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MINISTER RESPONDS TO INSPECTOR-GENERAL REPORT

Minister for Revenue and Assistant Treasurer Senator Helen Coonan today released the Board of Taxation's recommendations on the establishment of the Inspector-General of Taxation and the Government's response.

"As Minister for Revenue, my key priorities are to improve the responsiveness of the tax system to the genuine concerns of taxpayers and to ensure that the tax system is fair," Senator Coonan said.

"A vital part of the Government's election platform to improve the tax system is the establishment of the Inspector-General of Taxation as a new advocate for taxpayers and an independent adviser to Government on tax administration issues.

"On 29 May, I released a Consultation Paper outlining the Government's preliminary proposals for the office of Inspector-General of Taxation, and asked the Board of Taxation to conduct public consultation on this paper and to report with any recommendations.

"I have now had an opportunity to consider the Board's report and I am pleased to advise that the Government has accepted all the Board's recommendations in principle."

The Board of Taxation's recommendations and the Government responses are detailed in attachment A.

"I would like to congratulate the Board and thank each of its members sincerely for the excellent work that they have done within a tight timeframe," Senator Coonan said.

"I would also like to thank all those who participated in the consultation process by writing submissions and/or attending the round table meetings that the Board convened in Sydney, Melbourne and Canberra.

"I am appreciative of the depth of consideration given to the role of the Inspector-General and I know that the investment of time and intellectual effort by Board members, tax professionals and taxpayer representatives will result in a stronger and more effective Inspector-General of Taxation."

The Inspector-General of Taxation Report is available on the Board of Taxation website at www.taxboard.gov.au/inspector_general/index.htm

SPECIFIC RECOMMENDATIONS AND OUTCOMES

Recommendation 1

The legislation establishing the Inspector-General should include an object clause stating that the object of the legislation is to improve the way in which the Australian Taxation Office administers the Australian taxation system from the perspective of taxpayers.

Response: Agreed in principle.

Recommendation 2

In achieving this objective, the functions of the Inspector-General of Taxation should be broadly defined to include providing advice to the Government, reviewing the systems used by the Australian Taxation Office to administer the tax system, and making recommendations to the Government about how these systems could be improved.

Response: Agreed in principle.

Recommendation 3

The Inspector-General of Taxation should be established outside the Ombudsman's office, with the Ombudsman retaining its existing functions.

Response: Agreed.

Recommendation 4

The efficiency and effectiveness of the new office should be reviewed within five years of the appointment of the first Inspector-General of Taxation.

Response: Agreed.

Recommendation 5

The Inspector-General of Taxation should have a right of access to individual taxpayer information held by the Australian Taxation Office, but only to the extent necessary to carry out its functions, and should be under an obligation comparable to that of the Ombudsman to maintain the confidentiality of any such information.

Response: Agreed.

Recommendation 6

The Inspector-General of Taxation should be appointed by the Governor-General.

Response: Agreed.

Recommendation 7

The Governor-General should be able to remove the Inspector-General of Taxation from office only for misbehaviour or physical or mental incapacity.

Response: Agreed.

Recommendation 8

The Inspector-General of Taxation should be able to undertake work on both an "own motion" basis and in response to a direction given by a Minister. The legislation should not prescribe how the Inspector-General of Taxation's work priorities would be established.

Response: Agreed in principle. The Inspector-General will be able to undertake reviews on an 'own motion' basis and will have a high degree of discretion in prioritising work.

However, the Inspector-General will be obliged to respond to directions from Treasury Ministers, to reinforce the Inspector-General's role in providing a new source of advice to the Government on matters of tax administration, independent of the Australian Taxation Office and the Treasury.

Recommendation 9

The Inspector-General of Taxation should be required to report annually to the Parliament. The legislation should require that the annual report outline the matters on which advice has been provided to the Minister, and list the formal reports given to the Minister, in the reporting period.

Response: Agreed in principle. The Inspector-General's enabling legislation will impose a special annual reporting requirement on the Inspector-General to ensure transparency.

