

**Report on the perception of revenue bias in private  
binding rulings**

*for*

The Inspector-General of Taxation

*by*

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Faculty of Law  
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## **Contents**

Executive Summary .....	4
1 Introduction.....	6
2 Research design and conduct.....	7
2.1 The brief.....	7
2.2 The design.....	8
2.3 The conduct of the survey.....	8
3 Findings.....	10
3.1 Descriptive findings.....	10
3.2 Statistical analysis.....	29
3.2.1 Explanation of analytical techniques.....	29
3.2.2 Hypotheses testing.....	29
3.2.3 Discussion.....	33
4 Conclusions.....	34
4.1 Areas of specific interest as identified by the IGT.....	34
4.2 Strengths and weaknesses.....	36
4.3 Generalising from the findings.....	37
Attachment 1: Survey instrument.....	38
Attachment 2: Introductory letter.....	47
Attachment 3: Transcript of responses to Question 5.1.....	49

## List of Tables

Table 1: Telephone survey responses .....	9
Table 2: Number of PBR applications .....	10
Table 3: Breadth of matters to which applications related .....	10
Table 4: Capacity of interviewee .....	11
Table 5: Industry division .....	11
Table 6: Main areas to which applications related .....	12
Table 7: Treatment of PBR applications .....	13
Table 8: Outcomes of PBR applications .....	13
Table 9: Reasons for withdrawal of applications .....	14
Table 10: Unreasonable delay experienced .....	14
Table 11: Complexity of issue .....	15
Table 12: Clarity of ATO decision(s) .....	15
Table 13: Agreement with ATO reasoning .....	15
Table 14: Advice regarding progress of application .....	16
Table 15: ATO consideration of supporting material .....	16
Table 16: Technical discussion with ATO beforehand .....	16
Table 17: Request by ATO for immaterial information .....	17
Table 18: Timeliness of PBR process .....	17
Table 19: Awareness of Priority Ruling Process .....	17
Table 20: Impact of PRP on timeliness .....	17
Table 21: Use of PRP .....	18
Table 22: Deterrence effect of an unfavorable PBR .....	18
Table 23: Awareness of changes to penalties .....	18
Table 24: Impact of ROSA changes .....	19
Table 25: Not applying for a PBR .....	19
Table 26: Main reasons for not proceeding with a PBR application .....	20
Table 27: Overall satisfaction .....	20
Table 28: Correct decisions overall by the ATO .....	21
Table 29: Others' perceptions of ATO's decisions .....	21
Table 30: Resolution of ambiguities .....	21
Table 31: Greater reliance on law or policy intent .....	22
Table 32: Discuss law with Treasury .....	22
Table 33: Discuss policy intent with Treasury .....	22
Table 34: Delays caused by discussions with Treasury .....	23
Table 35: Perception of revenue bias .....	23
Table 36: Reasons for perception of bias .....	23
Table 37: Perception of bias held by others .....	25
Table 38: Need to address perception of revenue bias .....	25
Table 39: Measures to reduce the perception of bias .....	26
Table 40: Adequacy of existing ATO controls .....	27
Table 41: Additional assurance measures and controls .....	27

## **Executive Summary**

This report is based on research conducted by Atax on behalf of the Inspector General of Taxation (IGT) into the perception of revenue bias in private binding rulings on large complex matters. The relevant population for the research was limited to those internal and external advisers who had applied for a private binding ruling (PBR) between 1 July 2003 and 30 June 2005 for a corporate taxpayer with an annual turnover in excess of \$100 million. The ATO identified approximately 350 individuals who satisfied these conditions, from which the IGT selected a random sample of 50%. These selected individuals were then contacted by the researchers and invited to participate in a telephone survey.

The adjusted response rate to the survey was higher than expected at 86.4% (Table 1). After excluding responses that did not meet the conditions being studied, 78 full interviews were completed in total by three interviewers. On average, full interviews took 22 minutes to conduct and required three calls each. Interviews were conducted over a three week period beginning 18 November 2005. The interviews were used to collect both quantitative and qualitative data. The high sampling and response rates increase the level of confidence with which generalisations can be made in respect of the total relevant population based on the survey findings.

A large majority of interviewees (72% at Table 35) reported that they themselves believed that the ATO had a revenue bias in resolving the types of PBRs under consideration. This belief was mainly based on personal experience. Further, most interviewees (88% at Table 37) believed that others perceived the ATO as having a revenue bias. Of those interviewees who perceived bias, most (88% at Table 38) felt that it needed to be addressed. Measures suggested as likely to be most effective in reducing bias included a change in culture on the part of the ATO; greater independence in the making of rulings including external input; tangible signs of objectivity; and more dialogue between the applicant and the person deciding on the ruling.

Revenue bias was generally perceived to come into effect at the 'margin'. Where applications related to areas of uncertainty, interviewees felt that they were more likely to be decided in favor of the revenue, and particularly where substantial loss of revenue would result. The perception of bias was not found to be related to the type of adviser, the industry group, the outcome of applications, or the complexity of the issue. A statistically significant relationship (at the 95% confidence level) was found between the perception of bias and the number of applications made. Taking into account responses to other questions and comments, this relationship is interpreted as where the interviewee had a perception of bias, he or she was less likely to apply for a ruling unless certainty was essential.

More generally, interviewees (81% at Table 12) felt that the clarity of the ATO's decision(s) was acceptable, but only half (50% at Table 13) agreed with the decisions that they had received. There are many instances (for example, see Table 28 and Attachment 3) where interviewees questioned the ability of the ATO (its staff and its internal control measures) to ensure that the law is consistently and correctly applied. There was support for the concept of the ATO discussing the interpretation of both policy intent and the law with Treasury. In terms of timeliness in dealing with PBR applications, the experiences of interviewees were evenly divided (Table 10). However the majority (69% at Table 27) agreed that they were

satisfied with the overall standard of service provided by the ATO in dealing with applications for PBRs on large complex matters.

The final part of the report addresses a range of areas of interest specifically identified by the IGT. The strengths and weaknesses of the research are also discussed. We conclude that given the sampling and response rates that occurred, the results contained herein can be generalised, with a high level of confidence, to the total population of applicants to which the research relates.

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23 January 2006

## **1 Introduction**

In October 2005 the Inspector General of Taxation (IGT) engaged the Australian Tax Studies Program (Atax) of the University of New South Wales (UNSW) to assist in a review into the potential revenue bias in private binding rulings (PBRs) involving large complex matters. Specifically, Atax was to advise on the most efficient and effective means to survey a certain segment of taxpayers and their advisors on their perceptions on whether the Australian Taxation Office (ATO) has a pro-revenue bias in dealing with PBRs; to conduct the survey; and to report its findings to the IGT by the end of January 2006. That is, Atax's contribution was limited to research on the *perception* of bias, not its existence or incidence - this being part of the broader review being undertaken by the IGT in response to the Review of Aspects of Income Tax Self Assessment (ROSA). Atax researchers Ms Helen Hodgson and Mr Kalmen Datt conducted the research under the leadership of Associate Professor Margaret McKerchar.

The report is presented in five parts. Following on from the introduction, the second part of the report deals with the research design and conduct. The third part presents and analyses the results of the research. The final part presents a review of the key findings of the research given the following areas which were identified at the outset by the IGT as being of particular interest:

- the role of the ATO in relation to PBRs that involve uncertainty in the application of the law or underlying policy intent, including the ATO's interaction with Treasury;
- the potential adverse effects of not following a PBR;
- the perceived cogency of reasons provided for ATO decisions in relation to PBRs;
- the transparency of the PBR process and technical issue resolution;
- the adequacy of ATO assurance measures and controls that are aimed at minimising the potential for revenue bias;
- the timeliness in providing PBRs, in particular the effect that the ATO's Priority Ruling Process (PRP) has had on perceptions;
- the basis for any perceived revenue bias in the ATO's treatment of their particular PBR application; and
- the potential measures that will resolve perceptions of bias.

The final part also includes a review of the strengths and weaknesses of the design and conduct of the research; and comment on the extent to which the findings can be generalised to the relevant population as a whole.

## **2 Research design and conduct**

This part of the report presents an overview of the brief and the various considerations that influenced the design and conduct of the research.

### **2.1 The brief**

The brief was to conduct a survey of taxpayers and tax advisers that had made an application on behalf of a corporate entity, for a PBR on a large complex matter between 1 July 2003 and 30 June 2005. Initial indications from the IGT (based on ATO advice) were that there were some 600 taxpayers and 600 advisers that would satisfy these conditions. Given the tight timeframe within which the research was to be conducted and the anticipated time constraints of the potential interviewees, a telephone survey was recommended as the most appropriate means of conduct. Telephone surveys have been found to have a higher response rate than postal surveys<sup>1</sup> and a high response rate was desirable to maximise the reliability of the results.

Another distinct advantage of telephone surveys (particularly where open-ended questions are included) is that they facilitate the collection of both quantitative and qualitative data. Given the interests of the IGT were both about *what* was perceived (to which quantitative data is relevant) and *why* it was perceived (to which qualitative data is relevant) a telephone survey was recommended as the most appropriate design.

To minimise the potential for bias to be introduced by the interviewers, only the three principal researchers were to conduct the interviews. Together with the condition that all surveys were to be completed within a month, this meant that it would not be possible to survey all applicants and that random samples would need to be drawn. It was originally proposed to sample the two groups separately, drawing a sample of 100 from each group. With an expected response rate of 60 per cent, this would have given at least 60 respondents in each group which would have been sufficient to make statistical generalisations within reasonable confidence ranges (+/- 4 to 10 per cent).

However, it was subsequently found that the total population of PBR applicants that met the conditions of the study (after the removal of duplications) was approximately 350 in total. As a result, the decision was made to draw a random sample of 50 per cent, which is relatively high in terms of desirable confidence levels, from the total relevant population. That is, given the diminished size of the total relevant population, it was unlikely that valid statistical generalisations could be made on the two groups (i.e. taxpayer and tax adviser) independently, although comparative analysis could still be facilitated. The sample size of 50 per cent of the total population would result in each of the three researchers having to conduct up to 60 surveys within the month which was considered achievable.

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<sup>1</sup> Based on the literature, the response rate for a telephone survey could be expected to be in the range of 60-65% (see Fowler F, 1993, *Survey Research Methods*, 2nd edn, Sage, Newbury Park CA). In contrast, postal surveys conducted in Australia on tax issues have generated response rates in the range of 26-50% (see for example, McKerchar, M, 2003, *The Impact of Complexity Upon Tax Compliance: A Study of Australian Personal Taxpayers*, Australian Tax Research Foundation Research Study 39, ATRF, Sydney at p 166-167). A more recent electronic survey of Australian tax agents generated a response rate of only 1% see McKerchar, M, 2005, McKerchar, M., 2005, "The impact of income tax complexity upon practitioners in Australia", *Australian Tax Forum*, Vol. 20 No. 4, pp. 529-554.

## **2.2 The design**

The survey instrument was designed in four parts. The first part collected information on the basic characteristics of the respondents which were to verify their inclusion in the population and to provide a basis for comparative analysis to be undertaken. The second part collected information on the respondents' overall experience in dealing with the ATO in respect of PBRs. The third part collected information on the respondents' views of the ATO decision making processes. The fourth part collected information on the respondents' perception of bias and how (if needed) it could be addressed. The final section allowed for respondents to make any further comment. The questions themselves were a mixture of both open-ended and closed. Responses were subsequently coded to facilitate data analysis.

