

CHAPTER THREE

FACTORS CAUSING INEQUITY

3.1 The previous chapter discussed the issue of equitable treatment of taxpayers in general terms, addressing the complexity of the tax system, ATO equity measures, general views of the ATO and its organisational culture.

3.2 This chapter addresses major factors that lead to or influence cases of inequitable taxpayer treatment, namely:

- inconsistent decision making and treatment from the ATO;
- access to professional tax advice; and
- procedural unfairness.

3.3 It also focuses on two key areas in the ATO's operations where these concerns arise: tax penalties and tax debt collection.

Inconsistency

3.4 Inconsistency is seen as the most fundamental cause of inequity in the ATO's operations. The evidence suggests inconsistent practices affect all taxpayer segments, including large business, although there were indications that the problem is less pronounced under the High Wealth Individuals Program.¹

3.5 Inconsistent treatment is at odds with stated ATO policy. The ATO recognises that consistent application of tax law and ATO guidelines is essential to treating taxpayers fairly and equitably. The Taxpayers' Charter and its supporting booklets express the ATO aim of consistent treatment of all taxpayers. For example:

We always aim to be consistent in our treatment of taxpayers. This means:

- In interpreting and applying the tax laws, there is one Tax Office view of the law. The view is applied consistently throughout the Tax Office;
- In relation to more general matters, guidelines have been established and these are followed with judgement by our staff. Not every situation is the same and our staff follow guidelines in a way that achieves a sensible and equitable outcome having regard to your circumstances.²

3.6 While the ATO has made progress in ironing out inconsistencies, tax practitioners indicated that scope for improvement remains: 'there are still many instances where different branches – indeed, sometimes even different tax officers within the same branch – adopt

1 Submission No. 85, p. 12.

2 ATO, *The Taxpayers' Charter*, Explanatory Booklet 1, 'Treating you fairly and reasonably', July 1997, pp. 6-7.

inconsistent approaches when dealing with taxpayers'.³ Inconsistent interpretation of the law causes, as one firm stated, inequitable treatment, 'not by design, but in its effect'.⁴

3.7 The Ombudsman's evidence to the inquiry identified inconsistent treatment and practices as central concerns.⁵ In particular, the Ombudsman's investigation of complaints reveals wide disparities in treatment, including markedly disproportionate approaches by ATO officers in relation to tax penalties and debt collection. The Committee explores these two areas in more depth later in this chapter.

Access to tax advice

3.8 The differing degrees of taxpayer access to professional tax advice and representation are viewed as a primary cause of inequity in the tax system. Some taxpayers can afford professional assistance in managing their tax affairs, others cannot. Large corporations and certain high wealth individuals are said to employ top-level tax practitioners to out manoeuvre the ATO's compliance strategies.⁶ According to serving ATO officers:

...we look at equity issues and everyone should be on a level playing field. But the fact is that if you have proper advice and you are privileged to information that the average run-of-the-mill person in Australia does not have, then you do have an advantage. A person who is just an average salary and wage earner has no avenues to not disclose because their employer is going to issue them with a group certificate.... To the average worker, there is nowhere to hide. To other sections of the community, there is, because they realise that with proper advice and non-disclosure they get an advantage.⁷

3.9 This problem is partly a side effect of the complexity of the tax system: 'It is inequitable that taxpayers cannot hope to attain a thorough understanding of their rights and obligations – especially when our tax system is based on self assessment and provides for heavy penalties'.⁸ It also is what might be called a 'structural inequity' reflecting differing levels of wealth and financial literacy in the community. However, an inability to afford professional advice can appear in some cases to leave taxpayers at a disadvantage in dealing with the ATO. According to one tax lawyer:

Those taxpayers who have access to the best professional advice will obviously be well placed to ensure their legal rights are protected in the context of any disputes with the ATO – whether arising as a consequence of tax audits or otherwise. By way of contrast, those taxpayers who lack access to competent professional advice – for whatever reason – are likely to be placed at a disadvantage in the course of their dealings with the ATO. I do not mean to suggest that all tax officers will necessarily take advantage of taxpayers who are not adequately represented. However, I have no doubt that, in some cases, taxpayers who lacked competent professional representation were not treated fairly or equitably by ATO officers.