Recommendation 10

The Inspector-General should be able to publish reports of reviews of the systems used by the Australian Taxation Office to administer the tax system, and recommendations to the Government about where these systems could be improved (but not advice to the Government), but only after giving the Minister a reasonable opportunity to comment. A person whose interests would be adversely affected by the publication should be given a reasonable opportunity to comment, and to have their comments included in the publication. The Inspector-General should not be liable to be sued for an act done in good faith in exercise of any power conferred by the legislation, including the power to publish.

Response: Agreed in part and in principle.

The Government agrees that it will be important for the Inspector-General's reports to be made public. It will be important for the Inspector-General to be accountable to taxpayers, their advisers and representatives, for the way in which taxpayers' concerns are addressed. It follows that the operations of the office of Inspector-General must be transparent and that the Inspector-General must maintain the respect and cooperation of taxpayers.

However, the Inspector-General of Taxation is not intended to duplicate the roles of the Auditor-General nor the Ombudsman, both of whom have a continuing public reporting role on tax administration.

A key function of the Inspector-General of Taxation will be to advocate the concerns

of taxpayers to the Treasury Ministers to enable fast resolution of any systemic problems in the tax system. For this reason, the Inspector-General will report to the Treasury Ministers.

The Inspector-General's inquiries and reports may include recommendations for legislative amendments or changes in administrative processes. It is desirable for recommendations involving changes to the tax system to be released simultaneously with the Government's decision on such changes to avoid speculation and uncertainty about the taxation system. Accordingly, it is proposed that the Treasury Ministers would have the responsibility for releasing reports by the Inspector-General.

The Government agrees that, if there is criticism of the Commissioner or any other tax official arising from a review by the Inspector-General, then the Commissioner should have an opportunity to address such criticisms prior to completion of the report.

The Inspector-General of Taxation will be given appropriate immunity from being sued.

Recommendation 11

The Ombudsman's role in reviewing administrative action taken by the Australian Taxation Office, both in response to a complaint and on an "own motion" basis, should not be affected by the establishment of the Inspector-General of Taxation.

Response: Agreed.

Recommendation 12

The Inspector-General of Taxation should be obliged to consult with the Ombudsman and the Auditor-General in establishing a work program and priorities.

Response: Agreed. However, it is not intended that such a consultation arrangement would impinge on the independence of any of the statutory office-holders involved.

Recommendation 13

The Government should appoint as the inaugural Inspector-General of Taxation someone who:

- (a) has a strong capacity to understand commercial and public sector issues in tax administration;
- (b) is committed to community consultation and building constructive relationships with stakeholders; and
- (c) has earned the trust of both government and external stakeholders.

Response: Agreed.

Recommendation 14

The establishment of the Inspector-General of Taxation should not affect the functions of the Board of Taxation.

Response: Agreed.

Recommendation 15

The Inspector-General of Taxation should not be an ex-officio member of the Board of Taxation.

Response: Agreed.

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BRIEF FOR SENATORS

INSPECTOR-GENERAL OF TAXATION BILL 2002

21 OCTOBER 2002

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1: Does the Bill guarantee the independence of the Inspector-General?

The Inspector-General of Taxation Bill 2002 will establish an **independent** statutory office to review tax administration and to report to the Government with recommendations for improving tax administration for the benefit of all taxpayers.

The Bill guarantees the independence of the Inspector-General.

- The Bill provides for the appointment of an independent Inspector-General of Taxation by the Governor-General for a fixed term of up to five years, with explicit and strictly limited conditions for dismissal from office of the incumbent.
- The Bill provides for the Inspector-General to initiate reviews into tax administration on his or her own initiative, without requiring a reference from the Government. The Inspector-General will also have independence in allocating resources to different priorities.

While the Bill provides for Treasury Ministers to direct the Inspector-General to review a tax administration matter, any such directions must be disclosed in the Inspector-General's annual report to Parliament. This will ensure transparency and accountability around such directions.

