. But then it is a question of how much risk that you think you have in the system. You have certainly got guidance from the tax office about how the situation was a year ago. That is likely to be a situation where the matter is not a risk area for the tax office and therefore the tax office is not going to inquire any further as to that matter in any event. But let us say we did. The fact that you had that ruling and that you had applied that into the future would be an issue for remission of any penalties or interest, so it would be an interest and penalty one rather than a basic substantive restriction.

**Senator WATSON**—So you could rely on it in a sense, given the reasons that the tax office gave in terms of coming to their conclusion in the first instance?

**Mr D'Ascenzo**—That is right. It would be a sign of reasonableness on your part.

**Mr Fitzpatrick**—And you could apply for more than one year, as the commissioner said.

**Senator WATSON**—I am just saying that if a person applied for a ruling—

**Mr Fitzpatrick**—But it could go for more than one year, though.

**Senator WATSON**—So they applied and got that particular ruling as to the circumstances of the particular case and the circumstances in the second year were identical to those of the earlier year. I am talking about the extent they rely on the ruling, given that the reasons that the tax office gave are, again, highly identical or—

**Mr Fitzpatrick**—I agree.

**Senator WATSON**—absolutely identical, excepting perhaps in the quantum of what the deduction might be. Given that it was not an outrageous try-on—\$100 compared with \$50,000 or something in the second year—

**Mr D'Ascenzo**—It would go to the reasonableness of your actions. I mentioned the culpability penalty, which says 'reasonable care'. If you have based your decision on previous advice, then I think that would be—

**Senator WATSON**—In other words, so long as it is based on reasonable care—

**Mr D'Ascenzo**—That is right.



**Senator WATSON**—and following the strict guidelines to be set down, then it would be okay?

**Mr D'Ascenzo**—That is right.

**Mr Fitzpatrick**—Just for your information, we issued a draft ruling a couple of months ago on private rulings. That might be of help to you as well. It sets out the regime for private rulings.

**Senator WATSON**—Yes, that would be helpful. Could we have that?

**Mr Fitzpatrick**—You certainly can.

**Mrs BRONWYN BISHOP**—What happens where there is a public ruling, the person does not want to rely on that and they go for private ruling and then the commissioner changes his mind and decides he does not like his public ruling? You have someone with a private ruling who continues to carry on business in line with that private ruling. Does that mean that the public ruling overrides it and therefore you cannot rely on behaving in the same way as you did for your private ruling?

**Mr McCullough**—This was something that was addressed in the recent legislative changes that were made. Essentially now the regime works so that the taxpayer who has both a private ruling and a public ruling applying to them who has either commenced in the income year that the private ruling applies to or has commenced the activity that the private ruling applies to—

**Mrs BRONWYN BISHOP**—No, this is when the private ruling was for a year and you are now in your, say, second or third year.

**Mr McCullough**—I am sorry, I thought you were addressing the question of whether it is in the same year.

**Mrs BRONWYN BISHOP**—No. So what is the case for that taxpayer?

**Mr D'Ascenzo**—Again, it depends on whether the public ruling is not favourable to the taxpayer. Let us assume that to be the case.

**Mrs BRONWYN BISHOP**—Supposing you make a complicated tax ruling and the person then goes and gets a private ruling because they do not really want to rely on the public ruling—they want it specifically for them. There are plenty of examples of that.

**Mr D'Ascenzo**—Sure.

**Mrs BRONWYN BISHOP**—Then you pop off to Coonamble for lunch. In the interim you have taken advice and you really do not like that public ruling anymore. In the meantime people have been acting on their private ruling. It has come to an end, but they are still behaving in the same way in accordance with it. Then you make a speech at Coonamble and you reverse the original public ruling. What is the taxpayer's position?

**Mr D'Ascenzo**—I am not sure that the circumstance of reversing it in a speech is likely.

**Mrs BRONWYN BISHOP**—But it can be done?

**Mr D'Ascenzo**—I do not think so, because you have to go through a lodgment into parliament process.

**Mrs BRONWYN BISHOP**—You can do all that. It still can be done.

**Mr D'Ascenzo**—Well, after you have lodged the change. Let us say we change the public ruling in a proper way. That can happen; it is not a common case, but it can happen. The taxpayer is protected during the period of the previous private ruling—

**Mrs BRONWYN BISHOP**—But it has come to an end and they are behaving in the same way.

**Mr D'Ascenzo**—Yes, I know. They are also protected in relation to the public ruling as well in that sort of situation—the previous public ruling.

**Mrs BRONWYN BISHOP**—I know that.

**Mr D'Ascenzo**—Now we have got to a new situation. The taxpayer has done something, and the commissioner says—

**Mrs BRONWYN BISHOP**—No, the taxpayer has not done anything. He has just been carrying on in the same way all the time. You have changed your mind.

**Mr D'Ascenzo**—Yes, but at this point in time the taxpayer is doing this, and the commissioner has said, 'I think the law applies this way,' and that may be known or unknown to the taxpayer.

**Mrs BRONWYN BISHOP**—That is right—it could be unknown.

**Mr D'Ascenzo**—That is what I am saying. I have not tried to change those facts. Basically the taxpayer has the basis of the previous advice, has the basis of the public ruling, and the same sort of issues of reasonable care in terms of penalty and interest would be relevant to the taxpayer. They do not have a protection for the primary tax.

**Mrs BRONWYN BISHOP**—So you will lessen the penalty, but you will still apply the GIC.

**Mr D'Ascenzo**—There is a remission opportunity there. We are going to a process of trying to provide more guidance to people about our remission guidelines on GIC to take in situations where they have acted reasonably. There may be some GIC. It depends on what remission is applicable.

**CHAIR**—Could I interrupt there, please. Senator Watson, you have some more questions?

**Senator WATSON**—Yes. Further on Mrs Bishop's issue: when a person has a private ruling, they can rely on it for that year, even though part way through that year a public ruling is issued?

**Mr D'Ascenzo**—Yes.

**Mr Fitzpatrick**—The law provides for that.

**Mr D'Ascenzo**—Mrs Bishop's scenario was that the private ruling had come to an end.

**Senator WATSON**—If the private ruling comes to an end, it is a new thing. But, where there is a private ruling which is subsequently overtaken by a public ruling, that taxpayer can rely on that private ruling for that year?

**Mr Fitzpatrick**—For the time for which the private ruling applies; that is right.

**Senator WATSON**—Even though that may have been granted for a two- or three-year period?

**Mr Fitzpatrick**—For the period of the private ruling, yes.

**Senator WATSON**—For the period of the private ruling. That is justice; no problem.

**Mrs BRONWYN BISHOP**—Some get it.

**Senator WATSON**—Yes. Do you keep figures on mass marketing schemes? I am just interested in the number of taxpayers, for example, who might have applied for or be taking advantage of mass marketed arrangements in such things as trees, grapes, olives and—

**Mr Fitzpatrick**—Do you mean managed investment schemes?

**Senator WATSON**—Management investment schemes, yes—MISs.

**Mr Fitzpatrick**—Ms Martin might have some figures.

**Ms Martin**—I do not have the actual number of investors. Is that what you are after?

**Senator WATSON**—Yes, the numbers.

**Ms Martin**—You are asking about how many people have invested in them?

**Senator WATSON**—Yes, the number of taxpayers who are taking advantage of MISs.

**Ms Martin**—I do not have the number of investors at this point, but we can have a look to see if we can obtain that. They are managed through a prospectus process. We would have to look at how many people make investments under the prospectus.