3 Submission No. 85, p. 8. See also Evidence, pp. 130-131 and for an example p. 138.

4 Submission No. 6, p. 4.

5 Submission No. 80 and Evidence, pp. 217-229 and 246-264.

6 See chapters 5 and 6.

7 Australian Services Union, Evidence, p. 97.

8 Submission No. 85, p. 6.

Certainly, a perusal of the Commonwealth Ombudsman's successive reports to the Parliament would tend to suggest that this is the case.⁹

3.10 Unrepresented taxpayers are also at a disadvantage where process-driven approaches are adopted and care is not taken to examine their individual circumstances. The former Special Taxation Adviser to the Ombudsman, Mr Haggstrom, explained how small taxpayers can struggle to have their circumstances considered:

For instance, if you have someone who owes a small debt, they tend to get lumped in with a small debt situation – they get the treatment that goes with that territory. If they have some particular problem and they do not represent it to the tax office the proper way – they might not be articulate... – the system just grinds on remorselessly there.¹⁰

3.11 The Commissioner told the Committee that the ATO has established several measures and policies to address this imbalance:¹¹

- it provides free private rulings and determinations, which clarify at law and provide more certainty on its interpretation;
- it also has a product rulings system which issues public rules on the tax benefits of investment schemes; and
- 1998-99 saw the introduction of a new taxpayer information service, *ATOaccess*, which includes 131 inquiry telephone numbers, an appointment service and shopfronts mainly located away from ATO offices.

3.12 As well, taxpayers who use professional advice must meet higher standards of care than those who do not. For example, taxpayers who rely on a tax agent to prepare their returns are not eligible for the 'Commissioner's Guarantee' and therefore face the prospect of penalties for failing to take reasonable care in their returns. In contrast, under the Guarantee taxpayers who rely on the TaxPack to prepare their returns are indemnified from penalty treatment if they make an honest mistake.

Procedural or administrative unfairness

3.13 The main body of evidence to the Committee reflected complaints about administrative unfairness, that is, ATO actions that were said to be at odds with the commitments and spirit of the Taxpayers' Charter. Some of the criticism alleged highhanded behaviour on the part of some ATO officers or sections.

3.14 In the eyes of the witnesses unfair treatment equates to inequitable treatment, although little attempt was made to make comparisons with the treatment received by other taxpayers. The accounting firm, Arthur Andersen, summed up the nature of the issue. Pointing to a minority of ATO officers who appear to view taxpayers 'almost by definition [as] dishonest cheats', the firm stated:

9 Submission No. 85, p. 8.

10 Evidence, p. 247.

11 See the Commissioner's comments, Evidence, p. 268.

We think that some of the public complaint about inequity may stem partially from this ATO officer attitude. Taxpayers represented by quality tax advisers are better able to defend their position, to support it, and to demand professional treatment from the ATO – whereas other taxpayers may be intimidated by a more inquisitorial style. *The outcome is perceived inequity.* The solution is for a more neutral ATO interface with its clients. [Emphasis added]¹²

3.15 As this statement implies, some of the unfair treatment taxpayers experience stems from an officer attitude that is at odds with the Taxpayers' Charter's philosophy of treating all taxpayers as honest. This attitude instead reflects the hardened views of some officers – the 'tough culture' discussed in Chapter Two. Their view of taxpayers is often coloured by the experience of dealing with less scrupulous elements of the tax population.¹³

3.16 Consequently, these officers may tend to handle cases based more on their *own* career history than the compliance history or special circumstances of the taxpayer concerned. Alternatively, some witnesses claim that officers attempt to impose their own view of the law rather than the established ATO position on cases.¹⁴ Both approaches can lead to misinterpretations, inflexibility and treatment that is disproportionate in relation to the revenue at stake and therefore inappropriate.

3.17 The ATO recognises that some of its staff are out of step with the direction of the organisation:

For many of our staff, the Charter has required them to develop different relationships with taxpayers – one that has proven difficult for a few staff.¹⁵

3.18 While few in number, the actions of some 'hardline' staff are highly influential in shaping taxpayer perceptions of the ATO. Two areas of ATO operations where the influence of these officers is particularly evident are in relation to tax penalties and debt collection.