Staff of both Atax and the IGT were consulted in the development of the survey instrument. The survey instrument was then piloted with both taxpayers and tax advisers (six in total)<sup>2</sup> who could reasonably be expected to be representative of the relevant population. Feedback was specifically sought on the appropriateness of the questions to the brief and their interpretation was tested cognitively. As a result, the survey underwent refinements and enhancements over a two week period before being submitted to the relevant bodies for approval. The final survey instrument (Attachment 1) was approved by the Statistical Clearing House (01778-01) and by the UNSW Human Research Ethics Advisory Panel B (05 2 141).

The IGT made the random selection based on information provided by the ATO and provided the contact details for the sample population of 177. The sample was then divided randomly and equally between the three researchers. Prior to making telephone contact, an introductory letter (Attachment 2) on IGT letterhead was mailed to each person in the sample population. This was important in terms of establishing the credibility of the research and in achieving as high a response rate as possible.

## **2.3 The conduct of the survey**

The introductory letters were mailed on 11 November 2005 to the bulk of the sample population. A small number of those included in the sample were subject to higher security provisions and the provision of their contact details by the IGT was temporarily delayed as was the mailing of their introductory letters (which were sent in due course). Once all contact details were made available it became apparent that there were six remaining duplications in the sample population. That is, the corrected sample population was reduced to 171 which still approximated 50 percent of the total population (adjusted to 344).

Telephone interviews began on 18 November 2005 and all successful interviews were conducted before 8 December 2005. No further attempts were made to conduct interviews after 20 December 2005. A breakdown of response types is at Table 1.

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<sup>2</sup> None of the six were subsequently selected in the sample population. Undoubtedly the final version of the instrument was much improved as a result of the valuable input of others, which was much appreciated.

<b>Response types</b>	<b>Frequency</b>
Completed interviews	108
Declined to be interviewed	5
Contact person has left employment	21
Contact person on leave	5
Contact person unavailable (but contact details correct)	12
Contact person unable to be contacted (contact details incorrect or overseas)	20
<b>Total</b>	<b>171</b>

**Table 1: Telephone survey responses**

After excluding those who had left employment, were on leave or were unable to be contacted, there were 125 potential interviewees remaining in the frame. With 108 completed interviews, a **response rate of 86.4 per cent** was achieved. This response rate was higher than expected. Coupled with the random sample of 50 per cent of the total population, a high level of confidence can be placed in the representativeness of the views of those interviewed in respect of the total relevant population. Non response bias<sup>3</sup> may still exist, though its impact is unlikely to be significant given the sampling and response rates that occurred.

On average, a completed interview took three calls (1 minimum, 8 maximum) and 22 minutes to complete (14 minimum, 42 maximum). This excludes those interviews where the contact person advised (Question 1.1 of the survey refers) that he or she had *not* applied to the ATO for a PBR between 1 July 2003 and 30 June 2005 for a corporate entity taxpayer with an annual turnover exceeding \$100 million. Of the 108 interviews completed, 30 did not meet the conditions of Question 1.1, leaving 78 completed interviews to be the basis of the research. Some of those who did not meet the conditions of Question 1.1 failed the turnover test, but had applied for PBRs in respect of research and development expenditure. Some were very keen to still express their views on the subject and these are to be forwarded to the IGT by the researchers under separate cover. Their responses have not been included in any of the analysis in the body of this report.

On average, 6 calls were made to each of the 12 contact persons who were categorised as 'unavailable' in Table 1. Seven of the completed interviews had incorrect contact details but were able to be traced by the interviewers. In the case of 20 contact persons who were categorised as 'unable to be contacted' in Table 1, three calls were made to each of the contact persons where they had an Australian telephone number. There were 5 contact persons located overseas whom the interviewers did not call.<sup>4</sup>

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<sup>3</sup> Typically, in a number of the non responses contact was made (usually with the personal assistant of the contact person) but the person had other commitments that precluded an interview being scheduled (or rescheduled) within the timeframe for the research.

<sup>4</sup> The rationale here was that timing differences and potential language barriers would be expected to preclude the satisfactory completion of a telephone interview.

### 3 Findings

This part of the report presents both the descriptive and analytical findings of the research based on the conduct of the survey. The descriptive findings report the frequency of the various responses to each of the survey questions. The analytical findings include the testing of responses for significant relationships and the drawing of statistical and analytical generalisations.

All findings reported in this part are in respect of the 78 interviewees who confirmed that they had applied to the ATO for a PBR between 1 July 2003 and 30 June 2005 for a corporate entity taxpayer with an annual turnover exceeding \$100 million (i.e. a positive response to Question 1.1).

#### 3.1 Descriptive findings

Descriptive findings are presented for each question in the prescribed order. Further comments are made where relevant.

*Question 1.2: How many applications were made by you that satisfied the conditions of the study?*

<b>Number of PBR applications</b>	<b>Frequency</b>
One only	27
Between 1 and 5	37
Between 6 and 10	8
More than 10	6
Total	78

**Table 2: Number of PBR applications**

The accuracy of this information was not tested against data provided by the IGT. It was collected simply to facilitate the subsequent testing of whether or not the number of applications was related to the perceptions held by the interviewees.

*Question 1.3: Where more than one application was made, were they in relation to the same matter?*

<b>Multiple applications relating to the one matter</b>	<b>Frequency</b>
Yes	5
No	46
Total	51

**Table 3: Breadth of matters to which applications related**

The total of responses to this question is consistent with those that indicated in Question 1.2 that they had made more than one application that satisfied the conditions of the research.

*Question 1.4: In what capacity were you acting?*

<b>Capacity of contact person in respect of qualifying PBRs</b>	<b>Frequency</b>
Always acting as an employee (internal adviser)	21
Always acting as an external adviser	57
Total	78

**Table 4: Capacity of interviewee**

No interviewees indicated that they had acted in mixed capacities. The breakdown of internal advisers (27%) and external advisers (73%) interviewed is consistent with data provided by the IGT on the relevant total population. Again, this strengthens confidence in the representativeness of those interviewed. Responses to this question will facilitate the subsequent testing of whether or not perceptions held by interviewees were related to the capacity in which they acted.

*Question 1.5: In what industry did the corporate entity operate?*

<b>Industry division</b>	<b>Frequency</b>
Mining	4
Electricity, Gas and Water Supply	1
Wholesale Trade	1
Transport and Storage	3
Finance and Insurance	11
Cultural and Recreational Services	1
Total	21

**Table 5: Industry division**

Industry codes were only collected where the interviewee acted as an internal adviser (i.e. 21 interviewees based on responses to Question 1.4). It was presumed external advisers could have clients across industry groups making this a less relevant factor for subsequent testing. The codes used were based on the current Australian and New Zealand Standard Industrial Classification (ANZSIC) at the divisional level.<sup>5</sup>

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<sup>5</sup> Going to lower levels may have allowed individual taxpayers to be identified. Further, given the small numbers in many cases, subsequent testing may best be facilitated by reducing industry groupings to only two types: 'Finance and Insurance', and 'Other'.

Question 1.6: What was the most common area to which the application(s) related?

<b>Main areas to which applications related</b>	<b>Frequency</b>	<b>Percentage</b>
Capital gains tax (CGT) including rollover relief and event K6	14	18%
Debt, equity and capital restructuring including demergers and share buybacks	12	15%
Consolidations and thin capitalisation	10	13%
International issues including withholding tax, tax treaties, sources and rights	8	10%
Tax losses including loss integrity measures	5	6.5%
Dividend streaming, streaming of franking credits and corporate distributions	5	6.5%
Depreciation, uniform capital allowances including black hole expenditure	5	6%
Goods and services tax (GST)	3	4%
Deductions	2	2.5%
Taxpayer status including the assessability of income	2	2.5%
Interest deductibility including financing arrangements, capital raising and new products	2	2.5%
Remuneration arrangements and employee share plans	2	2.5%
Fringe benefits tax (FBT)	2	2.5%
Part IVA	2	2.5%
Research and development	2	2.5%
Share buybacks and portfolio transfers	1	1.5%
Debt forgiveness	1	1.5%
Totals	78	100%

**Table 6: Main areas to which applications related**

Question 1.6 was an open-ended question. Many respondents (approx 50%) identified up to three main areas to which their applications related. Table 6 is based on the main area as identified by the interviews based on frequency of applications. Some of these categories may well overlap to some extent (for example, capital raising, capital restructuring and share buybacks) and be further collapsed in subsequent testing. The accuracy of responses to this question was not verified against data provided by the IGT.

*Question 1.7: Where the application(s) considered, withdrawn or did the ATO refuse to rule?*

<b>Treatment of application(s)</b>	<b>Frequency</b>	<b>Percentage</b>
Always 'considered'	47	60%
Always 'withdrawn'	2	2.5%
Always 'refuse to rule'	2	2.5%
Mixed treatments (i.e. a combination of above)	27	35%
Total	78	100%

**Table 7: Treatment of PBR applications**

The accuracy of responses to this question was not verified against data provided by the IGT given that it was the interviewees' *perceptions* that were being studied rather than the accuracy of their responses.

*Question 1.8: Where the application was considered, was (were) the outcome(s) favorable or unfavorable?*

<b>Outcomes of considered application(s)</b>	<b>Frequency</b>	<b>Percentage</b>
Always favorable	48	61.5%
Always unfavorable	10	13%
Mixed outcomes (i.e. a combination of above)	14	18%
Awaiting decision or application ruled invalid	6	7.5%
Total	78	100%

**Table 8: Outcomes of PBR applications**

Again, the accuracy of responses to this question was not verified for the same reason as given at Question 1.7. Applications ruled invalid were regarded by the ATO as being in regard to a question of fact not law.

*Question 1.9: Where application(s) was (were) withdrawn, what was (were) the main reason(s)?*

<b>Reasons for withdrawal of application</b>	<b>Frequency</b>
Probable unfavorable outcome (usually based on discussions with ATO)	9
ATO appeared to be unwilling or unable to rule (sometimes accompanied by unreasonable delays or requests for information that could not reasonably be provided)	10
The question on which the application was based became obsolete (the transaction had changed or already been completed; or the relevant legislation had changed)	5
Total	24

**Table 9: Reasons for withdrawal of applications**

This was an open-ended question to which 24 of the 78 interviewees responded. That is, over 30% of the interviewees had had withdrawn at least one PBR application.

*Question 1.10: Overall, did you experience unreasonable delay on the part of the ATO in dealing with your application(s) for a PBR?*

<b>Unreasonable delay experienced on the part of the ATO</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	33	42%
No	33	42%
Neutral	10	13%
Unsure	2	3%
Total	78	100%

**Table 10: Unreasonable delay experienced**

No attempt was made to quantify what was meant by an ‘unreasonable delay’ or to verify the accuracy of the responses. What was relevant here was the opinion of the interviewee. This will subsequently be studied to determine whether or not it is related to perceptions of revenue bias. Notwithstanding, based on their responses to this question, opinions were clearly divided.