**Mr Fitzpatrick**—So do you want the number of investors or the number of product rulings on the issues? We can provide the number of product rulings for those schemes—

**Senator WATSON**—I want the number of products—

**Mr Fitzpatrick**—Product rulings.

**Senator WATSON**—trees, avocados or whatever it might be—and I also want the number of investors who are taking advantage of these particular schemes. Has the tax office also done any work on whether the subsequent yields from samples of those MISs have met prospectus expectations? I have had a few cases where people have complained to me that there has been early harvesting or the yields have been not what they expected, and there has been a little bit of unhappiness in some cases. People have suggested that that is probably why, for example, tree farmers are now moving across to more productive land rather than the marginal land on which some of the earlier schemes were sold.

**Mr D’Ascenzo**—I do not think we have those figures. I do not know whether Treasury has those in conjunction with the review of the general MIS environment. We say to people in our product rulings, ‘This says that, if you operate in accordance with the prospectus, the deductions claimed will be allowable under the law,’ and we make a very strong point early in the piece to say, ‘We do not give any indication about the commercial merits of the proposal.’

**Senator WATSON**—In terms of your advice to the government, surely Treasury would be interested in ensuring that there is going to be some element of tax collected in the longer or the medium term, or somewhere. There is a big difference between the cost of putting in the trees compared with the amount of money an investor must put out.

**CHAIR**—Could you provide us with what you can, because I know there has been a bit around publicly. You might like to take that away.

**Mr McCullough**—I am just not sure what is available.

**Senator WATSON**—I would have thought Treasury would be interested in this in terms of protecting the revenue.

**Mr D’Ascenzo**—Mr McCullough will have a look and see what can be provided.

**Senator WATSON**—Also, we have passed promoters legislation. People who put forward these scams in the past have often avoided prosecution, and we now have legislation which can bring these so-called people to justice. I am interested in the number of promoters who have been subject to some form of prosecution.

**Mr D’Ascenzo**—The regime is fairly new.

**Mr McCullough**—It only passed the parliament earlier this year. It was probably around March or April when it got royal assent, so I am not sure that it would have been used by the tax office at this stage.

**Mr D’Ascenzo**—Ms Martin has some details about what we are doing.

**Ms Martin**—The legislation became effective for activities undertaken after 6 April this year. As you know, it provides a range of remedies. It has injunctive remedies, voluntary undertakings and a civil penalty remedy, and obviously apart from that regime there are also existing criminal

options. We also do a range of things under the powers that were in place before this new legislation. We often do visits. If we see something happening that we think is a bit untoward, we will go out and do a visit to the person who is promoting a product. Quite often they will modify what they are doing to come within more acceptable tax behaviour. Otherwise, we will follow up on issues. We may issue a taxpayer alert. So we have a range of options. In relation to the new regime, we are going through a process where we are consulting with people. We have some marketing education with particular bodies about what the legislation means for them and how it will operate in practice. Our promoter task force area now has the benefit of those tools to look at cases where we may be able to apply to the court for a remedy.

**Mr D'Ascenzo**—So there is no list. Because it is applying into the future, we are trying to make sure that we have processes in place that try to achieve its policy intent and also give ordinary tax advisers and tax agents a level of comfort that ordinary advice will not come within the purview of that provision. One group of people who were doing things that might have come within the provision have actually come back to us and said, 'We've stopped doing that because of this legislation.' So it has already had some sort of deterrent effect, in an anecdotal sense.

Under the previous provisions, we did not have injunctive powers formally under the act, so this has now allowed us to act more quickly when we see the promotion of exploitation schemes. That is not to say that we did not try the best we could with the Australian Federal Police and the Director of Public Prosecutions to take on the prosecution of some promoters under the Criminal Code. A number of people were sent to jail in relation to the promotion of tax avoidance schemes.

**Mr Fitzpatrick**—In our submission, there is some more detail about what we have done over recent times about promoters, as the commissioner just outlined.

**Senator WATSON**—Will you be coming back later on? I have some more questions, but I am quite happy to adjourn now.

**CHAIR**—It is all right for you to keep going.

**Senator WATSON**—No, I want others to have their turn.

**CHAIR**—Dr Emerson has three questions on behalf of Ms King, who had to go to the House.

**Dr EMERSON**—The first question is in relation to family tax benefit. I am looking for data on the proportion of claimants of family tax benefit who claim it as a lump sum at the end of the year, as an ongoing PAYG deduction or as a direct debit into bank accounts—a cash payment.

**Mr Konza**—We can get that data for you.

**Dr EMERSON**—Will you get the other stuff from Centrelink?

**Mr Konza**—The direct payment, of course, is through family and community services.

**Dr EMERSON**—Yes, but you will know the total—and over time, if you could, so we can see any trends. I suspect there aren't any trends. I think it will be pretty stable over time in those first two categories, which are a minority. I think they are about 10 per cent.

**Ms Granger**—Since its introduction?

**Dr EMERSON**—Yes, please. The family tax benefit was reformed in 2000—

**Ms Granger**—That is right.

**CHAIR**—It doubled!

**Dr EMERSON**—Well, that is a reform! Reformed, rationalised, streamlined and simplified, you would say. Can you make any observations or provide a statistical basis regarding the income levels of people who claim it as a lump sum or as a tax deduction. Obviously, the hypothesis is that higher income earners might say, 'I don't really need that cash in my pocket; I'll take it at the end of the year as forced savings.' I would also like information on what sorts of people claim it as an income tax deduction—and, again, any data you have on their income levels or bands. The second question is in relation to Tax Help, a scheme that seems to be very welcome and effective. How much funding is provided by the tax office for the Tax Help facility?

The second question is in relation to tax help, a scheme that seems to be very welcome and effective. How much funding is provided by the tax office for the tax help facility?

**Ms Granger**—This is volunteers?

**Dr EMERSON**—Yes. Also, any information you have on usage, the prevalence—

**CHAIR**—Overview and a report back.

**Dr EMERSON**—Yes—and any problems that you might have with recruiting volunteers, given the shortage of tax people, and any data on the typical levels of the users of tax help. We know they will be low-income earners.

**Ms Granger**—It is targeted to people who are on a lower income or who need assistance.

**Dr EMERSON**—The final question is: could parents anticipating receipt of their 30 per cent child-care rebate apply for a variation to their pay as you go tax in order to help them to meet the costs throughout the year rather than waiting for a lump sum? If you have got any observations to make on that now they would be welcome, plus anything to back it up subsequently.

**Mr D'Ascenzo**—I see no reason why they could not. They would apply to the tax office, and the tax office would give their employer a new deduction level to take out.

**Dr EMERSON**—Child-care rebates are very new—they were announced in 2004. You are saying that there is nothing that you know of under the current law that would prevent that rebate being claimed as a PAYG deduction?

**Mr Konza**—They write to the commissioner and explain why they think that the tax would be overdeducted if the scheduled amount were taken out, and we would take that into account and issue the employer a certificate.

**Dr EMERSON**—Could you just double-check that there is nothing in the law that would prevent that? I know that is a general treatment of deductions but—

**Mr Konza**—We can double-check.

**Dr EMERSON**—If it is subject to the general treatment then the answer is yes; if there is any reason why it could not be subject to that general treatment, I would be interested in knowing. That is it.

**CHAIR**—Do you want to add anything now?

**Ms Granger**—It is just an observation that, particularly early in the take-up of new benefits, I would not expect to see very much of that, particularly one like that where you are trying to estimate what the impact would be. There is a fairly natural conservatism. Also, despite the level of educating we do, it can take a while for new benefits to filter into the community. So, on a practical level, I would expect it would be fairly small. We can tell you whether there is a legal barrier. We will not be able to tell you whether that is—

**CHAIR**—As much as you can.

**Ms Granger**—Because people are assessing their overall income situation there would be a number of factors involved.

**CHAIR**—Thanks a lot and thanks for asking those questions on behalf of Ms King—I know she had an appointment in the House and I know you have got one too, Dr Emerson.