The Bill provides the Inspector-General with statutory powers to obtain comprehensive information about tax administration from tax officials so that the office is not reliant on cooperation from tax officials in conducting reviews.

Until now the only formal advice available to the Government on tax administration has been from the Commissioner of Taxation. The Inspector-General will provide a valuable alternative and independent source of advice to Government on the operation of the tax administration system and thereby improve the responsiveness of the tax administration system to the needs of taxpayers.

2: Will the Inspector-General duplicate the work of existing review bodies?

The taxation system already incorporates various avenues for review of decisions relating to the administration of the tax laws — including internal review by the Australian Taxation Office, external review by tribunals, appeal to the courts and a right to complain to the Commonwealth Ombudsman.

All existing avenues of review of tax decisions and review of tax administration will continue to be available.

There is no overlap or duplication with the functions of the Ombudsman, the Auditor General or the Board of Taxation – the Inspector-General is complementary to these roles.

The Inspector-General will fill a gap in existing review arrangements for tax administration, as outlined below.

- The sole focus for the Inspector-General will be on broad **systemic** tax administration issues rather than individual taxpayer matters.
 - The Ombudsman’s role in handling complaints by individual taxpayers and conducting own motion inquiries into tax administration issues is undiminished.
- The Ombudsman and the Auditor-General have broad responsibilities across the range of public administration functions. By contrast, the Inspector-General of Taxation will target systemic tax administration issues and will develop **specialist** expertise and consultation networks directed at improving tax administration systems.
- For the first time, there will be a formal avenue for taxpayers to provide their views on the effectiveness of tax administration in Australia and to contribute to tax administration policy, knowing that the Inspector-General will advocate taxpayer views on important systemic issues to the Treasury Ministers.
 - The Auditor-General’s role in reporting to the Parliament on performance audits of Commonwealth agencies and the Ombudsman’s role of reporting to the Parliament on administrative actions — both of which reporting functions can involve the Australian Taxation Office — are not reduced.

To avoid possible duplication, the Bill requires the Inspector-General to consult with the Ombudsman and the Auditor-General for the purposes of setting work priorities at least once a year. However, the independence of the three agencies is not compromised in any way.

3: Should the office of Inspector-General be established within the Ombudsman’s office?

The Board of Taxation, in its report to the Government on the Inspector-General, rejected the option of establishing the Inspector-General of Taxation within the Ombudsman’s office. Many tax professionals also rejected the option.

The Board explicitly recommended that the Inspector-General be established outside the Ombudsman’s office. The Board considered it would not be appropriate to

combine the Inspector-General's advisory function with the Ombudsman's role of reporting to Parliament.

By establishing an independent statutory authority of Inspector-General of Taxation, the Inspector-General's function of advising on tax administration systems, and the Ombudsman's function of handling individual complaints and reporting on administration actions, will be managed independently. If the functions were to be merged, there is a risk one function may tend to dominate the other, which would not be to the benefit of the Australian community; the two functions are discrete and both are important.

4: Is there potential for overlap between the Inspector-General and the Board of Taxation?

The Board of Taxation reported to the Government on the proposed relationship between itself and the Inspector-General of Taxation.

The Board recommended that the functions of the Inspector-General should not include providing advice to the Government on the design of laws to implement policy initiatives, to avoid duplication in bringing the taxpayer perspective to policy initiatives.

The Government accepted this advice and the Bill provides that the Inspector-General will **not** review tax policy, but only review systemic issues in tax administration.

The Board rejected the option of the Inspector-General being an ex-officio member of the Board of Taxation as participation in the policy development process could make it difficult for the Inspector-General objectively to review that same policy later.

The Government also accepted this recommendation. It was decided that the better approach would be for the Board and the Inspector-General to liaise on an informal basis.

5: Who can initiate a review by the Inspector-General?

The Inspector-General may conduct a review on his/her own initiative, including as a result of consultations with taxpayers and their advisers, or:

- at the direction or request of a Treasury Minister;
- by a resolution of either House or both Houses of the Parliament;

- by a resolution of a Committee of either House or both Houses of the Parliament; or
- at the request of the Commissioner of Taxation.