The Penalty System

3.19 The most common issue of aggravation for taxpayers in the evidence is the ATO's penalty tax system. This is hardly surprising. The imposition of tax penalties is a matter of double jeopardy for taxpayers. It involves a cost over and above the tax they are required to pay (which is often more than the original assessment and may involve an interest component as well). It also carries a negative connotation that the taxpayer has tried to rort or cheat the system in some way, even if the penalty is for only an inadvertent mistake. On top of that, the complexity of the penalty system means that it is poorly understood by many taxpayers.¹⁶

3.20 These underlying difficulties appear to be compounded in some instances by ATO practices, leading to claims of inequitable treatment. Two major problems involve inconsistency and tax agents.

12 Submission No. 6, p. 6.

13 See Evidence, p. 246.

14 Submission No. 6, p. 5; Submission No. 85, p. 7.

15 Submission No. 83, p. 10.

16 See the Ombudsman, Submission No. 80, p. 8.

Inconsistency

3.21 Inconsistent ATO practices have led to inequities in the administration of penalties. This is evident from not only the cases before the inquiry but also reviews of the system done by other external bodies. A 1996-97 report of the Australian National Audit Office (ANAO) into the ATO's tax debt collection found that additional tax for late payment was not collected in 35 per cent (amounting to 41,000 cases) of the cases examined.¹⁷ As the Ombudsman stated:

[t]he significance of this statistic for equitable decision-making is obvious: some taxpayers have paid a penalty in cases where someone in identical or nearly identical circumstances may not. It is significant that such a system has been permitted to exist for a considerable time given the revenue and equity implications.¹⁸

3.22 The Ombudsman's own case studies, based on taxpayer complaints, reveal widely inconsistent responses from the ATO in the penalty area. On the one hand, high risk cases involving taxpayers with a history of tax avoidance were granted a degree of latitude that was at odds with their track record. At the other extreme, the ATO pursued taxpayers over small debts with a degree of vigilance at odds the revenue at stake.¹⁹ In both instances, the ATO's response appears disproportionate to the risk or issues involved.

3.23 The Ombudsman's findings are supported by recent analysis by the ANAO of the ATO's administration of penalties. An ANAO audit found that in general the ATO lacks the control structures to provide assurance that penalties are applied consistently and therefore equitably. The audit also found that data access constraints mean that staff administering penalties are unable to search taxpayer histories to the extent needed to implement the principles of the Taxpayers' Charter and Compliance Model. In the ANAO's opinion:

There is a risk that in the absence of complete information concerning a taxpayer's compliance history, ATO officers will form different opinions about the compliance status of a taxpayer resulting in the ATO applying penalties in an inconsistent manner.²⁰

3.24 The Commissioner indicated to the Committee that in general the ATO is updating its information technology systems to support new approaches for providing more individualised treatment to taxpayers.²¹

Unfairness

3.25 The evidence before the Committee focuses mainly on cases where, on the face of it, the ATO's approach appears harsh in some instances. In many of these cases the taxpayer has felt the penalty to be an affront to their integrity. This is because the mistake committed has

17 ANAO, *Tax Debt Collection: Australian Taxation Office*, Audit Report No.13 1996-97, p. 30.

18 Submission No. 80, p. 8.

19 Ibid, see pp.9-18.

20 ANAO, *Administration of Tax Penalties: Australian Taxation Office*, Audit Report No. 31, 1999-2000, p. 41.

21 Evidence, pp. 281-282.

been inadvertent, particularly where the tax law is complex, hazy and contested. In other cases, the ATO's reasons for the penalty impute motives – eg, failing to take reasonable care through to tax avoidance – that the taxpayer rejects.

3.26 Underlying these complaints is the perception that the ATO's behaviour is contrary to its stated position, such as the commitment in the Taxpayers' Charter to treat taxpayers fairly, reasonably and as being honest in their tax affairs. In the Budplan and Sentinel cases discussed later, witnesses have protested against the ATO's imposition of penalties on the grounds that neither the presumption of innocence nor their taxpaying histories appears to have been taken into account, as stipulated in the Charter's explanatory booklets.²²

3.27 Another source of administrative unfairness in this context is the allegedly unresponsive and/or uncompromising approach of the ATO when taxpayers have sought clarification on, or to enter negotiations over, penalties. Witnesses pointed to protracted delays in getting a response from ATO officers, despite repeated requests and inquiries.²³

3.28 The ATO has addressed this problem, to some extent, by taking up the Ombudsman's recommendation that it develop a better style of correspondence for debt collection that matches the principles of the *Taxpayers' Charter*.²⁴ The Committee welcomes this development as a sign of the ATO's willingness to listen and respond to client feedback, but notes that only time will tell whether or not this commitment will be translated into practice.