**Ms Granger**—It is a busy day.

**CHAIR**—It is a busy day; we do not have too many quiet days.

**Senator HUMPHRIES**—I apologise for not hearing some of the earlier evidence. If I ask a question that has already been answered, please tell me and I will read the transcript later.

**Mrs BRONWYN BISHOP**—We will let you know.

**Senator HUMPHRIES**—I am sure you will. This is not an area with which I am terribly familiar, so I want to ask a few possibly naive questions. I am looking particularly at the table and the bar graph on page 4 of the tax office submission. Can you explain what the abbreviations are for the bar graph—what does ITW stand for?

**Mr D'Ascenzo**—Income tax withholding, which is basically the old PAYE processes.

**Senator HUMPHRIES**—And OI?

**Ms Granger**—Gross other individual's income.

**Senator HUMPHRIES**—I assume the amounts in those bar graphs are gross collections, not net of refunds?

**Mr D'Ascenzo**—No, that is net.

**Senator HUMPHRIES**—Net of refunds; I see. So for 2005-06 we are expecting about \$230 billion worth of collections, after we have refunded \$50 billion odd. I see.

**Mr D'Ascenzo**—It is of that order. The bar graph is not intended to give precise details in a case of that magnitude.

**Senator HUMPHRIES**—Of course not. So noting that in that figure, and in that table above the bar graph, there is about \$50 billion in 2004-05—presumably it is a bit larger now—as the amount of tax refunded, I assume that would be substantially individual taxation as opposed to company tax?

**Mr D'Ascenzo**—I think a fair size of that is the input tax credits in the GST system.

**Senator HUMPHRIES**—I see—okay.

**Mr D'Ascenzo**—Ms Granger has a break-up.

**Ms Granger**—About \$15 billion of that is individuals—

**Senator HUMPHRIES**—I am looking at the \$50.6 billion in 2004-05.

**Ms Granger**—About \$15 billion of that \$50.6 billion is individuals' refunds.

**Senator HUMPHRIES**—So it mainly company based or enterprise based.

**Ms Granger**—This is income tax, sorry—I should have qualified it in that way.

**Mr D'Ascenzo**—The activity statements are \$28 billion of that.

**Senator HUMPHRIES**—When I look at that figure, it seems to me that about a fifth or a sixth of the total tax take moves from the hands of the taxpayers to the tax office and then comes back again. In your view, is that a necessary evil of the system that we have, that we need to have that kind of transfer going backwards and forwards? Or is it possible to redesign our tax laws so that we end up with less of that money passing in that way?

**Mr D'Ascenzo**—Mr McCullough might want to make some observations, but, as I said, a lot of it is part of the GST system, which says that you are taxed on the value added at each segment and you are entitled to have an input tax credit. So the design of the GST does have those compensating payments. Unless you change that system to some other system, I think that is inevitable. In terms of the income tax, there are a couple of different players there. It is always



open for taxpayers to seek to vary the amount of income tax deductions and instalments that they pay. A lot of taxpayers do not do that for a range of behavioural issues, such as 'I don't want to end up in debt'. Our schedules are based on there being some surplus that will have to be handed back to avoid there being an increased incidence in debt in the community. But again, the community does have a choice to vary down in regard to their individual circumstances. The other side is your range of deductions. That is, again, a policy matter.

**Senator HUMPHRIES**—So you don't see much room to change the policy settings to get less of that money making that journey.

**Mr D'Ascenzo**—Again, it is part of the current structure. So it becomes a policy setting issue.

**Mr McCullough**—If I could assist the senator, I was just refreshing my memory back to 1998, when the design of the GST system, which is based on the international value added system, came into being. The system is built around the idea of, at each step in the chain, tax being paid on a supply and then the tax that is paid, if it is able to be claimed by a credit, being claimed. So a whole range of people who are registered in the GST system pay the money in—hence that \$20 billion, or whatever it is, figure for input tax credits that goes through. The effect of that is that, if somebody down the end of a chain of payment fails to pay their tax, it is only the tax on the value-added component at the last bit that is lost, not the tax on the whole cost of the goods. The way things work out, large taxpayers tend to be more reliable, they tend to be more regular with their payments, they tend to be more accurate with their payments.

So a value added tax system that has this tax and then a credit arrangement tends to shore up all of the earlier stages—manufacturing and wholesale and even the major retail end—so that you have a system that has a lot more integrity than one just with a single taxing point. In fact, the sum total of the changes to bring in that type of system plus the ABN plus a few other changes, I think, were estimated to add about \$3½ billion above expected collections, in this document back in 1998 over the forward estimates periods. So it is a trade off. You could have a system with less tax payable and credit in it, but you might have a system, therefore, that was less efficient overall, collected less of the available tax and had the tax office actually chasing larger taxpayers more often rather than the people at the fringe with the less tax at risk.

**Senator HUMPHRIES**—Could I ask about the tax ruling regime. In the Treasury submission there is an explanation of the way in which the private tax ruling concept interacts with the tax law and with other policies towards giving taxpayers advice, and it states:

If the Tax Office issues a private ruling which is inconsistent with an earlier public ruling then the taxpayer can rely on either ruling.

How often does the situation arise where there is an inconsistency between a public ruling and a private ruling?

**Mr D'Ascenzo**—I do not know of any situation where it has arisen. The reason for that is that, when people do their private rulings in response to taxpayers, we have mandated that they have to look at our database. Our database has what we call our precedential information and the precedents include the public ruling. So they should follow a public ruling that is in point with a private ruling request. If they think that the public ruling is wrong or anything else on our

database is wrong, then they are required to put their hands up and escalate the matter, so that we can review the whole matter. That possibility might occur where someone conceives of a different statement of facts and does not make the connection between the two. Our requirements are that our officers should access our precedent database and follow whatever precedent is applicable. That is one of the improvements to the system that we made after 1992. In those days, it was a decentralised, regional system and you had things like taxpayers or agents going to seek rulings from different areas of the office hoping that they might get a more favourable ruling from one area than from another area.

To ensure the consistency and also, I think, to improve timeliness of rulings, we now have the database and we have mandatory procedures. An ATO officer who is handling a ruling request must access the database. They must see whether or not there is a precedent that covers their situation. If there is, they must follow it, unless they think it is wrong. If they think it is wrong, they have to put their hand up so that we as an organisation can review the difference.

**Mrs BRONWYN BISHOP**—That is not a legal requirement; that is what you have put in place.

**Mr D'Ascenzo**—That is right.

**Mr McCullough**—Just by way of supplementing what the commissioner said in regard to the reason that is highlighted in the Treasury submission. When we were consulting on the review of self-assessment, we met with a range of regional tax agents in groups to gather their concerns about access to information on the commissioner's opinion. One of the things they said was, 'We feel like we have to check all these public rulings to see if they override any of the private rulings.' So we said, 'We'll solve that problem.' We did that by effectively repackaging and refining some of the rules that were there, making them more transparent and making them taxpayer friendly, so that it is obvious if there is a clash in those circumstances and if you have done the right thing by putting the information properly forward to the tax office, that you do not then find suddenly half way through your arrangements that you have to check on all these other bits of information to make sure that you are still protected.

**Senator HUMPHRIES**—It is more of a comfort to the tax agent—

**Mr McCullough**—That is particularly the reason that we repackaged this, yes.

**Mr D'Ascenzo**—And as Mr McCullough said, it is repackage, because the old law did the same thing.

**Senator HUMPHRIES**—You say that in 2005 there were 432 public rulings. How many officers in the office were making those 432 rulings?

**CHAIR**—Senator, when you were out of the room there was a series of questions on the rulings system. They are going to provide some information. Are you happy to just incorporate that?