Ministerial direction

As outlined above, the Bill provides for the Government to seek a report from the Inspector-General on a particular tax administration matter, including where systemic problems have come to the attention of the Government and/or where reforms are under consideration.

The Minister can request or direct the Inspector-General to conduct an inquiry into a tax administration issue.

- Where the Minister issues a formal *direction*, the Inspector-General must comply with that direction but retains discretion as to the resources allocated to the relevant review.
 - To enhance transparency, the Inspector-General's annual report to the Parliament must include a schedule of directions given by the Minister.
- Where the Minister *requests* the Inspector-General to conduct a review, the Inspector-General has a discretion to include the requested review in the work programme.

In considering the Minister's request, the Inspector-General will have regard to any other requests — from the Parliament or the Commissioner. The Inspector-General will also have regard to the reviews that he or she wishes to conduct on an 'own motion' basis.

6: Will the Inspector-General's reports be released publicly?

The Inspector-General must prepare an Annual Report on the operations of the office during each financial year. The Minister must table the Inspector-General's Annual Report within 15 sitting days of receiving it.

After completing a review the Inspector-General must report, in writing, to the Minister. This approach will ensure that the review recommendations can be dealt with in a timely manner by Government.

The Minister is responsible for releasing reports of reviews by the Inspector-General. The Government has announced (in its formal response to the Board of Taxation report on the Inspector-General consultation process) that it would be desirable for

reports by the Inspector-General to be released simultaneously with the Government's decision on any recommendations made by the Inspector-General, to avoid speculation and uncertainty about the tax system.

7: How does the Bill protect taxpayer privacy and sensitive information?

The Bill provides strong protection for any taxpayer information that may be provided to the Inspector-General. The Inspector-General may not report information that would allow the identification of an individual taxpayer. The Inspector-General and staff of the office are under strict obligations to maintain the secrecy of any information received about individual taxpayers.

The Bill provides for the Minister to certify that the disclosure of information by the Commissioner of Taxation to the Inspector-General, or the reporting of information by the Inspector-General, would be prejudicial to the public interest.

- The enabling legislation of review bodies with statutory information gathering powers — such as the Ombudsman Act — includes such provisions.
- The provision in the Inspector-General Bill provides a high level of detail about the grounds on which information may be withheld from disclosure to the Inspector-General and is tailored to the requirements of the taxation environment. This increases the transparency of the certificate process.
- The provision recognises that the Inspector-General's information gathering should not prejudice tax litigation, revenue collection and other functions of the Commissioner of Taxation.

The Bill also makes it clear that, since the Inspector-General is reporting on systemic matters and not individual actions, it would not be appropriate for the Inspector-General's reports to name or identify individual tax officers other than the office of Commissioner of Taxation.

8: Does the Inspector-General need statutory information gathering powers?

The Bill provides statutory information gathering powers to underpin the independence of the Inspector-General and to make it clear that the office is not reliant on the cooperation of tax officials to conduct a review.

The Inspector-General of Taxation Bill provides for the Inspector-General to obtain information in three ways:

- Clause 13 provides for open public consultation;

- Clause 14 provides for voluntary disclosure by the Commissioner of Taxation, with such disclosure authorised for the purposes of privacy and secrecy laws; and
- Clause 15 gives the Inspector-General statutory powers to obtain information from tax officials.

It is possible that the Inspector-General may never need to use the powers under Clause 15.

9: Why can't the Inspector-General demand information from taxpayers?

The Inspector-General of Taxation cannot compel the provision of information by taxpayers.

- The Inspector-General will be investigating systemic issues in tax administration.
- The Inspector-General will **not** be investigating the affairs of individual or business taxpayers.

However, the Inspector-General will be able to invite taxpayers and their advisers to participate in consultation on systemic tax administration issues.