Penalties and tax agents

3.29 As noted above, the Commissioner's Guarantee states 'that if taxpayers rely on TaxPack yet still make an honest mistake, [the ATO] will accept that and apply no penalty'.²⁵ To illustrate that the guarantee is working, the ATO pointed to data that show that the rate of penalisation for TaxPack users is close to half that for taxpayers who engage tax agents to prepare their returns:

Latest figures show that penalties were imposed in 60 per cent of cases where we adjusted returns lodged by tax agents. The figure was just over 30 per cent for people who prepared their own return.²⁶

3.30 The ATO's interpretation, it could be argued, attempts to put the best possible face on what are disturbing statistics. These figures reveal that close to one-third of taxpayer self-returns that are adjusted (as opposed to all taxpayer self-prepared returns) incur penalties, a far from insignificant statistic in its own right. But this pales in comparison to 60 per cent rate in instances where taxpayers have relied on professional advice from tax practitioners.

3.31 These findings suggest significant difficulties with taxpayer returns. For taxpayers who self prepare their returns, the penalty rate points to poor levels of understanding of the

22 See, for instance, the explanatory booklet, *Your honesty and the tax system*, which outlines the factors taken into account in ATO decisions on penalties.

23 See Witness X, *In camera* Evidence published by order of the Committee, p. 11

24 Evidence, pp. 226-227.

25 Submission No. 83, p. 13.

26 Submission No. 83, p. 13.

taxpayer obligations under the self assessment system and/or a large degree of non-compliance. On the other hand, the 60 per cent penalty rate where tax agents are used suggests that the quality of advice and service provided by the tax industry is open to question. The Ombudsman has recently raised concerns about this issue:

In a growing number of complaints about ATO audit activities, in particular those concerning the work related expenses program, our investigations have highlighted questionable or careless actions on the part of some tax agents rather than defective administration on the part of the ATO.²⁷

3.32 A particular area of taxpayer confusion and contention with the ATO concerns the imposition of penalties for failing to take ‘reasonable care’ in cases where tax agents have been engaged. Many taxpayers struggle to comprehend that the ATO can penalise them for a failure to exercise reasonable care in instances where they sought professional advice in preparing their tax return:

I was incensed by the statement of the Taxation Office that [my son] had not acted in good faith because he used a tax agent and he had not taken proper care.²⁸

3.33 This partly reflects the common view that the use of a professional, such as a lawyer, is a prudent step, one based on the reasonable assumption that the advice will be sound.

3.34 It also, however, reflects a failure to recognise that under the self assessment system the onus of responsibility ultimately lies with the taxpayer, not the tax agent. The ATO does not view the use of a tax agent as a sufficient demonstration of ‘reasonable care’ by taxpayers. It states that ‘even if someone else, including a registered tax agent, helps you to prepare a tax return, you are still legally responsible for the correctness of the information’.²⁹

3.35 Nonetheless, it is understandable that, in the eyes of many taxpayers, such an interpretation appears administratively unfair and overly bureaucratic, particularly in instances when the tax agent would appear to be responsible for errors in returns. For example, the following refers to a case involving a claim for education expenses prepared by a tax agent which the ATO rejected, by its own admission, on a fine point of law:

We are talking about something which was a matter of opinion and which a tax agent submitted for my son in good faith. My son accepted his professional advice in good faith and, in the end, he ended up paying the tax.... We paid that and we got penalised for it and we got railroaded along the way.³⁰

3.36 The Ombudsman also suggested that the inconsistency in the ATO’s decision making on penalties influences the conduct of tax agents. The inconsistent imposition of penalties has left the door open for tax agents to test the system and see if they can get away with questionable claims on behalf of their clients.