**Mr Fitzpatrick**—We can certainly do that. The public rulings are written by our senior technical specialists in a range of centres of expertise, as we call them—different subject areas—

and our tax counsel network. They are the ones who essentially author public rulings. They work with our business line colleagues in doing that. They are authored by those senior technical specialists in the tax office and the public rulings go through a panel process by which we have some people external to the tax office on our public ruling panels to look at the issues coming forward and the draft put forward. We have the benefit of that, external to the tax office input on those public rulings.

We go through a fairly rigorous, robust process to get a public ruling finalised. We have the community input and we issue a draft of a public ruling for comment to the community. We look at the submissions we receive and sometimes have discussions with the various people affected by the proposed ruling. It goes back to the public rulings panel and then it is finalised through that process. We go through a pretty robust process for public rulings.

**Mr D'Ascenzo**—In terms of how the whole scheme fits into the tax system more generally, when the private and public ruling system was introduced in 1992 it was introduced in conjunction with the new penalty regime. You had a situation where the scheme of access to taxpayers and their agents said that if you exercised reasonable care or, for large adjustments, had a reasonably arguable position then you would not be subject to any culpability penalties. In other words, the risk is minimised subject to the bar, which is reasonable care.

On the other hand, because people were saying that sometimes things could be hard and things are genuinely uncertain, we have a private ruling system that is almost the reintroduction of an assessing process. If you really want to be assessed on a matter, give us a private ruling request and we will tell you what the position is. That has the advantage over the old assessment system in that you can apply for a private ruling in relation to a prospective arrangement. If you did not know the tax effect of a transaction you had already entered into, you could ask the commissioner or, if you were going to enter into a transaction and you were uncertain about the circumstances and you wanted a level of comfort over and above the level of comfort you have with the fact that if you act reasonably you will not be subject to culpability penalties in any event, then you can ask for a private ruling.

We have tried to make sure that the system is much more consistent and timely by having a precedent database so you have consistent treatment of people. Ultimately, it is done through our advice officers who are spread across our various business lines. So you have one officer, and maybe for larger rulings more than one officer, involved in those processes. You have a database with a range of quality assurance processes, including training and accreditation that we do for our advising set. So, those rulings issue from the middle ranges of the organisation, depending on how big and sensitive a ruling is. That is a risk management choice, because basically for the taxpayer that is our advice and that is provided in as streamlined a way as possible.

Public rulings were there to complement major areas of uncertainty that cut across a lot of the community. To explain to the community our position, we have gone through a fairly rigorous process of having consultation before the draft and after the draft. But the key—and this is pioneering; no other country in the world does this—is that we have experts on our public rulings panel that help us to make sure the rulings are as robust and sound as they can be. Basically, public rulings have a reputation in the marketplace. In the last report by the Australian National Audit Office, they were seen as high-quality enduring products. I think that is the way we are positioning them. Also, I have to make another point which is very important. Rulings,

whether they are private or public, do not bind the taxpayer; they only bind the commissioner. So taxpayers can choose to do something else.

**Mrs BRONWYN BISHOP**—Didn't we change that with regard to private rulings if you do not behave in accordance with it?

**Mr D'Ascenzo**—That has been changed. There was a penalty for not following a negative public ruling, but you had your right to objection and appeal. It was not so much binding on you in the strict sense. Now that has changed in any event and we do not have any sanction for not following the ruling other than that that is the commissioner's view. If you do not follow a private ruling we are likely to follow those matters up and we will certainly challenge you on the basis of what we think the right view is.

**Mrs BRONWYN BISHOP**—I will go back to the GIC in a moment, but to begin with I want to address the application of common standards of practice by the ATO across Australia. I want to refer specifically to fringe benefit tax rulings particularly as they relate to child-care expenses. I am reading from a document which says:

Below is an extract from the ATO's 2004 Agency Agreement for General Employees about salary packaging options for staff, confirming that ATO employees are able to salary sacrifice child care costs when that care is exempt from attracting fringe benefits tax liability.

In this list it has pay options for ongoing ATO employees and non-ongoing ATO employees. It clearly says:

**Exempt Child Care:** Child care provided on the business premises of the ATO or other Commonwealth government agency or in premises owned and operated by the ATO or other Commonwealth government agency.

We asked questions of the tax office about this issue on Wednesday. We were advised that, indeed, the Australian Tax Office does have such operations and there are employees who are enjoying what amounts to a tax deduction for child-care expenses.

**Mr D'Ascenzo**—I am not sure what the position there is.

**Mrs BRONWYN BISHOP**—Let me finish. After the hearing I received a curious piece of paper which is headed 'On Premises Child Care' and 'Answers to Questions on Notice'. The hearing was the same day. It says:

Could the ATO please confirm what arrangements it has in place for the 'on-premises' provision of childcare to its employees?

I am not quite sure where that question came from, but never mind. This was the response:

In the early 1990s, the ATO supported approximately 15 childcare arrangements around the country.

Over the years 2004 and 2005 the policy regarding these arrangements was reviewed and it was decided in May 2005 that the ATO would progressively move away from the ATO's involvement in the two remaining child care centre arrangements that existed by then, namely in Wollongong and in Belconnen.

The ATO removed itself from arrangements with Wollongong Child Care centre in June 2005 and ATO severed arrangements with the BlueBell childcare centre based in Belconnen in April 2006.

As we all know, the Department of Human Services is about to roll out such a scheme for its 38,000 employees. I understand that they have gained a public ruling. They are not relying on the public ruling, which the banks do not do either—they have a private ruling. I am perplexed because effectively, whilst the tax office refuses to give deductions for child-care expenses, this scheme is effectively granting parents tax deductibility for child-care expenses because they are paying for their child care with pre-tax dollars. I am very confused by a statement from the tax office that says that there was a 2004 agency agreement. When was that entered into, what was the length of the time of the agreement, are those conditions still offered by the tax office, what was the date of the ruling made in the first place about the definition of ‘premises’ which allowed for the FBT exemption and what was the date that the first child-care arrangements were set up by the tax office?

**Mr D’Ascenzo**—We can provide that, Mrs Bishop.

**CHAIR**—Yes, you can take all of that on notice.

**Mrs BRONWYN BISHOP**—No, I do not want it all on notice—all of those questions, yes, but I want to know this: on the one hand, how can you tell me that there is a 2004 agreement and then, on the other hand, I get a piece of paper that tells me ‘in 2004-05 we reviewed the policy’. Why? Who reviewed it?

**Mr D’Ascenzo**—The organisation reviewed it and now we do not currently have on-site child-care facilities for our staff.

**Mrs BRONWYN BISHOP**—None?

**Mr D’Ascenzo**—That is right.

**Mrs BRONWYN BISHOP**—So what happened with this agreement? So if an employee of the tax office—

**Mr D’Ascenzo**—They might want to do it with other providers in the marketplace.

**Mrs BRONWYN BISHOP**—I see. So you have done a deal with another department?

**Mr D’Ascenzo**—No, we have not done any deals with any departments.

**Mrs BRONWYN BISHOP**—It says here:

Commonwealth government agency or in premises owned and operated by the ATO or other Commonwealth government agency.

**Mr D’Ascenzo**—That may well be but we have not made any agreement.

**Mrs BRONWYN BISHOP**—What happened to all the children that were in those child-care places?

**Mr Konza**—I have been making some further inquiries into this in anticipation of your interest.

**CHAIR**—Could I stop you for one second or so. Obviously, this is a matter that is being pursued in another committee.

**Mrs BRONWYN BISHOP**—No, this is relevant here to the application across Australia. Now I want to know—

**CHAIR**—Hang on, as I just want to clarify something. There is plenty of time. Mr Konza, you have been making some further inquiries in relation to what?