*Question 1.11: In your opinion, was (were) the application (s) in relation to a complex matter?*

<b>Complex matter</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	64	82%
No	5	6%
Neutral	9	12%
Total	78	100%

**Table 11: Complexity of issue**

Again, no attempt was made to quantify what was meant by ‘complex’ or to verify the accuracy of the responses. What was relevant here was the opinion of the interviewee. This will subsequently be studied to determine whether or not it is related to perceptions of revenue bias. Notwithstanding, based on their responses to this question, most interviewees (82%) regarded their application(s) to be in relation to a complex matter.

*Question 2.1: Overall, were the reasons provided by the ATO for its decision(s) made clear to you?*

<b>Clarity of decision(s) made by the ATO</b>	<b>Frequency</b>	<b>Percentage</b>
Clear	63	81%
Unclear	8	10%
Neutral	5	6.5%
Not applicable	2	2.5%
Total	78	100%

**Table 12: Clarity of ATO decision(s)**

The ‘not applicable’ responses were by interviewees who had only made application(s) for which a decision had not yet been made, and/or who had withdrawn their application(s) before a decision was made. This comment also applies to Table 13. Some interviewees added that the reasons were clear because they had at times been “cut and paste” from their own applications, or that they had provided the reasons to the ATO in the first instance.

*Question 2.2: Overall, did you agree with the reasons provided by the ATO?*

<b>Agree with ATO reasoning</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	39	50%
No	23	30%
Neutral	13	17%
Unsure	1	1%
Not applicable	2	2%
Total	78	100%

**Table 13: Agreement with ATO reasoning**

Based on Tables 12 and 13, although the reasons for the ATO decisions in respect of the PBR applications were generally clear to the interviewees (81%), they did not always agree with them (with 30% being in disagreement). The frequencies of ‘neutral’ and ‘unsure’ responses

is expected given that 14 of the interviewees had experienced mixed outcomes (Table 8 refers) where they had made more than one PBR application.

*Question 2.3: Overall, did you feel that the ATO kept you adequately advised regarding the progress of your application?*

<b>Kept advised by the ATO regarding progress</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	51	66%
No	15	19%
Neutral	12	15%
Total	78	100%

**Table 14: Advice regarding progress of application**

The majority of interviewees agreed that the ATO had kept them advised regarding the progress of application. Some qualified their responses in that while they agreed that the ATO had kept them informed, they felt that they (or their client) had to be proactive in this regard.

*Question 2.4: Overall, did you feel that the ATO fully considered the material you provided to support your application?*

<b>ATO fully considered supporting material</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	29	37%
No	49	63%
Total	78	100%

**Table 15: ATO consideration of supporting material**

The level of negative response here may be higher than expected and could be a contributing factor to any perception of bias.

*Question 2.5: In any case, did you discuss the technical aspects of the matter with the ATO before applying for a PBR?*

<b>Technical discussion with ATO before applying for PBR</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	48	62%
No	30	38%
Total	78	100%

**Table 16: Technical discussion with ATO beforehand**

The percentage of applicants who had prior technical discussions with the ATO was high. This will subsequently be tested against a range of factors (including outcomes, applicant type and number of applications) to determine whether or not statistically significant relationships exist.

*Question 2.6: Did you feel that the ATO ever requested further information from you that was immaterial?*

<b>Request by ATO for immaterial information</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	29	37%
No	49	63%
Total	78	100%

**Table 17: Request by ATO for immaterial information**

*Question 2.7: How would you describe the timeliness of the ATO's PBR process?*

<b>ATO's PBR process is timely</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	38	49%
No	23	29%
Neutral	17	22%
Total	78	100%

**Table 18: Timeliness of PBR process**

*Question 2.8: Are you aware of the ATO's Priority Ruling Process (PRP)?*

<b>Aware of Priority Ruling Process (PRP)</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	65	83%
No	13	17%
Total	78	100%

**Table 19: Awareness of Priority Ruling Process**

Awareness of the priority ruling process was relatively high. Only interviewees who were aware of the PRP were required to answer the next two questions.

*Question 2.9: Do you believe that the timeliness in providing PBRs has improved as a result of the PRP?*

<b>Improved timeliness as a result of PRP</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	15	23%
No	12	19%
Neutral	8	12%
Unsure	30	46%
Total	65	100%

**Table 20: Impact of PRP on timeliness**

Many interviewees were unsure of any improved timeliness as a result of PRP as they had not yet used it.

*Question 2.10: Would you use the PRP to resolve a large complex matter?*

<b>Use the PRP</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	52	80%
No	4	6%
Neutral	4	6%
Unsure	5	8%
Total	65	100%

**Table 21: Use of PRP**

The percentage of interviewees who would consider using the PRP (of those who were aware of its existence) was relatively high. Some interviewees who expressed dissatisfaction with PRP believed that its requirements (to go via the board of directors) were unwieldy in terms of timeliness.

*Question 2.11: If an unfavorable ruling was received, would the potential adverse effects (i.e. penalties) of not following a PBR deter the taxpayer from the planned course of action?*

<b>Unfavorable PBR as a deterrent</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	64	82%
No	9	11%
Neutral	2	3%
Unsure	3	4%
Total	78	100%

**Table 22: Deterrence effect of an unfavorable PBR**

The majority of interviewees agreed that the potential adverse effect of an unfavorable PBR would deter the taxpayer from the planned course of action. Where interviewees disagreed, they generally commented that the taxpayer had already entered into the transaction before the ruling application was decided.

*Question 2.12: Are you aware of changes to penalties for not following a PBR that resulted from the Review of Self Assessment (ROSA)?*

<b>Aware of changes to penalties</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	57	73%
No	17	22%
Neutral	1	1%
Unsure	3	4%
Total	78	100%

**Table 23: Awareness of changes to penalties**

Interviewees who were unaware of changes to penalties as a result of ROSA were not required to answer the next question.

*Question 2.13: Have these changes influenced your view of the potential adverse effects (i.e. penalties) of not following a PBR?*

<b>ROSA changes influenced view</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	12	20%
No	36	59%
Neutral	10	16%
Unsure	3	5%
Total	61	100%

**Table 24: Impact of ROSA changes**

*Question 2.14: Have you had a situation in which you considered applying for a PBR and decided against it?*

<b>Deciding not to apply for a PBR</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	64	82%
No	14	18%
Total	78	100%

**Table 25: Not applying for a PBR**

A high proportion of interviewees agreed that they had had situations where they had considered applying for a PBR but had not proceeded. In the following question they were asked the main reasons for this decision.

Question 2.15: What were the main reasons for not proceeding with a PBR application?

Main reasons for not applying for a PBR	Frequency	Percentage
Timeliness expected to be a problem (in that the issue was complex and it was felt that the ATO would delay its response)	19	30%
There was a risk of getting an unfavorable outcome (including a lack of confidence in the ATO making an unbiased decision)	24	37%
Felt that the ATO would refuse to rule	10	15%
Too costly	5	8%
Client changed instruction	3	5%
Unsure or decided a PBR was unnecessary	3	5%
Total	64	100%

**Table 26: Main reasons for not proceeding with a PBR application**

This was an open-ended question posed only to those 64 interviewees who had answered Question 2.14 in the affirmative. Their responses are summarised at Table 26. Specifically, comments included “Don’t expect to get a balanced view or the correct interpretation – only apply where certainty is needed” and “Unless the matter is clear, there is little assistance from the process. It is tough to get a ruling through where there is some doubt”. Many respondents expressed the view that a reasonably arguable position (RAP) was a preferable alternative to a PBR where absolute certainty was not required. In forming a RAP, interviewees indicated that they would at times obtain external advice, for example from senior counsel.

Question 2.16: Overall, were you satisfied with the service provided by the ATO in dealing with your PBR application(s)?

Satisfied overall	Frequency	Percentage
Yes	54	69%
No	19	24%
Neutral	5	7%
Total	78	100%

**Table 27: Overall satisfaction**

More than two thirds of the interviewees expressed overall satisfaction with the PBR process. Based on earlier questions in this section of the survey, areas where improvements in satisfaction could be made include the full consideration by the ATO of material provided, more proactive advising by the ATO on the progress of applications; and the use of more technical and objective reasoning used in deciding on PBR applications. That is, while the reasons for the decision were generally clear (81% at Table 12), the level of agreement with the reasoning was low (50% at Table 13) when the number of interviewees who had only ever had favorable outcomes (61.5% at Table 8) is considered. Interviewees questioned the technical capacity of ATO staff to correctly interpret the law, and then their objectivity in applying it. Experiences were mixed.

A further area where improvement in satisfaction may be achieved is in respect of timeliness. While 49% (at Table 18) agreed that the process was timely, 42% (at Table 10) felt that they had experienced unreasonable delay.

*Question 3.1: By and large do you believe that the ATO makes the correct decisions in respect of PBRs on large complex matters?*

<b>Correct decisions overall</b>	<b>Frequency</b>	<b>Percentage</b>
Strongly agree	5	6%
Agree	28	36%
Neutral	22	28%
Disagree	16	21%
Strongly disagree	4	5%
Unsure	3	4%
Total	78	100%

**Table 28: Correct decisions overall by the ATO**

The interviewees' responses to this question were mixed with a third remaining either neutral or unsure.

*Question 3.2: Do you think that other taxpayers or tax advisors believe that the ATO generally makes the correct decisions in respect of PBRs on large complex matters?*

<b>Others believe ATO generally makes correct decisions on PBRs</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	19	24%
No	40	51%
Neutral	16	21%
Unsure	3	4%
Total	78	100%

**Table 29: Others' perceptions of ATO's decisions**

Taxpayers and tax advisors appear to believe that their peers are not very confident in the ATO's ability to make the correct decisions in respect of PBRs on large complex matters.

*Question 3.3: In practice, in resolving ambiguities do you think the ATO relies more heavily on its understanding of policy intent or on its application of the law?*

<b>In resolving ambiguities, the ATO relies on</b>	<b>Frequency</b>	<b>Percentage</b>
Application of law	19	24%
Understanding of policy intent	36	46%
Neutral	17	22%
Unsure	6	8%
Total	78	100%

**Table 30: Resolution of ambiguities**

*Question 3.4: On which do believe the ATO should place greater reliance?*

<b>ATO should place greater reliance on</b>	<b>Frequency</b>	<b>Percentage</b>
Application of law	39	50%
Understanding of policy intent	22	28%
Neutral	17	22%
Total	78	100%

**Table 31: Greater reliance on law or policy intent**

Interviewees questioned the ATO’s interpretation of policy and felt that it did not always accord with their own and that at times it was ‘flexible’. Applicants may have greater confidence in the ATO’s technical processes and objectivity if PBR decisions on large complex matters relied more heavily on applying the law rather than interpreting policy intent.

*Question 3.5: Should the ATO discuss the interpretation of the law with Treasury?*

<b>Discuss interpretation of law with Treasury</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	63	81%
No	12	15%
Neutral	2	2.5%
Unsure	1	1.5%
Total	78	100%

**Table 32: Discuss law with Treasury**

There was strong support for the notion of technical discussion between ATO and Treasury in respect of interpreting the law. Interviewees commented on the complexity of the law and the need to have greater certainty in its application. There were reservations in that some interviewees thought this practice would delay PBR applications.