27 See *Commonwealth Ombudsman Annual Report, 1998-99*, p. 42.

28 Evidence, p. 209.

29 ATO, *Your honesty and the tax system*.

30 Evidence, p. 215.

Because they also see a range of cases, private tax consultants have obviously noted that differential approaches to penalty imposition can occur and it would be naive to believe that such knowledge has not influenced their perception of how the system operates and how they should respond to individual cases.³¹

ATO Measures and Responses

3.37 Steps have been taken to simplify aspects of the penalty tax regime. These partly result from ATO advice to the Government on possible measures to close some loopholes in the law as it concerns penalties.³² In 1998 a new General Interest Charge (GIC) was introduced following a series of reports and reviews that highlighted the point that the complexity of existing penalty arrangements contributed to confusion and misunderstanding among taxpayers. In addition to replacing 52 different penalties,³³ the GIC was also aligned more realistically with market interest rates and requires the ATO to calculate interest on a daily compounding basis.³⁴

3.38 The ANAO originally indicated in 1999 that the GIC will address all the concerns it raised in relation to the ATO's compliance with imposing Additional Tax for Late Payment in its 1996 audit, cited above.³⁵ One indicator of the GIC's effectiveness in terms of improving taxpayer understanding of penalties will be if complaints to both the ATO's Problem Resolution Service and the Ombudsman decline. As confusion over penalties has been a major source of taxpayer criticism about the ATO's commitment to treating taxpayers fairly and reasonably, the Committee believes it is in the interest of the ATO and public confidence for the impact of the GIC to be monitored. A more recent ANAO report has raised concerns about the implementation of the GIC. It found that systems limitations mean that the ATO is not in a position to calculate interest on a daily compounding basis for all taxpayers:

The effect of this is that some taxpayers would be paying higher GIC penalties than others until the ATO is able to implement system changes necessary to implement the GIC consistently as required under legislation.³⁶

3.39 The ATO has indicated that the Commissioner will exercise a remission power to amend interest charges so that the taxpayers concerned are all subject to the same interest charge for the period 1 July 1999 to June 2000. From 1 July 2000 the GIC will be applied on a daily compounding basis.

31 Submission No. 80, p. 8.

32 See ANAO, *The Management of Tax Debt Collection*, Audit Report No. 23 1999-2000, December 1999, pp. 114-115.

33 The GIC also saw the introduction of two additional penalties – the Failure to Notify Penalty and the Late Reconciliation Penalty.

34 See ATO to Committee, 'The general interest charge' (received 6 December 1999) and the Explanatory Memorandum, General Interest Charge (Imposition) Bill 1998, especially pp. 12-13.

35 ANAO, *The Management of Tax Debt Collection*, p. 57.

36 ANAO, *Administration of Tax Penalties*, p. 47.

Recommendation

3.40 The Committee recommends that the ATO monitor the effect of the General Interest Charge (GIC) on taxpayers, focusing in particular on the extent to which it results in a decline in mistakes and complaints attributed to the complexity of tax penalties. The Committee also recommends that the ATO report on the findings of its monitoring of the GIC in the Commissioner's annual report to the Parliament.

3.41 There is a proposal to address the problem of taxpayers incurring penalties for errors caused by tax agents. Under the so-called 'safe harbour' measure, where the culpability for a tax debt or shortfall lies with a tax agent, a penalty will not be imposed on a taxpayer if he or she can demonstrate they have exercised reasonable care.³⁷

3.42 The safe harbour measure is part of a proposed new legislative framework for tax agents.³⁸ The passage of this legislation has, until recently, been halted at the request of the tax profession on the grounds that it wanted to concentrate on the tax reforms under the new tax system. According to the ATO, '[n]ow that the tax reform proposals are known, it is expected that the tax agents legislation will be progressed shortly'.³⁹

3.43 The Committee also notes that the ATO is responding positively to recommendations of the ANAO for significant improvements to its administration of tax penalties. These include strengthened corporate control, statistical analysis of the effectiveness of penalties as compliance tools, staff training that better aligns penalty application with the Taxpayers' Charter and Compliance Model and enhanced public information on the penalty regime.⁴⁰