**Mr Konza**—The Standing Committee on Family and Human Services.

**CHAIR**—And there were some questions about this?

**Mr Konza**—By the Deputy Chair, Mrs Irwin.

**CHAIR**—Yesterday was it?

**Mr Konza**—I received them yesterday.

**CHAIR**—Are they going to be answered back to that committee?

**Mrs BRONWYN BISHOP**—This here is the answer.

**Mr Konza**—That is the answer to that particular question.

**CHAIR**—Mrs Bishop, you are pursuing this in relation to—

**Mrs BRONWYN BISHOP**—The terms of reference which this committee has.

**CHAIR**—Yes.

**Mr Konza**—In answer to your question, Senator, as to the terms of reference of this committee, the ATO is not providing this by virtue of its ruling. It is providing it by virtue of section 47 of the Fringe Benefits Tax Assessment Act. That is what we discussed yesterday.

**Mrs BRONWYN BISHOP**—We did. It was the fact that there had been a ruling made. It was a public ruling made by the tax office on this.

**Mr Konza**—The existence of exempt child-care benefits is made by section 47 of the FBTA Act, not by—

**Mrs BRONWYN BISHOP**—And that is being interpreted by a public ruling by the commissioner. We discussed all of that.

**Mr Konza**—The limitations we discussed yesterday, but the tax office provision is provided by the act.

**Mrs BRONWYN BISHOP**—Mr Konza, there is an act which the ATO has interpreted and we had a discussion about whether or not it was making or interpreting law—we will not go there for the moment. But a public ruling has been made. The ANZ Bank uses it, the Westpac bank uses it, the Department of Human Services is about to use it and the tax office has been using it. I want to know when it began and what was the date of the public ruling.

**Mr D'Ascenzo**—We will provide that for you.

**Mrs BRONWYN BISHOP**—I also want to know what has happened to all the children who were in those places. Where have they gone?

**Mr Konza**—As I understand it, Mrs Bishop, the Bluebell premises is likely to be taken over by the Australian Bureau of Statistics, which has a very large office in the Belconnen district.

**Mrs BRONWYN BISHOP**—So the children can stay there?

**Mr Konza**—The children can stay there because the Fringe Benefits Tax Assessment Act says that one government department or authority is related to another government department or authority.

**Mrs BRONWYN BISHOP**—Correct. What I am pointing out to you is that this piece of paper here is highly misleading.

**Mr Konza**—Sorry; no, it is not. This piece of paper is the best information that was able to be obtained within 90 minutes, which was the time frame for answering that question.

**Mrs BRONWYN BISHOP**—I have no idea about the 90 minutes. But I do know that if I were to read this piece of paper I would think that the ATO had ceased and desisted from being involved at all. Yet this agreement is still on foot.

**CHAIR**—On that, why was there a 90-minute time limit?

**Mr Konza**—Subsequent to the hearings yesterday of the Standing Committee on Family and Human Services, I received a communication from the secretariat saying that the Deputy Chair wished to make a further question and required the answer by three o'clock.

**Mrs BRONWYN BISHOP**—That did not occur in the hearing.

**Mr Konza**—That question?

**Mrs BRONWYN BISHOP**—That statement—

**CHAIR**—So that was not a decision of—

**Mrs BRONWYN BISHOP**—I am the chairman of the committee, and that had nothing to do with the committee.

**Mr Konza**—I received a communication from the secretariat so I took that to be representative of the committee's wishes.

**Mrs BRONWYN BISHOP**—You were at the hearing and you know it did not occur. But I want to go back to this. On this salary packaging, you say 'ongoing ATO employees' and 'non-ongoing ATO employees' can:

choose to convert part of their annual salary under an approved arrangement for the following purposes:

They are cars and utility vehicles, motor cycles, car parking, superannuation (self only), portable computers, exempt child care, airline lounge memberships and professional association membership fees. My question is: are all ATO employees still entitled to salary sacrifice for all those purposes?

**Mr D'Ascenzo**—Depending on the conditions, I think that is what our current agreement says.

**Mr Konza**—Yes, that agreement remains—

**Mrs BRONWYN BISHOP**—So the answer is yes?

**Mr D'Ascenzo**—Yes.

**Senator WATSON**—That would be no different from the rest of the community?

**Mr D'Ascenzo**—It is different from the rest of the community.

**Mrs BRONWYN BISHOP**—Yes, it is different from the rest of the community. Only large organisations or government departments could do it, so we have two standards. That is why I am asking—the application of common standards.

**Mr D'Ascenzo**—I understand the question. That is where Mr Konza was coming from in terms of saying that that seems to be the policy intent behind the—

**Mrs BRONWYN BISHOP**—No, there is no policy intent. This is your interpretation. There is no government policy, which is why I have argued that there should be government policy and it should be legislated for. At the moment it is at your whim and discretion, and you can change your mind if you want to.

**Mr D'Ascenzo**—Again, on the issue of changing the parameters of policy, that is a matter for government.



**Mrs BRONWYN BISHOP**—No. You can change your interpretation.

**Mr D'Ascenzo**—Only if we think it is incorrect.

**Mrs BRONWYN BISHOP**—Correct, but you have that ability. That is why it should be government policy.

**Mr McCullough**—I am sorry, I am not following you. Is there a question of the ruling not being consistent with the law? It really does not matter what the ruling says if it is consistent with the law.

**Mrs BRONWYN BISHOP**—That is not the point at all. The question is that a ruling has been made which, if the commissioner chooses at a subsequent point of time, can change because he believes that his former interpretation is wrong.

**Mr McCullough**—I am just wondering about the consequences of the change of the ruling if the law is clear.

**Mrs BRONWYN BISHOP**—No. We have been through with Senator Watson what happens with public and private rulings and what happens when the commissioner changes his mind, which is why I have personally always argued that such rulings should be done by way of regulation and should be subject to tabling and disallowance in both houses of parliament. I am still of that view. But that is not the case here—the commissioner may change his mind. So I want the government to make it a policy and legislate for that. Fairness would be that the definition of ‘premises’ should be changed. The problem is that, at the moment, it has been expanded so that the employer now not only does not have to own the premises but may lease the premises and then bring in a provider to provide the child care, and yet a group of small business people cannot collectively put together to control an area and put in a child-care centre to provide for their employees. That is not permitted. And neither can a small business person go to a child-care centre and say to their employee, ‘I will secure’—

**CHAIR**—So you mean a group of retailers or a group in an industrial estate or something.

**Mrs BRONWYN BISHOP**—Yes, or even a—

**Mr McCullough**—There has to be an in-house exemption, doesn't there?

**Mrs BRONWYN BISHOP**—No, it does not have to be in house. It can be separate from the place of business.

**Senator WATSON**—This is not the administration of the law, this is policy of government.

**Mrs BRONWYN BISHOP**—But it is not policy of government. That is the whole point.

**Mr McCullough**—To the extent that what you are describing seems to me—and I will check this for you—to be the way the law works, it is not merely a question—

**Mrs BRONWYN BISHOP**—No. This is the way the interpretation of the law works, and it is not challenged.

**Mr McCullough**—There is a provision that I recall for an FBT exemption for the provision of in-house child care. That is a matter of the law.

**Mrs BRONWYN BISHOP**—It does not have to be in house because the ATO ruled that way.

**Mr Fitzpatrick**—Are you suggesting that the ATO's ruling is wrong?

**CHAIR**—Mr Fitzpatrick, before you go on, just for all the members here, I am happy for this discussion to go on. I know that Senator Watson has some more questions. I am going to declare this hearing closed at 1 o'clock. Out of courtesy, I am not asking any questions, although I have a great number. I think, in fairness, Senator Humphries has some questions and Senator Murray has indicated to me that he does not have any questions.

**Senator MURRAY**—I have a question I am prepared to put on notice.

**CHAIR**—We will do that right at the end. So I will hand back to Mrs Bishop, but we will go back to Senator Watson in about 15 minutes.

**Senator WATSON**—I just want to make sure that the tax office is doing everything consistent with the law applicable to large employers. That is the important point as far as I am concerned.

