



Australian Government

Australian Government response to the
Joint Parliamentary Committee of Public Accounts and Audits
report:

Report 426 – Ninth Biannual Hearing with the Commissioner
of Taxation

Recommendations 2 and 3

Recommendation 2

The Committee recommends that Australian Taxation Office notifications to the Government, either directly or through Treasury, on tax policy and legislative problems be made public within 12 months of submission, along with the Government's response.

Government response:

The Commissioner of Taxation (Commissioner) has a statutory independence in his administration of the taxation laws which means that the Government cannot direct the Commissioner to administer the laws in a particular way. If the Australian Taxation Office (ATO) forms a view that the existing law may compromise revenue collections or have unintended consequences then it will be a matter for the Government to decide whether or not to amend the laws and, if so, then for Parliament to approve the necessary legislative amendments.

If the Government chooses not to amend the tax laws, then the Commissioner must decide on how he responds in administering the existing law. This may mean that the ATO needs to change its administrative practices and to amend its published view about how the law applies. However, this is a matter for the Commissioner.

In this context, it is worth noting that the Government also receives representations from a range of different entities (including individuals, businesses and representative groups) and that the Government takes into account these differing views before deciding whether to amend the tax laws and, if so, how to design the amendments.

There is a significant risk that publishing ATO notifications to the Government about potential legislative problems could lead to uncertainty and confusion in the taxpaying community about how the ATO will administer the existing laws. Dialogue between the ATO, Treasury and the Government may canvass a range of issues which could colour the interpretation of the existing law and existing ATO published views. For example, the ATO provides various forms of public advice to taxpayers about the Commissioner's views on, and his interpretation of, the tax laws, such as public rulings, private rulings, administratively binding advice and interpretative decisions. Different types of advice provide various levels of protection against primary liabilities, penalties and interest to taxpayers who rely on that advice. It is unclear how a taxpayer would reconcile any published notifications with existing ATO views.

Accordingly, the Government *disagrees with this recommendation*.

Recommendation 3

The Committee recommends the Inspector-General of Taxation's reviews be made public within a reasonable time.

Government response:

Section 11 of the *Inspector-General of Taxation Act 2003*, obliges the Minister to ensure the public release of the Inspector-General's reports within 25 sittings days of each House of Parliament after receiving it. Specifically, section 11 states:

- (1) The Minister must cause a copy of each report under section 10 to be tabled in each House of the Parliament, or to be otherwise made publicly available:
 - (a) before the general publication deadline; or
 - (b) if the Inspector-General recommends that the tabling or public release of the report be delayed for a specified period—before the extended publication deadline.
- (2) For the purposes of subsection (1):
 - (a) the *general publication deadline* is the end of 25 sitting days of each House of the Parliament, calculated starting from the day after the day on which the Minister receives the report; and
 - (b) the *extended publication deadline* is the end of 25 sitting days of each House of the Parliament, calculated starting from the day after the day on which the period referred to in paragraph (1)(b) ends.

Note: If, because of differences in the days on which the two Houses sit, the 25 sitting day period for the two Houses ends on different days, the relevant deadline is the end of the later of those days.

That said, the Government *notes this recommendation* about the Committee's preference for publicly releasing the Inspector-General's reports within a reasonable time.