*Question 3.6: Should the ATO discuss the interpretation of policy intent with Treasury?*

<b>Discuss policy intent with Treasury</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	64	82%
No	11	14%
Neutral	1	1.5%
Unsure	2	2.5%
Total	78	100%

**Table 33: Discuss policy intent with Treasury**

There was strong support for the ATO to engage in discussion with Treasury on policy intent.

*Question 3.7: Do you believe that discussions between the ATO and Treasury delayed the resolution of your PBR application?*

<b>Discussion with Treasury caused delay</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	13	17%
No	55	71%
Neutral	1	1%
Unsure	9	12%
Total	78	100%

**Table 34: Delays caused by discussions with Treasury**

The majority of interviewees did not believe that discussions with Treasury had delayed their PBR application. However, many interviewees were unaware whether or not such discussions had taken place.

*Question 4.2: do you believe that the ATO has a revenue bias in resolving PBRs?*

Prior to asking this question it was confirmed that interviewees understood what was meant by revenue bias in the context of this survey. Some of these understandings included “the greater the risk to revenue the less the chance for a favorable ruling”; “where the matter is finely balanced, the ATO tends to rule in favor of the revenue”; “the ATO will go for an interpretation that protects the revenue”; “the ATO is more concerned about the loss of revenue than the correct interpretation of the law” and that “the ATO errs on the side of caution in favor of the revenue when in grey areas”.

<b>ATO has a revenue bias</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	56	72%
No	16	21%
Neutral	5	6%
Unsure	1	1%
Total	78	100%

**Table 35: Perception of revenue bias**

The majority of interviewees did believe that the ATO had a revenue bias in resolving PBRs on large complex matters.

*Question 4.3: Why do you believe this to be the case?*

<b>Reasons for perception of bias</b>	<b>Frequency</b>	<b>Percentage</b>
Personal experience	58	74%
Expectation	20	26%
Total	78	100%

**Table 36: Reasons for perception of bias**

Question 4.3 was an open-ended question. The main reason given for their perception of bias (or non bias) generally fell into one of two categories: personal experience and expectation. In terms of personal experience, interviewees' comments were mixed. The focus on the revenue implications of a PBR drew considerable negative comment from interviewees (based on personal experience) as evidence of the existence of bias. For example:

- *“they specifically ask for information to identify amount of tax involved or risk to revenue-help them understand size of transaction”*;
- *“part of discussions with ATO showed impact on revenue for our application”*; and
- *“where ATO does not like outcome will rule negatively. If unintended outcome and tax neutral, may convince ATO to rule otherwise will rule negatively because of outcome”*.

There was also comment on the manner and consistency in which the ATO interpreted the law. For example:

- *“in my experience, if the ATO can find an argument to deny, they will do so in finely balanced matters”*;
- *“anti avoidance provisions written wider than specific evil with fear of unknown in mind. Result is when ATO asked to rule, has subjective decisions to make”*;
- *“tax legislation written in vague general terms where Commissioner has a wide discretion”*;
- *“default position on three applications was anti avoidance provisions whilst one other was looked at it impartially. Expect impartial approach. No balance.”*;
- *“reasonable attention to law where adverse ruling, ATO probably correct”*;
- *“in some cases adopt restrictive or literal interpretation of the law rather than giving effect to policy”*;
- *“will use policy to overrule the law”*;
- *“in my experience in complex and grey areas, the ATO rules in favour of revenue”*;
- *“rather than support policy follow technical approach which supports revenue”*;
- *“ATO not prepared to think laterally”*;
- *“in my experience, if the ATO can find an argument to deny, they will do so in finely balanced matters”*;
- *time taken reflects could not bring themselves to say yes. The nature of the principles they sought to extract from the case were wrong”*; and
- *ATO tries hard to effect policy intent, appears to have a very balanced view”*.

With regard to expectation, interviewees commented on the ATO culture of adopting the ‘default position’ and having an obligation to protect the revenue; many feeling that it was understandable and perhaps inevitable given the conflict of interest (i.e. having to both interpret and apply the law). The culture was seen as an adversarial culture - ‘us’ and ‘them’. For example:

- *“ATO tries to find issues to rule against taxpayer”*;
- *“deal with some dishonest taxpayers and tar all with the same brush”*;
- *“difficult job trying to be objective. Not clear enough what their role is. Managing the Charter is about getting the right outcome. They are not able to deal with their mistakes or cases that have shades of grey or are on the margin”*;
- *“general ATO attitude is that if it’s grey they have an obligation to protect the revenue. This influences the outcome”*;
- *“it’s their role”*;
- *“there is a lack of leadership. Decision making is a collective (or team) process and taking the softest course (the negative) always wins out rather than taking a stand”*;

- “nature of the organisation - start from a position of assuming bias, may be unconscious”; and
- “ATO is a gatekeeper”.

*Question 4.4: Do you have any additional evidence to support your belief?*

Again, this was an open-ended question with approximately half of the interviewees having further comments to add. Many drew on their own experience and the anecdotal experiences of others. The responses generally reaffirmed the results from the previous question. For example:

- “ATO approach is taxpayer trying to get away with something-where only trying to clarify law”;
- “probably a cultural issue. ATO staff believe they are policemen of tax rather than umpires”;
- “seems where matter is unclear ATO officers default in favour of revenue so as not to be held accountable for a negative revenue outcome”;
- “ATO has pursued cases that it had no chance of winning and that were contra to policy”;
- “previous correspondence prejudicial”;
- “based on experiences during audit no reason to suppose PBR different”;
- “experience with smaller clients”;
- “case where ruling was eventually reversed by Pt IVA panel”;
- “case where favourable ruling given to detriment of revenue”; and
- “interpret policy different to announced intent”.

*Question 4.5: Do you think that other taxpayers and tax advisors believe that the ATO has a revenue bias in resolving PBRs?*

Others perceive ATO has a revenue bias	Frequency	Percentage
Yes	69	88%
No	1	1.5%
Neutral	2	2.5%
Unsure	6	8%
Total	78	100%

**Table 37: Perception of bias held by others**

The responses to Question 4.5 indicate that the interviewees believed that the perception of revenue bias was widely held.

*Question 4.6: Do you believe that any perception of revenue bias by the ATO needs to be addressed?*

Only respondents who answered in the affirmative to either Questions 4.2 or 4.5 were asked this Question (i.e. n= 73).

Perception of bias needs to be addressed	Frequency	Percentage
Yes	64	88%
No	8	11%
Neutral	1	1%
Total	73	100%

**Table 38: Need to address perception of revenue bias**

Although interviewees felt some level of bias was to be almost inevitable given the role of the ATO (Question 4.3), there was strong support for the need to address the perception of revenue bias, which interviewees considered to be quite widely held.

*Question 4.7: What measures do you think could be effective in reducing the perception of revenue bias on the part of the ATO?*

Only respondents who answered in the affirmative to either Questions 4.2 or 4.5 were asked this question, and some respondents provided multiple suggestions (i.e. n= 73).

<b>Suggested measures</b>	<b>Frequency</b>	<b>Percentage</b>
Culture change on the part of the ATO (including greater objectivity and understanding of commercial realities faced by business)	16	22%
Greater independence in the making of rulings (including an independent body; an independent panel such as used for Part IVA; and/or a review panel with external representatives)	14	19%
Tangible signs of greater objectivity by the ATO (including more transparency; more technically-based decisions; more marginal decisions in favor of the taxpayer; omission of revenue implications in the PBR application)	11	15%
More dialogue between ATO and stakeholders (including industry groups; educating taxpayers) to build higher levels of mutual trust	10	14%
Unsure of appropriate measures	7	10%
Greater clarity in tax policy	5	7%
Access to the decision maker	3	4%
Separation of the ATO's conflicting roles of interpreting and administering the law	3	4%
More avenues for taxpayers to request internal review (or review by Treasury) of PBR decisions	2	3%
Publication of PBRs	1	1%
Better choice of cases to be litigated by ATO	1	1%
<b>Total</b>	<b>73</b>	<b>100%</b>

**Table 39: Measures to reduce the perception of bias**

Many of the measures suggested by respondents support the notion of the ATO needing to demonstrate greater objectivity in the resolution of PBRs in respect of large complex matters.

*Question 4.8: Do you believe the ATO has adequate assurance measures and controls in place to minimise the potential for revenue bias?*

<b>Adequate controls in place</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	16	21%
No	36	46%
Neutral	7	9%
Unsure	19	24%
Total	78	100%

**Table 40: Adequacy of existing ATO controls**

The interviewees did not appear to be confident that the ATO has adequate assurance measures and controls in place to minimise the potential for bias. Some respondents indicated that they were not aware of any measures that are in place.

*Question 4.9: Are there additional measures and controls that are needed to minimise the potential for revenue bias on the part of the ATO?*

<b>Additional measures</b>	<b>Frequency</b>	<b>Percentage</b>
Unsure/unable to suggest additional measures	32	41%
Greater objectivity of PBR decisions (including external reviews - would need to be cost efficient - and the disassociation of PBR decisions from revenue KPIs )	9	12%
The use of internal ruling teams for more complex matters with a specialist appointed (including greater peer review; the use of a referee; and the use of a 'taxpayer advocate' to ensure the counter arguments are fully considered)	7	9%
A culture change to the mindset of revenue protection	7	9%
Changes to the internal decision making process including addressing the use of delay tactics	7	9%
Improved staff training to enhance technical expertise	4	5%
Wider policy discussion and debate (including with Treasury)	4	5%
Ability for ATO to escalate matter to an independent body	3	4%
Clearer communication and access to decision makers	2	2.5%
Applications not to disclose amount of revenue at issue	2	2.5%
Outcomes need to be made available to public	1	1%
Total	78	100%

**Table 41: Additional assurance measures and controls**

Interviewees could provide more than one response to this question. Table 41 is based on their primary response.

*Question 5.1: Are there any further comments you would like to make?*

Many of the interviewees had additional comments to make. They are reproduced at Attachment 3. It is noted that the interviewees reported mixed experiences. A small number were highly complementary of ATO staff particularly in helping applicants meet tight deadlines. However, there were many others who expressed great frustration in their dealings with the ATO on PBRs. Much of the frustration appeared to be related to two areas: firstly, the technical capacity of ATO staff to deal with complex matters; and secondly, the attitude of ATO staff to the applications and applicants. The importance of a good working relationship with the ATO was recognised. Many interviewees acknowledged that there had been improvement over time, but that there was still some way to go in terms of the ATO's technical capacity, timeliness and objectivity.

## **3.2 Statistical analysis**

This section of the report includes a brief explanation of the testing undertaken followed by the presentation and discussion of the hypotheses tested based.

### **3.2.1 Explanation of analytical techniques**

The basis of the quantitative analysis in this section is hypotheses testing: where it is sought to establish claims or conjecture on the basis of strong support from the survey data. Each claim to be established is called the alternate hypothesis or  $H_1$ . The opposite statement, one that nullifies the research hypothesis is called the null hypothesis or  $H_0$ . The decision to be made, on the basis of data analysis, is whether or not to reject the null hypothesis. The statistical tools considered appropriate to this research are the goodness of fit (chi-square) and the  $p$ -value measure of significance.