**Mr D'Ascenzo**—There is legislation. People asked us what our view of the interpretation of that provision was, as Mrs Bishop correctly said. We have given our ruling. It was a situation where we have taken it through those processes I described earlier, including discussion at the public rulings panels. That position, we believe, is consistent with both the words and the underlying policy intent.

**Senator WATSON**—Is that position available to all other large employers?

**Mr D'Ascenzo**—It is there for the public. It is a public ruling.

**Mrs BRONWYN BISHOP**—Just so we are very clear, let me say that I think it is a good thing. My problem is that it is not extended to everybody.

**Mr D'Ascenzo**—I understand.

**Mrs BRONWYN BISHOP**—I think it is a good thing because it actually gets around the High Court ruling that child-care expenses are not deductible for the purposes of reduction of assessable income. Clearly, on the finding of the facts of all of those cases, you could not work unless you had the child care. It is a very narrow High Court ruling. This gets around it because, by having the ability to pay for your child care with pre-tax dollars, you are effectively getting a tax deduction—and very satisfactory that is too. But I want the option for small business people.

**Mr D'Ascenzo**—I understand that.

**Mrs BRONWYN BISHOP**—I want a small business person—which is why I say it has to be government policy—to be able to go to the Bluebell child-care centre and say, ‘I’ll secure a place there for my employee; I’ll allow my employee to salary sacrifice,’ and the 2.4 million microbusinesses and their employees can also benefit, not just the elites.

**Mr D’Ascenzo**—I understand.

**Mrs BRONWYN BISHOP**—The other reason that I want it made policy is to take away the possibility of a subsequent change of mind by you or a subsequent commissioner. I think that is a very fundamental point to make with regard to the application of common standards—and they are not being applied to mothers. Back to the GIC. How much is collected annually from penalties and how much is collected annually from the application of the GIC?

**Mr Fitzpatrick**—I think we would have to take on notice.

**Mrs BRONWYN BISHOP**—That is fine.

**CHAIR**—I have one question to put on notice on the point you are making, because there are some very good points in these matters for consideration in fora beyond this committee. This might be a question for Mr McCullough. In relation to Mrs Bishop’s questions, give us an idea of the present cost to the revenue of the extent of the usage throughout the Public Service and big business and then what the cost would be if it were available and taken up by all employers.

**Mr McCullough**—I will take that on notice. We could certainly do the first. I think it would be a matter of public record in the tax expenditure statement.

**Mrs BRONWYN BISHOP**—No, it is not. Can I say that the answer to the question is that the modelling has been done and the Treasurer has refused to release the modelling. It was done in answer to another member’s question. The point I made at the hearing the other day, and I make it again here, is that I think a parliamentary committee is entitled to look at that modelling, even if it is on a confidential basis.

**Mr McCullough**—I will take the question on notice.

**Mrs BRONWYN BISHOP**—That is the cost of tax deductibility, which is the same quantum.

**CHAIR**—I just feel it is pointless getting some of the answers without some idea what it costs us presently and what it would cost with further extensions.

**Mrs BRONWYN BISHOP**—Along those lines, with regard to the recovery of debt, I have had a lot of evidence come to me from small business people that there is a pretty harsh regime in place with collections, with the tax office determined to send many of them bankrupt very quickly. I ask you how many bankruptcies did the tax office cause by bringing action? I would like the figures for the last five years to see if there has been an increase.

**Mr D’Ascenzo**—One thing we can add to that is the annual reviews that we have of our processes for taking those decisions. Over the last two years at least—2004 and 2005—we had KPMG do an independent review of a sample of 97 per cent of our cases. They did not find the

tax office taking anything other than a proper course in 95 of those 97 cases. In relation to the other two cases they said that, even if we had taken a different approach, they would not know what the outcome might be. If anything the observation was that perhaps we should be tougher than we are in making those decisions.

**Mrs BRONWYN BISHOP**—I am interested to see whether there has been an increase in the number of bankruptcies.

**Mr D'Ascenzo**—I understand.

**Mrs BRONWYN BISHOP**—With regard to EBAs, I would like to know how many EBA matters remain outstanding. When you are entering into a settlement, do you still require those who wish to take advantage of a settlement offer to sign an acceptance without knowing the amount of money they will be up for?

**Ms Martin**—In our submission we have the number of cases at the moment, which is—

**Mr Fitzpatrick**—While Ms Martin is looking for the numbers, I can tell you that about 90 per cent of EBA participants—

**Ms Martin**—The numbers here are 385 income tax disputes remain out of EBA cases.

**Mrs BRONWYN BISHOP**—How many?

**Ms Martin**—There are 385, of which 250 are at the appeal stage.

**Mrs BRONWYN BISHOP**—When you say they are at the appeal stage, where are they at the appeal stage?

**Ms Martin**—When I talk about disputes, they are either income tax appeals or objections.

**Mr Fitzpatrick**—The appeal stage in the AAT or the court.

**Ms Martin**—That is right. Many of those cases are under active discussions about settlement as well.

**Mrs BRONWYN BISHOP**—How many objections are there?

**Ms Martin**—The difference between 385 and 250 roughly, which is about 135. A dispute is either an objection or an appeal.

**CHAIR**—That is 285 and 250?

**Mr D'Ascenzo**—No. The 250 forms part of the 385.

**Mrs BRONWYN BISHOP**—The 385 is the overall figure.

**Ms Martin**—Yes, that is right.

**Mr D'Ascenzo**—What is the total group?

**Ms Martin**—We count EBAs in terms of cases; there are 5,750 cases. As you know, with an EBA, you have a number of entities and they grew from those cases.

**Mrs BRONWYN BISHOP**—But how many actual taxpayers were involved?

**Ms Martin**—There are about 9,000 taxpayers. 'Taxpayer' here might be the beneficiaries of a trust.

**Mrs BRONWYN BISHOP**—No, I do not mean that.

**Mr D'Ascenzo**—The answer would be 5,700, I think.

**Ms Martin**—That is the case.

**Mr D'Ascenzo**—That is the taxpayer entities.

**Ms Martin**—An employer entity, a trust and some beneficiaries. That is one case. You need the case to make it work.

**Senator WATSON**—How many advisers are those associated with? Is it a large number?

**Mr D'Ascenzo**—The 5,700?

**Ms Martin**—The ones remaining?

**Senator WATSON**—No—in terms of advisers to those cases. Are they coming from a small group of people, or are they coming from—

**Ms Martin**—The ones that remain, are you referring to?

**Senator WATSON**—Yes.

**Ms Martin**—There is a fairly small group of people. Our approach at the moment is that we are generally finding that they sit in groups. Basically, we have two main groups of offshore superannuation arrangements. One group is sitting behind a particular case in the Administrative Appeals Tribunal. With the other grouping, which is about 200 cases, all except one or two in negotiation for settlement have agreed to settle.

**CHAIR**—Perhaps you could provide as much as you can in answer to that question.

**Mrs BRONWYN BISHOP**—I want the answer to the other question too: do you still require people to sign without giving them the total amount that they are up for?

**Ms Martin**—No. We basically operate in terms of the principles of the settlement, and we give them an indicative indication of what that would mean in terms of dollars. We have a phone line where we can tell them, ‘If you settle, this is what it will cost you.’ We settle on one taxing point, and there are variations of remissions—

**Mrs BRONWYN BISHOP**—I want to ask you about taxing points. With regard to cases where you are disallowing the deduction, are you still also using the FBT as a taxing point?

**Ms Martin**—If we just go back a little to what the FBT assessments are, when we started to look at these arrangements—

**Mrs BRONWYN BISHOP**—I am referring to the Essenbourne decision. Are we still doing it?

**Ms Martin**—There are a number of Essenbourne ones where we are in the process of reducing to nil the FBT assessments. There was potentially up to about 400. We have reviewed 300 of those, of which about 220 were in fact like Essenbourne. We have reduced them to nil.