Debt Collection

3.44 In addition to penalties, the Ombudsman pointed to the ATO's debt collection practices as a major area for concern about equitable treatment. Tax debt collection is a significant element of ATO operations. At 31 January 2000 debtor cases referred for action numbered 550,629, with a value of \$7.88 billion.⁴¹

3.45 In response to 'a persistent high level of complaints',⁴² the Ombudsman's office investigated the ATO's debt collection practices. The investigation addressed a range of taxpayer criticisms, some of which mirror the concerns raised before the Committee's inquiry, in particular:

- the ATO's 'inflexibility' or 'uncommercial' approach to individual cases;

37 ATO to Committee, 'A safe harbour from penalties' (6 December 1999). See also 'New Legislative Framework for Tax Agent Services', Senator the Hon. Rod Kemp, Assistant Treasurer, Press Release No. 14, pp. 4-5.

38 Ibid. A similar immunity will also extend for tax agents who exercised reasonable care in providing services.

39 ATO to Committee, 'A safe harbour from penalties' (6 December 1999).

40 ANAO, *Administration of Tax Penalties*, pp. 15-16.

41 ATO update to Committee, 4 February 2000 and Evidence, pp. 286-287. Commissioner of Taxation, *Annual Report 1998-99*, 20 October 1999, p. 36.

42 Submission No. 80, p. 6.

- the ATO's approach to the remission of late payment penalties;
- the ATO's failure to take account of the individual circumstances of a debtor;
- concerns about the tenor of the ATO's correspondence; and
- actions by the ATO that seriously prejudice the interests of debtors such as the use of its garnishee powers.⁴³

3.46 Based on an examination of several hundred taxpayer complaints compiled over three years, and an additional 300 cases selected randomly from the ATO's own databases, the Ombudsman's investigation concluded:

Our experience with debt collection complaints suggests that there is a group of cases where some approaches to recovery are very hard to reconcile with other cases and the general philosophy of the ATO.

The evidence of the randomly selected debt cases suggests some quite widely varying approaches in the penalty area. For instance, one case involved a situation where the ATO garnisheed a taxpayer's employer for a late payment penalty of \$195. Another case revealed that another branch did not even impose a late payment penalty because it was below \$150. Differing local procedures, combined with poor supervision, may contribute to apparent inconsistencies in outcomes.⁴⁴

3.47 The inconsistent responses in the examples above indicate how inequitable treatment of taxpayers can occur, despite the ATO's adoption of the Charter and emphasis on treating all taxpayers reasonably and fairly. It also highlights the influence of different practices at the branch and office level of the ATO on the quality of treatment provided to taxpayers, especially in instances where the response appears petty or harsh in relation to the revenue at stake.

3.48 The Australian National Audit Office (ANAO) has also examined the ATO's management of tax debt collection. The most recent audit conducted in 1999 partly involved a follow-up to a 1996 ANAO report on debt collection.⁴⁵ It found that the ATO had improved efficiency, effectiveness and equity in its administration of tax debt collection since the previous audit. This progress had been achieved at the same time as resources had decreased by 20 per cent, indicating greater efficiency. Another notable result was the increase by almost 30 per cent of tax debt assessed in 1998-99 as a result of ATO targeting 'hot spots' such as the cash economy, aggressive tax planning and tax avoidance and evasion.

3.49 The audit also pointed to ATO research on persistent tax debtors which reveals that three professional groups – lawyers, accountants and medical practitioners – have an average level of tax debt that is nearly five times the national average; barristers have nearly ten times the national average. These findings in part reflect the results from an ATO project, started in 1997, focusing on the legal profession, particularly the high level of debt connected with members of that taxpayer group.

43 Submission No. 80, p. 7.

44 Submission No. 80, p. 9.

45 ANAO, *The Management of Tax Debt Collection*, Audit Report No. 23 1999-2000, December 1999. See also ANAO, *Tax Debt Collection*, Audit Report No. 13 1996-97, November 1996.

3.50 The ATO sees the majority of lawyers as not posing a compliance risk problem. But it also indicated that ‘tax debtors who are legal professionals are an Australia-wide problem for the ATO in respect of the size of the debts, the number of debts, the deteriorating tax compliance behaviour of some barristers, the time and cost of collection and their impact on other taxpayers’.⁴⁶

3.51 The ATO also identified serial bankruptcy as another significant compliance risk. Serial bankruptcy is a tactic used almost exclusively by high-income professionals to avoid paying tax debts. These professionals appear to engage in this stratagem without any repercussions for their continued employment and high incomes.