A goodness of fit test attempts to determine if a conspicuous discrepancy exists between the observed frequencies (presented in tabular form) from a random sample and those expected under a null hypothesis. The expected frequencies under the null hypothesis are calculated by specifying the probability of an event and multiplying this by the sample size. The discrepancy in each cell is measured by the squared difference between the observed and expected frequencies divided by the expected frequency. The sum of these discrepancies for all cells is given by the chi-square, or  $\chi^2$  statistic.

As a chi-square distribution is not symmetric about zero, the rejection region of the null hypothesis will lie in the upper-tail area. Where the computed  $\chi^2$  statistic is less than or equal to the critical value or cut off point, the null hypothesis ( $H_0$ ) is accepted. Where the computed  $\chi^2$  is greater than the critical value,  $H_0$  is rejected and the alternative hypothesis  $H_1$  accepted.

The number of degrees of freedom used (calculated as the product of (number of rows less 1) and (number of columns less 1)) will affect the chi-square probability distribution in that the greater the number of degrees of freedom, the greater will become the acceptance region of the null hypothesis.

It is important to recognise that the goodness of fit test is an approximation and that its validity is affected by sample size and distribution across cells (ideally the expected frequency of each needs to be at least 5). As a result, like categories of observations (such as unsure and neutral) have been combined in some of the testing in accordance with normal practices in this type of analysis.

The strength of acceptance is specified by nominating a fixed level of confidence, 0.05 or a 95% confidence level was used in all testing. The strength of rejection is determined by the  $p$ -value. A small  $p$ -value (approaching zero) indicates that the null hypothesis should be strongly rejected, or that the result is statistically significant.

### **3.2.2 Hypotheses testing**

In total, 13 hypotheses were tested based on the survey data. The hypotheses were generally directed at establishing whether or not statistically significant relationships existed between the interviewees' personal perception of bias (with neutral and unsure responses combined as one category) and a range of other factors.

### 3.2.2.1 Was perception of bias related to the number of applications made?

The personal perception of bias held by interviewees was tested against the number of applications made for PBRs using a chi-square test with six degrees of freedom (based on a 3 x 4 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 12.59$ . Since the computed value of  $\chi^2$  was 26.65 and the  $p$ -value was approaching zero (0.000168), the null hypothesis was strongly rejected. That is, at the 95% confidence level, a statistically significant relationship was evident between the interviewees' perception of bias and the number of applications that they had submitted. Interviewees who had made 5 or more applications reported lower levels of perceived revenue bias than did interviewees who made less than 5 applications. The direction of the relationship is not apparent from this type of testing. It could be that by making more applications that the perception of bias is reduced, or alternatively, it could be that the stronger the perception of revenue bias, the less likely one is to apply for a PBR. However, given the responses made by interviewees to the open-ended questions (such as 5.1 and 2.15) and to Question 2.14, it is concluded that the later explanation is the more likely to be correct. That is, interviewees did not apply for a PBR on large complex matters (unless necessary) *because* they perceived that the ATO had a revenue bias.

### 3.2.2.2 Was the perception of bias related to the interviewees' capacity?

The personal perception of bias held by interviewees was tested against the capacity in which they operated (internal or external adviser) using a chi-square test with two degrees of freedom (based on a 3 x 2 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 5.99$ . Since the computed value of  $\chi^2$  was 0.382 and the  $p$ -value was high at 0.82, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees' perception of bias and the capacity in which they made PBR applications.

### 3.2.2.3 Was the perception of bias related to industry type?

Industry type was collected only in the case of internal advisers. To improve the reliability of the chi-square test, industry types were broken into 'Finance and Insurance' and 'Non-Finance and Insurance', thus using a 3 x 2 table and 2 degrees of freedom. The acceptance region of the null hypothesis was  $\chi^2 \leq 5.99$ . Since the computed value of  $\chi^2$  was 1.984 and the  $p$ -value was 0.32, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the perception of bias of the internal advisers interviewed and whether or not they worked in the 'Finance and Insurance' industry.

### 3.2.2.4 Was the perception of bias related to the treatment of the PBR application(s)?

The personal perception of bias held by interviewees was tested against the treatment of application(s) using a chi-square test with six degrees of freedom (based on a 3 x 4 table) with treatments being either 'always considered'; 'always withdrawn'; 'always refuse to rule'; or 'mixed'. The acceptance region of the null hypothesis was  $\chi^2 \leq 12.59$ . Since the computed value of  $\chi^2$  was 10.425 and the  $p$ -value was high at 0.99, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees' perception of bias and the treatment of their PBR applications.

*3.2.2.5 Was the perception of bias related to the outcome of the PBR application(s)?*

The personal perception of bias held by interviewees was tested against the outcome of application(s) using a chi-square test with six degrees of freedom (based on a 3 x 4 table) with outcomes being either ‘always favorable’; ‘always unfavorable’; ‘mixed’; or ‘awaiting a decision or ruled invalid’. The acceptance region of the null hypothesis was  $\chi^2 \leq 12.59$ . Since the computed value of  $\chi^2$  was 1.36 and the *p*-value was high at 0.967, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees’ perception of bias and the outcomes of their PBR applications.

*3.2.2.6 Was the perception of bias related to having experienced unreasonable delay?*

The personal perception of bias held by interviewees was tested against their experience regarding the experience of unreasonable delay using a chi-square test with six degrees of freedom (based on a 3 x 4 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 12.59$ . Since the computed value of  $\chi^2$  was 7.87 and the *p*-value was 0.303, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees’ perception of bias and their experience regarding unreasonable delays on the part of the ATO in dealing with their PBR applications.

*3.2.2.7 Was the perception of revenue bias related to the matter being complex?*

The personal perception held by interviewees of revenue bias by the ATO was tested against their opinion on the complexity of the subject matter using a chi-square test with four degrees of freedom (based on a 3 x 3 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 9.487$ . Since the computed value of  $\chi^2$  was 0.23 and the *p*-value was high at 0.993, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees’ perception of bias and their opinion on the complexity of the subject matter.

*3.2.2.8 Was the overall level of satisfaction related to the outcome of the PBR applications(s)?*

The overall satisfaction (Question 2.16) of interviewees was tested against the outcomes of their PBR application(s)(Question 1.8) using a chi-square test with six degrees of freedom (based on a 3 x 4 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 12.59$ . Since the computed value of  $\chi^2$  was 10.425 and the *p*-value was 0.107, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees’ overall level of satisfaction and the outcome of their PBR applications.

*3.2.2.9 Were pre-application technical discussions with ATO related to the perception of bias?*

The conduct of a pre-application technical discussion with the ATO (Question 2.5) was tested against the interviewees’ personal perception of revenue bias (Question 4.2) using a chi-square test with two degrees of freedom (based on a 3 x 2 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 5.99$ . Since the computed value of  $\chi^2$  was 0.579 and the *p*-value was high at 0.784, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees’ perception of revenue bias and whether or not they had had a technical discussion with the ATO prior to lodging a PBR application.

*3.2.2.10 Was overall satisfaction related to perception of revenue bias?*

The overall satisfaction (Question 2.16) of interviewees was tested against their perception of revenue bias by the ATO (Question 4.2) using a chi-square test with four degrees of freedom (based on a 3 x 3 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 9.487$ . Since the computed value of  $\chi^2$  was 5.919 and the  $p$ -value was 0.205, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees' overall level of satisfaction and their perception of revenue bias by the ATO.

*3.2.2.11 Was personal perception of revenue bias related to the perceptions of others?*

The personal perceptions regarding revenue bias held by interviewees (Question 4.2) was tested against what they perceived other taxpayers and tax advisors believed (Question 4.5) using a chi-square test with two degrees of freedom (based on a 3 x 2 table). The acceptance region of the null hypothesis was  $\chi^2 \leq 5.99$ . Since the computed value of  $\chi^2$  was 5.577 and the  $p$ -value was 0.061, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees' personal perceptions of revenue bias and what they perceived others to believe.

*3.2.2.12 Was the personal perception of revenue bias related to the subject matter of PBR applications?*

The personal perceptions regarding revenue bias held by interviewees (Question 4.2) was tested against the most common subject matter of their PBR application(s) (Question 1.6) using a chi-square test with six degrees of freedom (based on a 3 x 4 table). Subject matters of applications were categorised as either 'corporate financing and related issues;; CGT; International issues' or 'Other'. The acceptance region of the null hypothesis was  $\chi^2 \leq 12.59$ . Since the computed value of  $\chi^2$  was 8.06 and the  $p$ -value was 0.233, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees' personal perceptions of revenue bias and the most common subject matter of their PBR applications.

*3.2.2.13 Was personal perception of bias related to whether or not the PBR application was regarded by the ATO as precedential?*

At the specific request of the IGT, the interviewees' personal perception of revenue bias (Question 4.2) was tested against whether or not there had been a PBR application that was regarded by the ATO as precedential (based on data provided by the ATO to the IGT). This was tested using a chi-square test with two degrees of freedom (based on a 3 x 2 table with precedential status being either 'yes' or 'no'). There were 16 interviewees who were positive in this respect, with the ruling requests of the remaining 62 interviewees being identified as non-precedential. The acceptance region of the null hypothesis was  $\chi^2 \leq 5.99$ . Since the computed value of  $\chi^2$  was 2.74 and the  $p$ -value was 0.25, the null hypothesis was not rejected. That is, at the 95% confidence level, a statistically significant relationship was not evident between the interviewees' personal perceptions of revenue bias and whether or not their application(s) were regarded by the ATO as precedential.

### **3.2.3 Discussion**

With one exception, there were no statistically significant relationships apparent between the perception of revenue bias on the part of the ATO held by the interviewees, and a range of factors with which a relationship could be expected to exist. These included the capacity in which interviewees operated; the outcome of their applications; the industry in which internal advisers operated; the main subject matter to which applications related; the level of overall satisfaction; their perception of what others believed regarding revenue bias; whether not the resolution of their applications had been unreasonably delayed; or whether or not their applications were in relation to a complex matter.

The one exception to this general finding was that a statistically significant relationship was found to exist between the number of applications made and the interviewee's perception of bias. It is felt that the nature of this relationship is such that the perception of revenue bias acts as a general deterrent to the lodgement of applications for PBRs on large complex matters in the case of corporate taxpayers with an annual turnover in excess of \$100 million. This conclusion is further supported by the general comments made by respondents, and by the finding that pre-technical discussions were not related to the perception of revenue bias. That is, it does not appear that increased contact with the ATO on these matters dispels the perception of revenue bias.

Further, the lack of statistically significant relationships is not unexpected given the high percentage of interviewees who themselves felt that revenue bias did exist and that the view was widely held.

It is noted that there are variations on what interviewees understood to be meant by 'revenue bias' based on their responses to Question 4.1 – that is, whether it occurs 'across the board' or at the 'edge'. The most common meaning interviewees gave was that the bias came into play at the 'edge'. That is, applications for PBRs that fell into grey or uncertain areas were more likely to be decided in favor of the revenue, and particularly where substantial loss of revenue would result. This interpretation is further supported by the responses to Question 5.1.

## **4 Conclusions**

In this part of the report specific comment is made, based on the survey results, on each of the areas of interest identified by the IGT in part 1 of this report. The report then concludes with consideration of the strengths and weaknesses of the research and the ability to draw general conclusions from its findings.