- The Inspector-General will have an 'open door' policy in relation to taxpayers and their advisers.

10: Can the Inspector-General direct the Commissioner of Taxation?

The Inspector-General will not be able to direct the Commissioner, other than to require the Commissioner to disclose information for a review, thereby preserving the autonomy of the Commissioner in administering the law.

The Inspector-General cannot review individual decisions by the Commissioner, but only systemic tax administration matters. For example:

- The Inspector-General could review the self assessment system as a whole but could not review an amended assessment issued by the Commissioner.
- The Inspector-General could examine the operation of the tax rulings system but could not review any particular ruling issued by the Commissioner.

- The Inspector-General could review the way in which the Commissioner has imposed penalties and interest for late payments of tax and/or exercised the discretion to waive or remit such charges. However, the Inspector-General has no power to waive or remit such charges himself or herself.

11. Can the Commissioner delay a report by the Inspector-General?

The Inspector-General must give the Commissioner a 'reasonable opportunity' to make submissions in relation to any criticisms of the Australian Taxation Office that may be included in a report.

However, the Commissioner cannot unreasonably delay finalisation of a report by the Inspector-General.

12: Can the Inspector-General intervene in tax administration for the Government?

The Bill establishes an **independent** statutory office of Inspector-General.

The Inspector-General does **not** have any power to intervene in the administration of the tax laws. The Inspector-General has a specialist review and advisory role.

The Inspector-General cannot review interpretation of the tax laws; the Inspector-General can only review tax administration.

The Inspector-General will report to the Government on systemic reviews and can recommend improvements to tax administration. The Government may act on those recommendations and this may involve legislative change.

There is no mechanism for the Inspector-General to otherwise influence the administration of the tax laws.

13: Will businesses now be able to exert influence over tax administration?

The Inspector-General does **not** have any power to intervene in the administration of the tax laws. The Inspector-General has a specialist review and advisory role. It follows that taxpayers will **not** be able to exert influence over tax administration through the office of Inspector-General.

The Commissioner of Taxation will continue to have absolute independence in the administration of the tax laws.

The Inspector-General will identify any systemic problems in tax administration, in consultation with taxpayer groups and the business community generally, thus acting as an advocate for all taxpayers, including Australian businesses.

The Inspector-General will advocate the concerns of taxpayers and their advisers direct to the Government, providing advice that is independent of Treasury and the Tax Office.

14: Will the Inspector-General benefit particular groups of taxpayers?

The object of the Inspector-General of Taxation Bill is to improve the administration of the tax laws for the benefit of all taxpayers.

In framing recommendations to Government, it may be necessary for the Inspector-General to balance the individual benefits that might flow to a particular taxpayer or group of taxpayers, with the need to protect the integrity of the tax system for the benefit of Australian taxpayers as a whole. In that event, the integrity of the tax system for all Australians is paramount.

15: Did the Government consult with the community on the Inspector-General?

The Minister for Revenue and Assistant Treasurer released a Consultation Paper on 29 May 2002. The Board of Taxation conducted public consultation on this paper and reported to the Government with recommendations on 19 July 2002. The Government response to the Board's report was released on 16 September 2002. The Government accepted all the Board's recommendations in principle and the Board's advice is reflected in the Bill presently before the Parliament.

16: When does the Bill take effect?

The Bill will commence on the day after it receives Royal Assent.

17: What is the cost of the Inspector-General proposal?

Funding of \$2 million per year for four years for the office of Inspector-General of Taxation, commencing in 2002-03, was included in the 2002-03 Budget.

However systemic improvements to tax administration recommended by the Inspector-General of Taxation may produce unquantifiable compliance cost saving for both Government and taxpayers.

18: Will the Bill give rise to any compliance costs for taxpayers?

The Bill does not impose any obligations on taxpayers and thus has no compliance costs for individuals or businesses.

The compulsive investigative powers of the Inspector-General do not extend to taxpayers, since the Inspector-General will be reviewing systemic tax administration issues and not the tax affairs of individuals or groups.