**CHAIR**—Are there any outstanding ones where you are still taxing them at both points?

**Ms Martin**—No, our ongoing position is that we will settle on one point. If a case is in the court and the person has decided not to settle, we still put before the court the full range of options. But our position has been all along that we only collect on one taxing point and we only settle on one taxing point.

**Mrs BRONWYN BISHOP**—No, I have seen the assessments. Here is the problem: when you choose to use both taxing points, the deduction and the FBT, and you add together the sums, you can often see a position where, if it is a corporation, you could technically be insolvent because that is a debt due and payable. But you are taxing on both points, which you are not entitled to do.

**Ms Martin**—For the ones that are actually like Essenbourne or Spotlight in fact in circumstances, we are reducing those FBT assessments to nil.

**Mrs BRONWYN BISHOP**—So when did you change your mind on that point?

**Ms Martin**—That was earlier this year.

**Mrs BRONWYN BISHOP**—About what time earlier this year?

**Ms Martin**—I think it was in February. We have been writing out to people. There were some we knew exactly; others we are writing to.

**Mrs BRONWYN BISHOP**—I am glad you did; that is very good. Why did the tax office originally separate EBAs from other mass-marketed schemes? You will note that the inspector-general was particularly critical of the tax office for doing that.

**Mr Fitzpatrick**—The EBA schemes are a lot different to the mass market investment schemes. Different circumstances apply. The EBA schemes essentially consisted of three major, main schemes around employee benefits. One major scheme involved what we call employee benefit trust arrangements, which is the Essenbourne court case type of scheme. There were other schemes involving superannuation contribution deductions. One case of an offshore superannuation scheme was a case called Walstern, which was heard before the Federal Court. Other cases of controlling interests and superannuation schemes before the Federal Court were the cases of Harris and Prebble.

**Mrs BRONWYN BISHOP**—But what was the principle? The inspector-general says, re production for one form of EBA:

MMTEIs and EBAs have therefore received different treatment in this regard.

Again, that goes to our question of how the same principle needs to be applied right across the nation. Clearly you did not do that.

**Mr D'Ascenzo**—We tried to explain that in our submission to the committee. There is a section which tries to cover that point. Mr Fitzpatrick has been trying to say that circumstances are different. In relation to mass market investment schemes, parliament has said, 'Hey, this is a special circumstance. This is a situation where there are a lot of unwitting taxpayers who, through high-pressure arrangements, get into situations that ultimately are proving not to be effective.' In relation to employee benefit arrangements—

**Mrs BRONWYN BISHOP**—Hang on. It was a Senate inquiry which had two references, and I think it ran out of time. It dealt with the mass marketing.

**Senator MURRAY**—I can clarify; I was on both of those inquiries.

**Mrs BRONWYN BISHOP**—Can you? Thank you.

**Senator MURRAY**—We did not run out of time. We negotiated an agreement with the tax office on the basis that the commissioner outlines, namely that those who were unsophisticated or unwitting—that was the word you used—taxpayers should be given remissions of interest and penalty charges but not the primary tax debt. That should remain. The effect of that, I calculated as a result of information I had, was somewhere in the region of an \$800 million relief to tens of thousands of taxpayers, which I thought was a very useful outcome. It was a multiparty negotiation with the three of us—me, a Labor member and the excellent Liberal member who has now left us, former Senator Gibson. We thought the tax office was very accommodating. The tax office, with our agreement, went after sophisticated investors, promoters and advisers. So, although there are still points of disagreement between the Senate committee and the tax office, overall we were happy with the outcome and we did not feel that we had run short of time. The chair of the committee subsequently wished to pursue matters further, but there was not Senate support for that operation.

**Mrs BRONWYN BISHOP**—I will go back and read the report. I do not recall reading all that in the report—that there had been negotiations with the tax office.

**Senator MURRAY**—Yes, it was a committee sanctioned negotiation.

**Mrs BRONWYN BISHOP**—Is that in the report?

**Senator MURRAY**—It is certainly in the minutes; I would have to go back to the report.

**Mrs BRONWYN BISHOP**—I think it is not in the report.

**Senator MURRAY**—The negotiations were held with the effect of trying to find an outcome which preserved the fundamental principle that tax liability was recognised and paid, but that people did not carry a penalty and interest rate charge because they had basically been conned into or taken advantage of in arriving at their investments. But at no stage did either the commissioner or the Senate agree that the tax liability was not due and should not be paid.

**Mr Fitzpatrick**—Mrs Bishop asked a question about why there are differences. At page 9 of our submission on aggressive tax planning, we point out the reasons for the difference between the EBA schemes and mass marketed investment schemes.

**Mrs BRONWYN BISHOP**—I want to go to the question of GST. I think you said in your opening statement that there was a further review about the ability of the tax office to vary GST assessments. Was that in your opening statement?

**Mr D'Ascenzo**—Not in my opening statement.

**Mr McCullough**—I think I referred to the fact that findings of the review of self-assessment, which related to income tax, also recommended that Treasury review whether those findings should apply to other taxes. I do not think I mentioned GST but, obviously, that would be one of the other taxes that they could potentially apply to.

**Mrs BRONWYN BISHOP**—Is that to be the subject of a review?

**Mr McCullough**—That would be something that, subject to timing determined by government, would be released in due course, I expect.

**Mrs BRONWYN BISHOP**—That will of course have quite a considerable impact upon the running balance account. I have small business people who come to me and say that when they put in their BAS and make their GST payment and then find that their quarterly payment is due—which is provisional tax by any other name; despite the fact that we said we were going to abolish it, we didn't—the commissioner will choose to apply the money that they think they are paying their GST with to their quarterly provisional tax. Suddenly, they find themselves in debt and they get a GIC as well. Or it can happen the other way around. This seems to me to be an unfair practice. They find themselves on a treadmill and it seems very unfair. Commissioner, would you like to comment on that?

**Mr D'Ascenzo**—I think situations occur but not at the behest of the tax office. We do ask taxpayers when they make their payment to indicate what account they would like the payment to go into. Sometimes when they do not nominate the account, it goes into—



**Mrs BRONWYN BISHOP**—But you can choose.

**Mr D'Ascenzo**—No, not if a taxpayer says, 'This is my payment for a certain tax liability.' The commissioner does not choose that.

**CHAIR**—You are saying that you choose if they do not elect one.

**Mr D'Ascenzo**—That is right. It then goes into a prescribed series of arrangements.

**Mrs BRONWYN BISHOP**—Is a certain prescribed form of words required? What if they send it in attached simply to their BAS?

**CHAIR**—No, I think you are saying they should elect one.

**Mr D'Ascenzo**—No, I think it is more obvious. If it is your BAS with your GST payment, it will go to your GST account. There are situations where we have had undissected amounts, which have been put into different situations. In those cases, taxpayers have come back and we have had to do manual workarounds to reallocate it according to the taxpayers' wishes. I do not know whether other people want to add anything.

**CHAIR**—No, I think we will keep moving.

**Mr D'Ascenzo**—In other words, taxpayers can come back and readjust, if they want to, in those circumstances where they have not told us which account to put it into and we have put it into an account that they think is incorrect.

**Mrs BRONWYN BISHOP**—So, absolutely and without any equivocation, if a taxpayer says, 'This is to pay X tax,' you cannot apply it to Y.

**Mr D'Ascenzo**—That is my understanding, but we will certainly confirm that in the response back.

**CHAIR**—If you could do that that would be good. If any members have additional questions they want to place on notice, we will facilitate that through the secretariat throughout the course of the day.