### **4.1 Areas of specific interest as identified by the IGT**

*The role of the ATO in relation to PBRs involving uncertainty in the application of the law or underlying policy intent, including the ATO's interaction with Treasury*

Almost half (46% at Table 30) of the interviewees felt that in resolving ambiguities, the ATO relied more heavily on its interpretation of policy intent than on applying the law. Half (50% at Table 31) of the interviewees felt that the ATO should place greater reliance on interpreting the law rather than policy intent. In both instances, 22% of interviewees were neutral in their opinion. There was strong support for the ATO to discuss both the interpretation of law (81% at Table 32) and policy intent (82% at Table 33) with Treasury. Some cautionary comments were made about the impact of such interaction on the timeliness of rulings.

*The potential adverse effects of not following a PBR*

The awareness of the potential adverse effects of not following a ruling was high (82% at Table 22) and the majority of interviewees (73% at Table 23) were aware of the changes to penalties as a result of ROSA. However, the ROSA changes had had limited effect as a deterrent with 59% of interviewees reporting that their opinion on the potential adverse effects of not following a PBR had not changed as a result (Table 24). It would appear that rather than having to address the potential adverse effects of not following a PBR, it was preferable to withdraw the request altogether (hence changes to the penalty regime were of no real consequence). Where interviewees reported that the potential adverse effects of an unfavorable PBR were not a deterrent, they typically qualified their response by stating that the transaction had already been undertaken – that is, the decision was driven by timing and commercial issues, rather than by penalty considerations.

*The perceived cogency of reasons provided for ATO decisions in relation to PBRs*

While interviewees generally agreed that the reasons given by the ATO for its decisions on PBR applications were clear (81% at Table 12), only 50% (at Table 13) agreed with the reasoning provided by the ATO. A statistically significant relationship was found between agreement with ATO reasoning and the outcome of the applications – that is, where a favorable outcome had resulted, interviewees generally agreed with the ATO reasoning. Conversely, interviewees generally disagreed with the ATO's reasoning where the outcome was unfavorable. Almost two thirds of interviewees (63% at Table 15) felt that the ATO had not fully considered the material that they had provided with their application and 37% (at Table 17) felt that they had had requests for immaterial information.

*The transparency of the PBR process and technical issue resolution*

Overall, 42% (Table 28) of interviewees felt that the ATO made the correct decisions in respect of PBRs on large complex matters. However, the majority (51% at Table 29) felt that others did not think that these decisions were correct. In terms of technical resolution the level of confidence expressed by interviewees could be described as marginal. Many interviewees commented (Questions 4.7, 4.9 and 5.1) that increased dialogue between applicants and ATO staff would be appreciated. In turn, this may result in increased transparency and greater confidence by interviewees in the objectivity and ability of ATO staff to apply the law. Another aspect of technical resolution that drew considerable comment in these same questions was the need to further develop the expertise of ATO staff and their understanding of commerce.

*The adequacy of ATO assurance measures and controls that are aimed at minimising the potential for revenue bias*

Based on their responses to Question 4.8, interviewees were generally not confident in the adequacy of the ATO's assurance measures and controls that are aimed at minimising the potential for bias. At Table 40 it can be seen that 46% of interviewees believed the assurance measures and controls to be inadequate with a further 33% being either 'neutral' or 'unsure' in their response to this question.

*The timeliness in providing PBRs, in particular the effect that the ATO's Priority Ruling Process (PRP) has had on perceptions*

Based on responses to Question 1.10 (Table 10), 42% of interviewees felt that their applications had experienced unreasonable delay. Responses to Question 1.10 were evenly balanced, as they were to Question 2.7 where interviewees were asked whether, overall, the timeliness of PBRs was acceptable (49% in agreement at Table 18).

Most (83% at Table 19) interviewees were aware of the PRP and of these, 23% (at Table 20) felt that it had improved the timeliness of rulings processing and 80% (at Table 21) indicated that they would use PRP. However, in Question 5.1 there were comments made about the resourcing impact of PRP on the timeliness of the resolution of other applications.

*The basis for any perceived revenue bias in the ATO's treatment of their particular PBR application*

The dominant factor on which interviewees based their perception of revenue bias was their personal experience (74% at Table 37), followed by an expectation (26%) of revenue bias by the ATO given its responsibility for revenue collection. These prior personal experiences included the unfavorable outcomes of applications made and the circumstances leading to the withdrawal of other applications. Further supporting evidence cited was the anecdotal experience of others. The interviewees widely (88% at Table 37) held the view that others perceived the ATO to have a revenue bias. There was also strong support (88% at Table 38 of those who perceived that bias existed) for the need to address the perception of revenue bias. This need is further evidenced in the responses to Question 5.1.

*The potential measures that will resolve perceptions of bias*

The potential measures suggested by the interviewees to resolve the perception of bias are at Table 39. They include:

- Culture change on the part of the ATO (including greater objectivity and understanding of commercial realities faced by business);
- Greater independence in the making of rulings (including an independent body; an independent panel such as used for Part IVA; and/or a review panel with external representatives);
- Tangible signs of greater objectivity by the ATO (including more transparency; more technically-based decisions; more marginal decisions in favor of the taxpayer; disclosure of revenue implications not being required in the PBR application)
- More dialogue between ATO and stakeholders (including industry groups; educating taxpayers) to build higher levels of mutual trust
- Greater clarity in tax policy
- Access to the decision maker
- Separation of the ATO's conflicting roles of interpreting and administering the law
- More avenues for taxpayers to request internal review (or review by Treasury) of PBR decisions
- Publication of PBRs
- Better choice of cases to be litigated by ATO

These measures are in order of frequency, not necessarily importance. Read in conjunction with the responses to Question 5.1, it appears that addressing the issue of improved communication between applicants and the ATO will be critical to the reduction in the perception of revenue bias. Interviewees need to be convinced that an acceptable level of objectivity exists on the part of the ATO – improved communication can assist to some extent, but visible changes to processes and outcomes are likely to be more influential.

## **4.2 Strengths and weaknesses**

As is the case in all research, there are strengths and weaknesses in design, conduct and analysis that add to or detract from the overall confidence in the findings and need to be acknowledged. In this case, the strengths in design include the telephone survey to facilitate the collection of both quantitative and qualitative data; and the provision of a random sample of the relevant database by the IGT. Weaknesses in design included the short time frame for data collection; and the availability of limited resources at short notice which meant only a sample of the relevant population could be surveyed; and that the interpretation of questions may vary between parties (piloting of the survey can address this to some extent).

The strengths in conduct were that the survey was conducted in a short time frame and that a very high response rate resulted. The willingness of the interviewees to give up their time and to discuss their concerns was far greater than expected. Weaknesses in conduct include non response bias (though this is likely to be minimal given a response rate of 86.4%), and potential bias caused by having three interviewers. This was considered using a Kruskal Wallis Rank Test. At the 95% level of confidence, no significant differences ( $\chi^2=2.874$  with 2 degrees of freedom,  $p=0.238$ ) were evident between the three groups thus if interviewer bias did exist, it was not significant. Unfortunately a number of those selected for interview had since left employment and could not be contacted. Similarly, it was unfortunate that resources precluded the follow up of those individuals whose contact details were overseas.

The strength in analysis is that both quantitative and qualitative data was available on which to base interpretations. The main weaknesses in analysis is that at times the chi-square tests are less reliable given the small number of observations in given cells. This was addressed as far as possible by combining responses as indicated to strengthen the reliability of the comparisons.

### **4.3 Generalising from the findings**

Short of surveying the total population (which is rarely cost effective), a simple random sample is the preferred means of population sampling. All applicants had an equal and high chance (50%) of being selected which effectively halves the sampling error for the given sample size i.e. to between  $\pm 2\%$  to  $\pm 5\%$ . Given the sampling rate and the response rate, the statistical findings of this research can be generalised with a high degree of confidence to the total population of those who applied between 1 July 2003 and 30 June 2005 for a PBR on a large complex matter for a corporate taxpayer with an annual turnover in excess of \$100 million. Similarly, given the patterns that emerged in the open-ended questions, it can be assumed with reasonable confidence that analytical generalisations made herein apply to the total relevant population.

## Attachment 1: Survey instrument

Respondent code	
Interviewer code	
Date of interview	
Contact details correct?	Yes / No
Number of calls	
Time taken to conduct interview	Mins

### REVIEW INTO POTENTIAL REVENUE BIAS IN PRIVATE BINDING RULINGS (PBRs)

#### INSTRUCTIONS TO INTERVIEWER

IN CONDUCTING THE INTERVIEW:

1. Confirm that the person you are speaking to is the person as listed by the IGT.
2. Explain who you are and identify yourself as a staff member of Atax, UNSW. (Introduce other Atax staff if present and explain their role.)
3. Explain that on behalf of the IGT, you are conducting a survey of taxpayers and their tax advisors into the perception of revenue bias in private binding rulings involving large complex matters.
4. Confirm that the interviewee has received an explanatory letter from the IGT which includes contact details for the IGT, Atax and HE UNSW should there be any concerns about the survey. (If not received, take details and resend).
5. The interview is expected to take up to 30 minutes – confirm that the present time is suitable, or arrange a time more convenient to the interviewee.
6. Explain that participation is voluntary, confidential and that the interviewee can choose to terminate the interview at any time.
7. Confirm that responses by individuals will not be identifiable in any reporting to the IGT.
8. Briefly explain the structure of the survey to the interviewee.

IN COMPLETING THE FORM:

9. Record responses in the 'response' column.
10. The respondent code number (each page) must match database code.
11. Include all attempts to contact the respondent in the number of calls (page 1).

**Part 1: Respondent's characteristics**

Question		Response	
1.1	Did you apply to the ATO for a PBR between 1 July 2003 and 30 June 2005 for a corporate entity taxpayer with an annual turnover of > \$100 million?	1. Yes 2. No (discontinue)	
1.2	How many applications were made by you that satisfied these conditions?	1. One only (go to 1.4) 2. > 1 but ≤ 5 3. > 5 but ≤ 10 4. > 10	
1.3	Were the applications in relation to the one matter?	1. Yes 2. No	
1.4	In what capacity were you acting?	1. Always as employee (incl. director) 2. Always as external advisor (go to 1.6) 3. Various	
1.5	In what industry did the corporate entity operate?		
1.6	Broadly speaking, what was (were) the main area(s) to which the application(s) related? (in order of decreasing frequency)	1. .... 2. .... 3. ....	
1.7	Was (were) the application(s) considered, withdrawn or did the ATO refuse to rule?	Result	Frequency
		Considered	
		Withdrawn Refuse to rule	
1.8	If considered, was (were) the decision(s) favorable or unfavorable?	Result	Frequency
		Favorable	
		Unfavorable	
1.9	If withdrawn, what was (were) the main reason(s)?  (in order of decreasing importance)	1. .... 2. .... 3. ....	
1.10	Overall, did you experience unreasonable delay on the part of the ATO in dealing with your application(s) for a PBR?	1. Yes 2. No 3. Neutral 4. Unsure	

1.11	In your opinion, was (were) the application(s) in relation to a complex matter?	<ol style="list-style-type: none"><li>1. Yes</li><li>2. No</li><li>3. Neutral</li><li>4. Unsure</li></ol>
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**Part 2: Overall experience in dealing with the ATO regarding PBRs**