3.52 The ANAO noted that the ability of these tax debtors to use bankruptcy and continue in their profession assists them in tax avoidance. The risk to revenue that this poses is increased by the fact that these debtors are in professions ‘that can promote or undermine the integrity of the tax system’.⁴⁷ The ANAO concluded:

ANAO considers that the incidence and nature of the avoidance of tax liabilities by some taxpayers such as those reviewed may raise questions about tax law and administration that warrant closer attention. There is now a need to examine the best methods to address these compliance problems.⁴⁸

ATO Measures and Responses

3.53 It is clear to the Committee that the ATO is awake to the problems and compliance risks involved with tax debt. Both the ANAO and the Ombudsman report that the Commissioner has been receptive to recommendations to improve compliance strategies and administrative practices.

3.54 Improvements in debt collection reflect this point. For instance, in 1998-99 the ATO increased the amount of debt referred by 13 per cent, increased the number of cases finalised by 12 per cent and increased the amount of collectable debt by 26 per cent (\$580 million).⁴⁹ As well, the ATO has reduced the amount of tax debt written off.⁵⁰ The Ombudsman has also stated, that in relation to improving tax debt collection, ‘I am satisfied that the ATO is moving in the right direction’.⁵¹

3.55 The Commissioner has also signalled his intention to tackle taxpayers with persistent debts, including those using serial bankruptcy to avoid paying tax debts. Part of this tougher approach includes encouraging professional bodies, associations and councils to act in concert with the ATO in changing the behaviour of their members identified as persistent debtors. The Commissioner has stated further:

46 ANAO, *The Management of Tax Debt Collection*, p. 25. See also pp. 111-115.

47 ANAO, *The Management of Tax Debt Collection*, p. 25.

48 ANAO, *The Management of Tax Debt Collection*, p. 26.

49 Commissioner of Taxation, *Annual Report 1998-99*, p. 36.

50 ANAO, *The Management of Tax Debt Collection*, p. 19.

51 *Commonwealth Ombudsman Annual Report, 1998-99*, pp. 37-38. The ATO also reports improvements in finalising cases, in addition to a range of new measures aimed at enhancing debt collection performance. See Evidence pp 18-19 and Submission No. 83B, pp. 3-5.

I am giving advance notice that in fulfilling my responsibility under the law to advise the Parliament on the working of the Act I propose including in my 1999-2000 Annual Report details of those persons who have a substantial debt outstanding at 1 January 2000 and who have a history of playing hardball...⁵²

3.56 The Committee welcomes the Commissioner's resolve to address the problem of persistent tax debtors. Non-compliance of this nature is not only a major risk to revenue but also has serious equity implications. While the majority of taxpayers meet their obligations, others are in a privileged position to evade the system and to do so continuously. That some of this group occupy positions of responsibility and influence in the tax industry and are subverting the tax system is a cause for considerable concern.

3.57 However, the Committee considers that the Commissioner should be circumspect in his initiative to report publicly on persistent tax debtors. Any move to disclose individual taxpayer details must be considered within the constraints of the Privacy Act and the secrecy provisions of the Income Tax Assessment Act.

3.58 The Committee also notes that the ATO has agreed to the ANAO recommendation that it identify the best methods for addressing the compliance problem raised by persistent tax debtors. However, the ATO's response appears to be limited to administrative strategies to detect, analyse and act on aggressive tax planning arrangements. The Committee agrees with the ANAO's view that the extent and nature of the compliance risk that persistent tax debtors represent requires examination of legislative measures to address the problem.

Recommendation

3.59 The Committee recommends that the ATO formulate advice to the Government on potential legislative responses to the compliance problem of persistent tax debtors, and in that have regard to the inadvisability of persistent tax debtors and serial bankrupts continuing to practice as tax advisers.

52 Michael Carmody, Commissioner of Taxation, 'A Question of Balance', Address to the American Club, Sydney, 17 September 1999, p. 6.