**Senator WATSON**—I think that at an earlier Senate estimates a figure was given of the quantum of the outstanding debt on the BAS statements. I think it might be useful if we had that on the record in lieu of Mrs Bishop's question about bankruptcies. I was quite astounded at the outstanding debt on the BAS statements.

**Mr D'Ascenzo**—It is a risk area for us. There is a lot of outstanding debt and we are looking at ways we can reduce that amount.

**Senator WATSON**—I think you gave us some figures, didn't you?

**Mr D'Ascenzo**—I think the micro area of outstanding debt is in the order of \$6 billion.

**Senator WATSON**—I have a question for Mr McCullough. You might recall my earlier questioning about the accounting profession being concerned about a lack of staff in the Treasury business advisory unit. It is no criticism of the unit itself. It is highly professional. It does have a high turnover. We have had different views on that. The head of Treasury came back and said he would look at that. It is certainly a problem area for business. Given the large collections that are coming from the corporate area and business generally, I would certainly regard it as a matter of some priority. I think that one of your colleagues had looked at it and regarded it as low priority. Subsequently Dr Henry came back and said that he would further examine it. I think it is a matter that certainly we would like some urgency given to. So can you look at whether there has been any progress in terms of the staffing?

**Mr McCullough**—I can certainly ask Dr Henry whether he has decided he will give more resources to the business tax area. I do not know where they would come from, but I would be happy to ask him.

**Senator WATSON**—There is a lot of money coming out of corporate Australia at the moment in terms of the increased revenue.

**CHAIR**—We have a strong economy.

**Senator WATSON**—Obviously, yes. But, at the same time, when the business that is providing that is seeking clarification from Treasury—not from Taxation; from Treasury—I would be disappointed if it were regarded as a low priority. Earlier we had a situation where there was a reasonably high degree of shopping around for rulings. Given the improved database, can you ensure that the integrity of the database in relation to rulings is such that taxpayers get no advantage and that, if they try this shopping around for rulings, they will not get different rulings from different offices?

**Mr D'Ascenzo**—That was what I explained to Senator Ray.

**Senator WATSON**—This is going back some time.

**Mr D'Ascenzo**—That was what I think people's experiences had been. It was true that, in the early days of the private ruling system, you did have tax professionals shopping around, particularly for various areas. This is why we set up the precedent database and we have set mandatory processes. Our people follow the database except where they think that the decision of the database is wrong, in which case what they have to do is escalate it and it gets reconsidered at a more senior level. In a systemic way that is perhaps the best check and balance that I can think of to ensure that that shopping for rulings does not occur and that people get consistent and timely rulings.

**Mr Fitzpatrick**—We do not see evidence these days of that happening.

**Senator WATSON**—That is good.

**Senator MURRAY**—It is a much improved system. It was pretty awful before.

**Senator WATSON**—I am just following through on issues that we looked at the last time we met in this sort of situation. That is indeed encouraging. For an overseas resident in receipt of a dividend where withholding tax is deducted at 10 per cent or whatever the percentage is, is that the final liability for those people in respect of tax obligations? I presume that they gross that up with withholding tax plus the net amount received and then return that in their overseas income. That is the final liability, isn't it, in all cases?

**Mr Konza**—Yes, it is. This is for an overseas person. If there is a permanent establishment in Australia it changes, but if they are, as I think you meant, a person who is overseas—

**Senator WATSON**—An individual.

**Mr Konza**—Yes, that is final.

**Mr D'Ascenzo**—If they are subject to the withholding regime, it is gross withholding and that finalises their liability.

**Senator WATSON**—In terms of harmonisation, Ms Vivian, you will recall that we raised a question about inconsistency between APRA and ATO. You were going to have discussions with APRA about having a uniform approach in relation to small superannuation funds.

**Ms Vivian**—I talked to the staff about that this morning. We have just agreed that we will be taking the APRA view. We are about to look at how we will change our material so that we will have consistency there with APRA. Did your question refer to spouse contributions?

**Senator WATSON**—Yes, the whole issue of harmonisation in relation to superannuation in terms of what you do and what APRA does.

**Ms Vivian**—In that regard, we have a number of regulator meetings—in fact, we had one just the other day—where we look to make sure that we are being consistent with APRA. It is the same with our rulings and technical interpretations. We make sure that we are consistent with what has been put out into the community.

**Mr D'Ascenzo**—We cannot guarantee necessarily that the sorts of activities that we do, which cover a much wider range of self-managed super funds, are inimical to what APRA does, which covers a much smaller range of people. It is just a question of scale difference and resourcing issues.

**Senator WATSON**—Yes, but the same principles have to apply.

**Mr D'Ascenzo**—Certainly.

**Senator WATSON**—Again this question is to Ms Vivian. I raised the issue of a complaint. You felt that the action of the tax office was wrong and you were going to seek some redress. What progress have you made with that?

**Ms Vivian**—It was not that I necessarily thought the action of the tax office was wrong—

**Senator WATSON**—Or the advice.

**Ms Vivian**—In this case I was concerned that the taxpayer, due to their circumstances, had effectively moved from being regulated by the tax office to being regulated by APRA.

**Mrs BRONWYN BISHOP**—I have one of those too.

**Ms Vivian**—I think that may be the same as Senator Watson's issue.

**Senator WATSON**—The taxpayer, through no fault of their own, suddenly found themselves, from being in a regulated fund, to be in an unregulated fund. The tax office was of the view initially that, because that had occurred, it was outside your jurisdiction. From the information that you gave me previously, I understand that you are now looking at that.

**Ms Vivian**—Certainly.

**Senator WATSON**—You acknowledged that it should have been still within your purview.

**Mrs BRONWYN BISHOP**—I have one that is the same. Can I refer that to you too?

**Ms Vivian**—Yes, you may. In dealing with this case, since the issue was raised with me, the first thing we have done is to make sure that we can do the most we can for that taxpayer. There has been some progress just recently in terms of what we can do there.

**CHAIR**—And Mrs Bishop can refer her—

**Ms Vivian**—I suspect that Mrs Bishop's issue may be the same.

**Mrs BRONWYN BISHOP**—It is, but it is a little more sinister.

**Senator WATSON**—Can I go to the effect of what has been done?

**Ms Vivian**—One of the issues that concerned me about that was what I raised when you raised the matter with me. That is, in this sort of situation, a self-managed super fund, due to various actions, no longer was a self-managed super fund. We then referred the case to APRA. At last estimates one thing I took on board was to check and see whether the tax office could do a bit more with such cases, so we are looking at that. In addition, at the very least, we then wanted to look at what would be the better sort of escalation or referral process with APRA. We had a regulators' meeting—a joint one that we often have—earlier on this week. My priority here is to make sure that we can do the most for the taxpayer, but then we will look at it as a bit of a case study and see how that flows through and what we can do a bit better there between the regulators.

**Senator MURRAY**—The Treasurer has made a very pleasing announcement and he introduced a bill into the House yesterday or today, which makes redundant 4,100 pages of tax law, over half of which is income tax law. I am delighted with that, but I note that the announcement includes the fact that 200 rulings will have to be revised because of some connection with that law. My question on notice is simple. Could you give the committee an

estimate of how long you think it would take from the time of assent of that bill, whenever that is, for those 200 rulings to be revised, because that seems to me to be a very substantial job.

**Mr D'Ascenzo**—It is.

**Senator MURRAY**—I would like to get a sense with how difficult it is, what the time lines are.

**Mr Fitzpatrick**—Just very quickly, that will take a little while, but we can give you an answer.

**CHAIR**—Please take it on notice.

**Mr Fitzpatrick**—Some of them will be withdrawn fairly quickly.

**CHAIR**—If you can give us just the one answer on those, it will make it much easier. On behalf of the committee, I thank everyone for their attendance at this three-hour hearing and for their evidence.

Resolved (on motion by **Senator Murray**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 1.01 pm**