Question		Response
2.1	Overall, were the reasons provided by the ATO for its decision(s) made clear to you?	1. Yes 2. No 3. Neutral 4. Unsure 5. Not applicable (go to 2.3)
2.2	Overall, did you agree with the reasons provided?	1. Yes 2. No 3. Neutral 4. Unsure
2.3	Overall, did you feel the ATO kept you adequately advised regarding the progress of your application(s)?	1. Yes 2. No 3. Neutral 4. Unsure
2.4	Overall, did you feel that the ATO fully considered the material you provided to support your application(s)?	1. Yes 2. No 3. Neutral 4. Unsure
2.5	In any case, did you discuss the technical aspects of the matter with the ATO before applying for a PBR?	1. Yes 2. No
2.6	Did you feel that the ATO ever requested further information from you that was immaterial to the application under consideration?	1. Yes 2. No
2.7	How would you describe the timeliness of the ATO's PBR process?	1. Acceptable 2. Unacceptable 3. Neutral 4. Unsure
2.8	Are you aware of the ATO's "Priority Ruling Process"?	1. Yes 2. No (go to 2.11)

2.9	Do you believe that the timeliness in providing PBRs has improved as a result of the ATO's "Priority Ruling Process"?	1. Yes 2. No 3. Neutral 4. Unsure
2.10	Would you use the Priority Ruling Process to resolve a large complex matter?	1. Yes 2. No 3. Neutral 4. Unsure

Question		Response
2.11	If an unfavorable ruling was received, would the potential adverse effects (i.e. penalties) of not following a PBR deter the taxpayer from the planned course of action?	1. Yes 2. No 3. Neutral 4. Unsure
2.12	Are you aware of the changes to penalties for not following a PBR that resulted from the Review of Self Assessment (ROSA)?	1. Yes 2. No (go to 2.14) 3. Neutral 4. Unsure
2.13	Have these changes influenced your view of the potential adverse effects (i.e. penalties) of not following a PBR?	1. Yes 2. No 3. Neutral 4. Unsure
2.14	Have you had a situation in which you considered applying for a PBR and decided against it?	1. Yes 2. No (go to 2.16)
2.15	What were the main reasons for this decision?	1. .... 2. ....
2.16	Overall, were you satisfied with the service provided by the ATO in dealing with your PBR application(s)?	1. Yes 2. No 3. Neutral 4. Unsure

**Part 3: Decision making by the ATO**

Question		Response
3.1	By and large do you believe that the ATO makes the correct decisions in respect of PBRs on large complex matters?	<ol style="list-style-type: none"><li>1. Strongly agree</li><li>2. Agree</li><li>3. Neutral</li><li>4. Disagree</li><li>5. Strongly disagree</li><li>6. Unsure</li></ol>
3.2	Do you think that other taxpayers or tax advisors believe that the ATO generally makes the correct decisions in respect of PBRs on large complex matters?	<ol style="list-style-type: none"><li>1. Yes</li><li>2. No</li><li>3. Neutral</li><li>4. Unsure</li></ol>
3.3	In practice, in resolving ambiguities do you think the ATO relies more heavily on its understanding of policy intent or on the application of the law?	<ol style="list-style-type: none"><li>1. Application of law</li><li>2. Understanding of policy intent</li><li>3. Neutral</li><li>4. Unsure</li></ol>
3.4	On which do you believe the ATO should place greater reliance?	<ol style="list-style-type: none"><li>1. Application of law</li><li>2. Understanding of policy intent</li><li>3. Neutral</li><li>4. Unsure</li></ol>
3.5	Should the ATO discuss interpretation of the law with Treasury?	<ol style="list-style-type: none"><li>1. Yes</li><li>2. No</li><li>3. Neutral</li><li>4. Unsure</li></ol>
3.6	Should the ATO discuss the underlying policy intent with Treasury?	<ol style="list-style-type: none"><li>1. Yes</li><li>2. No</li><li>3. Neutral</li><li>4. Unsure</li></ol>
3.7	Do you believe that discussions between the ATO and Treasury delayed the resolution of your PBR application?	<ol style="list-style-type: none"><li>1. Yes</li><li>2. No</li><li>3. Neutral</li><li>4. Unsure</li></ol>

**Part 4: Opinions on perception of revenue bias by the ATO**

Question		Response
4.1	In relation to PBRs, what do you understand to be meant by the term “revenue bias”?	..... ..... .....
4.2	Do you believe that the ATO has a revenue bias in resolving PBRs?	1. Yes 2. No 3. Neutral 4. Unsure
4.3	Why do you believe this to be the case?	1. .... 2. .... 3. ....
4.4	Do you have any (additional) evidence to support your belief?	1. .... 2. .... 3. ....
4.5	Do you think that other taxpayers and tax advisors believe that the ATO has a revenue bias in resolving PBRs?	1. Yes 2. No 3. Neutral 4. Unsure
4.6	(ONLY if answered “yes” to EITHER 4.2 OR 4.5) Do you believe that any perception of revenue bias by the ATO <i>needs</i> be addressed?	1. Yes 2. No 3. Neutral 4. Unsure
4.7	(ONLY if answered “yes” to EITHER 4.2 OR 4.5) What measures do you think could be effective in reducing the perception of revenue bias on the part of the ATO?	1. .... 2. .... 3. ....
4.8	Do you believe the ATO has adequate assurance measures and controls in place to minimise the potential for revenue bias?	1. Yes 2. No 3. Neutral 4. Unsure
4.9	Are there additional measures and controls that are needed to minimise the potential for revenue bias on the part of the ATO?	1. .... 2. .... 3. ....



## **Attachment 2: Introductory letter**



Telephone: (02) 8239 2111  
Facsimile: (02) 8239 2100

**Australian Government**  
**Inspector-General of Taxation**

Level 19, 50 Bridge Street  
Sydney NSW 2000  
GPO Box 551  
Sydney NSW 2001

**File: 2005/0055**  
[Date]

[representative of PBR applicant]  
[mailing address]

Dear [identified individual]

### **Research into the perception of revenue bias in private binding rulings**

The Minister for Revenue and Assistant Treasurer has asked me to review and report on whether there is a pro-revenue bias in Private Binding Rulings (PBR) issued by the Commissioner of Taxation. Based on consultations with private sector stakeholders, I have decided to broaden the scope of the review to include PBR applications which taxpayers withdrew and PBR applications on which the Tax Office refused to rule. This will enable me to review the potential for pro-revenue bias in the Tax Office's dealings with PBRs and to review the basis for perceptions of revenue bias in the PBR system.

To assist me to review any perception of revenue bias I have engaged a team of researchers at the Australian Tax Studies Program (Atax) at the University of New South Wales to report on the perceptions of taxpayers and tax advisors in respect of the processing of private binding rulings in large complex matters. The research is being conducted by Associate Professor Margaret McKerchar, Ms Helen Hodgson and Mr Kalmen Datt.

The research will be conducted across a random selection of taxpayers and tax advisors from the large business sector. You have been selected as a potential participant and you can expect to be contacted shortly by telephone by one of the researchers. I am hoping that you agree to participate in this research as the success of any review in improving the tax administration system depends directly upon the open, frank and representative views of affected taxpayers.

I understand that some involved in the large corporate sector would prefer to maintain confidentiality of their views from the Tax Office. With a view to hopefully understanding, and thus helping to overcome, the apparent difficulties which are

concerning some I want to give you my personal assurance that I will not, nor will any of my staff, disclose to the Commissioner or his officers any information which may be conveyed to me in the course of this research which may be specific to, or tend to identify, any company or tax official involved.

This confidentiality involves:

- As regards to information provided to the researchers, as part of the researcher's consultancy contract with me to undertake this research, the researchers are bound by the secrecy provisions of section 37 of the *Inspector-General of Taxation Act 2003* in the same way as the staff of my office.
- As regards to information provided to myself or my staff, the very purpose of this research is to receive information independently of and confidentially from the Tax Office.

Findings will be presented only in aggregate form and no individual responses will be identified or identifiable.

Participation is entirely voluntary. If you do participate, you will be asked a series of questions the duration of which should not take longer than 30 minutes. You can withdraw at any time and you may also decline to answer any one or more of the questions. However, you are strongly encouraged to take part. Your open and frank views are important to the findings of this research and the quality of recommendations directed towards beneficially changing the tax administration system.

Should you have any concerns about this research you can contact me direct. Please also note that the Statistical Clearing House has approved the survey (approval number 01778-01).

Yours sincerely



David Vos AM  
Inspector-General of Taxation

### Attachment 3: Transcript of responses to Question 5.1

Note: Responses herein are numbered for the purposes of discussion and are not presented in any particular order. The numbers do not refer to any codes used to identify the interviewees by the researchers.

1. The survey is a positive process and to be encouraged.
2. In my experience I do not feel staff in charge of rulings are adequately trained resulting in them referring to Centres of Excellence which cause long delays. Cases should be allocated to personnel that have experience in area. Officers require training and need allocation of matters to knowledgeable staff.
3. Hope priority system will be good-concern that it does not degenerate into extended periods. Few technical decision makers in rulings group-they try but are overwhelmed. Priority ruling does not resolve the need for more resources of senior staff. Seems always same people making the technical call. Bad experiences 5-10 years ago scarred regime. Staff require constant training - they have limited expertise in various fields.
4. Made PBRs less flexible and more costly and rigid. Tax office reluctant to put anything in PBR that is against legislation even though they accept it should not work on facts given.
5. Survey is positive step. ATO staff need training in objective decision making. Writing of rulings done at a relatively low level in ATO. Require external advisors in training programs. Bias experienced more in audit. Bias is not limited to PBRs. Collection of debt may also show signs of bias. Perception of bias can be removed by dealing objectively with issues.
6. Examples in public rulings should identify nuances and not just give clear examples.
7. For the most part the process is of a high quality. Decentralisation is a problem - different issues being reviewed by different officials causes delay and loss of perspective of whole matter. Bias occurs in minority of cases.
8. Trend in right direction.
9. Bias determined by individual corporate experience. Tend to hear the negative rather than positive.

10. Believe ruling process is good.
11. ATO is making efforts to deal with PBRs in a timely fashion. Greater transparency is needed for reasoning ATO adopts and openness of dialogue between ATO and Treasury.
12. Generally dealings are amicable. ATO has lack of understanding of fine principles of law. Lack of knowledge of large issues other than tax.
13. Progress being made. Majority of ATO officers doing right thing. About 25% of officers are letting everyone down.
14. This is an opportunity to try and realign relationship between ATO and taxpayers- to reduce compliance costs and to add certainty to process. Above adds certainty to overall tax system. With complex rulings ATO is structured into Centres of Excellence - unable to resolve matters easily.
15. Have refused to rule on prior applications -use delaying tactics. ATO perception was not to accept commercial reasons-believed it was tax based - could not give any explanation for this approach.
16. Rulings administered to facilitate policy making on the run. Current senior tax counsel good.
17. About to lose a lot of good people and newcomers not experienced. Individuals in ATO rule on basis of personal bias - no access to seniors to result in review.
18. Certain draft rulings or interpretative documents by ATO have a revenue bias.
19. Did not appoint specialists early enough in process.
20. ATO trying to bring resources to bear on rulings. Too much specialisation - Centres of Excellence deal with all issues. Centres have authority but no responsibility - there is a disconnect. In creating specialisation ATO has disempowered business lines. Some people as part of ruling process refuse to speak to taxpayers or their advisors - no chance for a dialogue. Dialogue essential. ATO bogged down in process rather than resolution of matter. Petroulias affair exacerbated issue.
21. ATO current proceedings bogged down in process-should be quick and easy and now long and involved. This is needed to prevent abuses in past. Rulings take too long. Bias exacerbated by slowness in process. Perception of bias merely a symptom of undue length of process.
22. Act more expeditiously.

