

Senate Economics Legislation Committee

Inspector-General of Taxation Bill 2002

Submission No. 11

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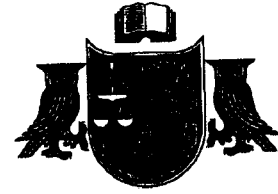
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Attachments? No Attachments

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TAXATION INSTITUTE OF AUSTRALIA

13 November 2002

Dr Kathleen Dermody
 Committee Secretary
 Economics Legislation Committee
 Australian Senate
 Parliament House
 Canberra ACT 2600



Dear Dr Dermody

Inquiry into the Inspector-General of Taxation Bill 2002

Thank you for providing the Taxation Institute of Australia (the Institute) with an opportunity to make a written submission on the Inspector-General of Taxation Bill 2002 (the Bill).

By way of background, the Institute is a tax education body, and was established in 1943. Our 11,000 members range from small rural and suburban accountants to senior members of the bar specialising in tax. Taken together with their clients, our members' views reflect the opinions of many tax professionals as well as small, medium and large businesses throughout Australia.

The Taxation Institute supports the need for an Inspector General because of the widespread community dissatisfaction with the tax system. Compliance costs, inconsistent advice, processing delays, poor quality legislation displaying little commercial reality and little genuine communication are just some of the issues causing headaches among tax practitioners and taxpayers alike. Unfortunately, a lot of the legislation we see has more provisions to deal with anti-avoidance or revenue protection than the substantive or core issue itself. Problems remain despite a range of external reviews. Clearly a new approach is needed – with an independent, whole of system perspective.

However, the Inspector-General of Taxation Bill 2002 as introduced in Parliament contains a number of impediments to the effectiveness of the position.

First, under Clause 7(1)(a) of the Bill the Inspector-General can only review law and administrative systems that are "established". This precludes the Inspector-General from reviewing an administrative system, which is being developed and has not been implemented. For example, if the Taxation Institute was concerned that the ATO was going to introduce an administrative arrangement which we knew was unsatisfactory, the Inspector-General would have to wait until this arrangement is in place before he/she could examine the arrangement. Further, if the Minister wished to seek the Inspector-General's view on poor systems being designed under a reform measure the Inspector-General would be unable to advise the Minister as it would not be "established by a law". If improvement of the tax system is a key purpose of the Bill then the clause needs to be extended to include proposed laws and administrative systems.

For the Taxwise® Professional

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The second limitation is also contained in Clause 7(1)(a) of the Bill. The clause only authorises the Inspector-General to review only "tax" laws. This means the Inspector-General could only investigate one side of the current Family Tax Benefit system failures – i.e., systems put in place by the ATO. Considering that a number of problems lie with Centrelink systems (which the Inspector-General cannot look at), the Inspector-General would not be able to make fully informed recommendations to improve this type of situation. This weakness can only become greater as more social welfare law is linked to the tax system. The powers need to be extended to review both administrative systems that impact upon the tax system including social security laws.

The third major concern is the scope of Clause 25 of the Bill. Clause 25 restricts the release of reports criticising an ATO official unless the Commissioner has to be given opportunity to address criticisms. There are two problems. First, as minor or major criticisms of the ATO could be implied in every investigation the process will be slowed as the Commissioner effectively must be given the opportunity to respond every time. Secondly, there is no time limit in which the Commissioner must reply or make comment. The Commissioner could use this type of provision to engage in delaying tactics for releasing a report because the Inspector-General cannot finalise the report under the legislation. The clause needs to be amended such that the Inspector-General should only have to refer major criticisms to the Commissioner for comment and to impose a reasonable time limit. Under the time limit (say 21 days), if the Commissioner doesn't respond in a way authorised by the legislation, then the Inspector-General should be free to release the report.

The fourth concern relates to independence of the position. Under clause 8(2) of the Bill the Inspector-General must comply with a direction from the Minister. This is a greater power than that given by the Clause 8(3) both houses of Parliament. For the purposes of transparency and the integrity of the position, and to ensure critical issues are not buried under a multitude of minor, irrelevant directions, this clause should be removed.

The Taxation Institute also has concerns with Clause 9 of the Bill. Under Clause 9 the Inspector-General must consult with the Commonwealth Auditor General and Commonwealth Ombudsman. However, all three positions remain fully vested with the power to direct their respective work programs. If the Inspector-General and the Commonwealth Ombudsman investigate the same issue(s) from different perspectives and at different times, arriving at different recommendations on the same facts, there is no mechanism to resolve overlap. Thus, the legislation needs to be amended to include a clear tie breaker type clause which provides a mechanism for adjudicating who should consider an issue when there is some disagreement about how it is to be handled.

Finally, the Taxation Institute has concerned about a further attempt to undermine legal professional privilege in Clause 27(2) of the Bill. The Clause does not reflect the current law and should be removed from the Bill.

In summary, the Taxation Institute believes that the removal and modification of the Bill as suggested above will ensure that the Inspector-General is truly independent and will be able to respond quickly to investigate faults in the tax system. If you have need to discuss any aspect of this submission or require additional information or clarification, please contact the Institute's Tax Director, Michael Dirkis, on 02 9232 3422.

Yours faithfully



Barry Low
President