



# TAXATION OMBUDSMAN

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11 November 2002

Dr Kathleen Dermody  
Committee Secretary  
Senate Economics Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Dr Dermody

I refer to your letter dated 28 October 2002 about the Senate Economics Committee's inquiry into the Inspector-General of Taxation Bill 2002.

Attached is my submission to the inquiry. I would be pleased to attend before the hearing.

Yours sincerely

R.N. McLeod  
Taxation Ombudsman

## Commonwealth and Taxation Ombudsman

### Submission to the Senate Economics Legislation Committee

#### Inquiry into the Inspector-General of Taxation Bill 2002

#### **Summary**

The submission set out below makes the following points.

- I support the strengthening of independent scrutiny of the Australian Tax Office's (ATO) administration of the tax system and will work closely with this proposed new agency.
- I support the Government's statement (per the Second Reading Speech):
  - the Bill will not affect the powers of other taxation review bodies, including the Taxation Ombudsman; and
  - the Taxation Ombudsman will continue to investigate complaints and conduct systemic investigations, while the proposed Inspector-General of Taxation will focus on reviews of tax administration.
- The Taxation Ombudsman could perform the wider role envisaged for the Inspector-General. However, if this were decided, the Ombudsman would need additional resources.
- The Taxation Ombudsman envisages no difficulty in cooperating and working with the proposed Inspector-General.

#### **Taxation Ombudsman's submission**

As Commonwealth and Taxation Ombudsman, I support the Inspector-General of Taxation Bill 2002 ("the Bill") as a welcome measure to strengthen external oversight of the Australian Taxation Office's (ATO) administration of the tax system. In my view, the proposed Inspector-General of Taxation (IGT), with its focus on systems review, will be a valuable addition to the existing review framework that currently oversees the operations of the ATO. However, I also acknowledge the need to avoid unnecessary duplication and to ensure close and effective cooperation between the various bodies that carry out those review functions.

Rather than offer comments on the details of the Bill, I have chosen instead to focus my submission on those aspects of the Bill that most directly relate to or impact upon the function and operations of the Taxation Ombudsman. In

particular, I would like to discuss my perceptions of the role of the Taxation Ombudsman alongside the proposed Inspector-General of Taxation, and the likely importance of close co-operation and communication between the two offices.

The work of the Taxation Ombudsman focuses on the handling and investigation of complaints from taxpayers and tax professionals with respect to administrative actions of the ATO. Generally, such complainants are seeking some specific redress or remedy in response to a specific ATO action. Investigations of such complaints will focus on whether or not the action can be characterised as “defective administration” – in the broadest terms, whether the action might be regarded as “unfair” or “unreasonable” – and, if so, whether some remedial action is warranted. Most of these investigations are relatively informal and often involve negotiating practical solutions to individual problems.

I am also empowered to conduct own motion investigations, which generally focus on broader questions of administration, and which tend to result in the issue of public reports and formal recommendations aimed at improving administrative policies and procedures. At present, I am conducting three such investigations with respect to the ATO: examining the ATO’s Test Case Litigation program in light of the delays in the Budplan test case; investigating ATO complaint-handling processes; and conducting an audit of the ATO’s use of search and entry powers. However, it should be noted that such investigations tend to be resource intensive, and therefore, in a small organisation driven largely by the need to respond to individual complaints, limited to only a few each year.

This is not to say that my office’s contribution to so-called “systemic issues” is limited to my own motion investigations. Many of the individual complaints that we receive raise systemic issues affecting more people than the complainant, and many of the investigations of those complaints produce systemic remedies – that is, remedies that can be applied to people in similar circumstances to the complainant. In my view, this is an important – and inevitable – result of effective complaint handling and investigation.

For example, last year we investigated a complaint from a taxpayer about the ATO’s treatment of the taxpayer’s rental property in the Australian Capital Territory (ACT). Our investigation disclosed that tax treatment of such properties in the ACT was different from those of the States, and that the ATO audit had not taken this into account. As a result of our investigation, the ATO provided specific relief to the taxpayer in question, but also agreed to make changes to its publication on rental properties (general advice to taxpayers) and to update the ATO audit guidelines accordingly. In this way, the relatively informal investigation of one complaint had a beneficial outcome for potentially thousands of taxpayers.

As I understand it, the intention of the Bill is to create an Inspector-General of Taxation (IGT) responsible for reviewing systems within tax administration

with the aim to reporting on how those systems might be improved for the benefit of all taxpayers. That is, the proposed IGT will examine the broader systems by which the tax laws are administered – such as the public and private rulings system, tax practitioner's lodgement programs, and assessment and debt collection processes – in order to identify improvements that may be of benefit to all taxpayers.

Clearly, there is some potential for overlap here with my own motion power. However, I am confident that through appropriate liaison between both bodies each will be able to complement the work of the other and cooperate closely consistent with our respective legislation.

First, I believe that the demands of individual complaint handling and investigation are such that there will always be practical limits on a complaint-handling body's ability to conduct the kinds of broad-ranging systems reviews envisaged by the Bill. However, I also believe that a fundamental element of effective individual complaint handling and investigation is the identification of systemic issues and remedies. In this sense, it is in my view impossible to fully divorce the systemic aspect from the work of the Taxation Ombudsman.

Secondly, I believe that the own motion power of the Commonwealth and Taxation Ombudsman enables my office to investigate administrative issues that are common to most Commonwealth agencies, including the ATO. This would include such issues as record-keeping procedures, handling of Freedom of Information applications, the provision and recording of oral advice, and complaint handling. These issues would presumably be of little interest to the IGT, whose primary focus would presumably be on systems largely unique to the administration of tax law (such as the public and private rulings systems and the tax assessment process).

Thirdly, I believe that the broad-ranging systems reviews envisaged by the Bill would generally go beyond what the Taxation Ombudsman would be likely to take up by way of own motion investigation with respect to the ATO. In practice, my own motion investigations tend to focus on particular aspects of a process, such as procedural guidelines or training issues. My understanding of the Government's proposal for the IGT is that that office would generally be expected to take a more system-wide approach to administration.

Details of my activities in 2001-02 can be found in my annual report. An extract of that report outlining my work as the Taxation Ombudsman is attached.



R.N. McLeod  
Taxation Ombudsman

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