<p>23. Approach by ATO is mostly reasonable and getting better. There appear to be some resourcing issues, but ATO were upfront about timeframe. Think there may be more evidence of bias in product based rulings or class rulings than in PBRs.</p>
<p>24. ATO tends to start from a negative position. Staff appeared inexperienced and checklist focused, rather than giving the issue the technical analysis that was required.</p>
<p>25. Difficult to get to the right contact person in relation to specific issues, though do have good contacts in general. The ATO staff are good. Process works well, but could be quicker. Takes 6-8 weeks to get back to client, this is too long.</p>
<p>26. Bias created by showing details including name of applicant and revenue involved.</p>
<p>27. Concerned that ATO skill levels are generally not high. They build up one side of the argument, concentrating on arguments against the taxpayer and flippantly dismiss counter arguments. They become entrenched in their argument and can't break through. They disregard precedents (e.g. relying on an AAT finding and ignoring a High Court decision) and at times the PBR is in conflict with public rulings. The underlying thought processes need to be checked by an independent party and at a reasonable cost - rather than going to court. Objections and appeals are a joke - not an independent hearing. There is a bias towards the big end of town - the higher up the taxpayer the more likely they are to be heard by the ATO. The small end of town has no forum to get an 'unofficial' view of their issue - they have to commit it to paper.</p>
<p>28. Overall, a very positive experience with the ATO. The staff are professional and service orientated and have really improved their game. They have worked together with us when we've had very tight timeframes. But some decisions are too hard. The ATO needs to be more proactive in taking unintended consequences back to Treasury.</p>
<p>29. The law is complex and often not workable, but it is put into place anyway. There needs to be more effort made into creating certainty at the outset, not by a series of public rulings afterwards. They should take the time to get it right and give greater attention to the practical implications. More use could be made of industry bodies. Information needs to be circulated to the public more quickly. The problems get bigger as time goes on. They could shortlist some key areas that need immediate attention such as K6 and Div 149.</p>

<p>30. Experience has been very different for different applications. In one case (where there was no revenue differential) we were offered real assistance (such as which cases to rely on). In the other cases where there was revenue involved, there was immediate disbelief on the part of the ATO. Their approach was inconsistent.</p>
<p>31. PBR system is at risk when ruling on existing law. The ATO has a fairly rigid approach which they use to their own advantage. For example, not wanting to rule on existing law when they know it is about to change. This is churlish. The client needs to build a relationship with the ATO, understand their approach to tax risk profiling and corporate governance. Great variations in dealing with the TCN - some have a very strong revenue bias and others are excellent.</p>
<p>32. The writers of rulings have a vested interest to protect the revenue; therefore there is a conflict of interest. There needs to be an area of technical excellence. Have mixed feelings about the TCN, one or two are very good and are prepared to work within the ATO to convince their colleagues to give you an objective hearing. Having a case officer is helpful in other respects, but they are not able to help on complex technical matters.</p>
<p>33. Assisting taxpayers doesn't appear to be part of the brief. Skills need to be improved. They need more appropriate training to manage difficult issues. It is a tough culture and they have to wear bad decisions. 'Retail products' appears to be the area where the revenue bias lies. The role of the OPC is unclear.</p>
<p>34. Corporates need a level of confidence. In terms of governance, they try to do the right thing, but need more assistance. Sometimes you just need clarity and signoff, but the ATO opt out by refusing to rule on a question of fact.</p>
<p>35. ATO encourages taxpayers to apply for PBRs for resolving grey areas, but they are costly (external advice needed) and commercially not always possible.</p>
<p>36. The process is too long. This deters investment by sovereign entities. ATO efficient in some areas but not in others. There needs to be better communication by the ATO to taxpayers/advisors.</p>
<p>37. On large and complex matters, the ATO takes a position without any legal base. There is no justification other than to protect the revenue.</p>
<p>38. There is the perception - often unwarranted - that the ATO is very quick to take a revenue stance. We are asking for a more balanced approach in areas of greyness.</p>

<p>39. ATO staff have a poor understanding of the business environment and this is frustrating. Some questions asked are irrelevant. Taxpayers expect a higher level of professionalism. Face to face contact may be more helpful than phone or letters. There are cost benefit issues to consider in applying for a ruling.</p>
<p>40. Current system is not about certainty, which is a shame. There are risks in requesting a ruling. Taxpayers see cynicism and skepticism on the part of the ATO. They'd rather back themselves than request a ruling. Only ask for a ruling where there is a lot of money at stake and the taxpayer has options and will only proceed with certainty. ATO is too pedantic about the information it requests. Taxpayers are viewed with suspicion. The ATO tends not to be very practical, but very technical and focused on revenue collection.</p>
<p>41. Different levels of competencies within the ATO. Senior people won't step in and direct staff unless there is a crisis. It is a bureaucracy and it is easier to take the safest course. Unreasonable delays in getting an outcome are ridiculous, unbelievable and unprofessional. For the foreign client, it is a real deterrent to investment. Our system of government is a danger to the rule of law. It attacks certainty. Dealing with unintended consequences is a real problem.</p>
<p>42. Agent has to be proactive in getting advice from ATO. On finely balanced matters the concern is that the ATO will be biased so will take a RAP. Where absolute certainty is required on big dollar matters will get QC advice. ATO staff have a lack of commercial experience. There needs to be more objectivity on important matters.</p>
<p>43. Timeliness is a real issue. Requests are not finalised in 28 days, never less than 6 months and the measurement is manipulated for internal stats. There is a fundamental conflict of interest. There is information overload. The taxpayer requested a ruling on specific questions and issues, but the ATO came back with more questions on unrelated issues. It was too broad and over the top, and trying to cover all cases. The focus needed to be on the issue itself and not all its permutations.</p>
<p>44. ATO has difficulty in interpreting policy. Governments need to keep it simple. The priority ruling process was a very positive experience in terms of the level of the people working on them and its co-ordination. But you shouldn't have to go to the priority level to get this level of service. There needs to be an independent board.</p>
<p>45. ATO needs to understand the concept of business and where they're coming from. The key client system works well and can help avoid applying for rulings. There needs to be more of them. Our ruling request was rushed by the ATO and it took the easy way out.</p>

<p>46. Outcome of ruling request was surprising, we knew others had had favorable outcomes. The advice from the ATO was to alter the question posed and reodge the application. This was disappointing and not constructive. There were also other implications including the cost of external advisors and the delay. We had already gone ahead with the transaction and are left with the lingering doubt.</p>
<p>47. It may be helpful if advisors could be included in the process of discussions between ATO and Treasury or if draft requests could be lodged. Dealing directly with the Centre of Excellence would also be helpful. Foreign investors are mesmerised by the process, the length of time, the evidence of bias, the delay for the sake of it, and the unfairness. It is a real deterrent. You expect some bias, but the extent of it and the other practices such as not ruling, not ruling in time, the inertia, are unacceptable to the extent that you just don't go for a ruling. Where there is a sizeable group involved, you are compelled to go for a class ruling, but the bias doesn't appear to be as great in these cases.</p>
<p>48. The practice is don't apply unless you are sure of the outcome. There are different schools of thought within the ATO on Part IVA and this makes it difficult to be consistent and to provide certainty for taxpayers.</p>
<p>49. On debt equity issues, reluctant to apply for a PBR especially if cross hybrid as the ATO refuse to rule or else delay. The Priority Ruling Process is too restrictive in terms of having to already consider the matter at board level - this takes time. Have used it for more bureaucratic issues.</p>
<p>50. Need to be proactive to get advice from ATO on progress of application. Don't apply for a ruling unless there is a third party and certainty is needed. There is always the possibility that the ATO will have a different view. Approach is to get it right, then go to the ATO to just get it finalised. The ATO is not impartial, it takes an advocacy position in its interpretation of the law. Where the law needs to be changed it needs to be done by the proper process, rather than by flexible interpretation. It is difficult to get to the person who makes the decision to engage in discussion and debate. Their own internal checks and balances stop this. A more direct and accessible relationship would be helpful.</p>
<p>51. Have noticed improvement over the last couple of years, but there does still need to be more collaborative relationships. The ATO and taxpayer don't meet in the middle, the ATO needs to be more willing to discuss and debate. Their technical expertise needs to be improved. The TCN is good, but below this there is a gap.</p>
<p>52. Client had to chase the ATO to get advice on progress. It's expected and acceptable for there to be bias at the edges, but the ATO needs to be fair.</p>

53. Lack of training in the ATO and law is too complex.
54. Some good experiences & ATO commercial understanding improving; process is unwieldy & time consuming for both parties; concern regarding timeliness; some individuals in the ATO make it difficult.
55. The profession is the captive of the legislation and the ATO; there is an 'us and them' mentality; applications only lodged where favorable outcome expected - 90% applications are not lodged for this reason.
56. Helpful that enquiry underway; process needs to be fixed; need certainty for commercial reasons; recently PBRs from 10 years ago were overturned - negative experience.
57. Two approaches - be upfront and seek rulings or play hide and seek - tax risk management decision - can put off other party. Frustrating where settlement based on information at time later reviewed. ATO lacks capacity to work in real time; lacks authority, expertise, capacity; delay can result in commercial consequences. Have developed relationships & processes, will proceed on RAP if unfavorable ruling expected.
58. More open discussions with ATO; inexperienced front line officers dealing with enquiries; 28 days unrealistic; ATO only gave taxpayer 21 days.
59. PBRs overused by practitioners using ATO as research tool and stretching resources as a result.
60. Higher the level in the ATO the more policy bias exists; concern about middle management gap in ATO - brain drain leading to lack of commercial and technical knowledge.
61. Has had bad experience with an individual in ATO; levels of competence and commercial understanding vary; suspicious when they don't understand transaction.
62. Fear of decision making by individuals in ATO; Client sees timeliness issue as commercial impediment; advisors also biased where ambiguous; sometimes ATO clearly don't understand transaction - ask for details; PRP diverts resources from other rulings.
63. Priority rulings process should also apply to class rulings as they are significant market transactions & rely on tight commercial timelines.

<p>64. 28 day deadline not realistic leads to request for information; relationship with Treasury &amp; profession needs to improve; inherent tension between profession &amp; ATO; ATO has improved - trying to meet commercial deadlines.</p>
<p>65. Most advisors have anti-revenue bias - is a balancing act; concern arises if don't engage in dialogue or explanations.</p>
<p>66. Specialist cells very helpful - should be more accessible prior to and during process.</p>
<p>67. Tends to be a troubleshooter in the firm - goes to the top in the ATO - handful of senior technical people who will cut through the issues. Three key issues - timeliness, seek irrelevant information, junior staff won't risk a decision. International clients can't believe the process.</p>
<p>68. ATO didn't understand the question asked. Applied precedent although case distinguishable on the facts. Didn't engage with applicant.</p>