



Australian Government
Inspector-General of Taxation

**PROPOSED WORK PROGRAM
FOR THE 2005/06 YEAR**

On 5 August 2005, the Inspector-General consulted representatives from selected industry, business, accounting, legal practitioner and tax organisations about the prioritisation of his work program for the 2005/06 year. Key issues of concern that have been raised with the Inspector-General over the past year were discussed with participants.

On the basis of strong feedback, the Inspector-General has selected the following topics for inclusion on his “short list” of issues that he aims to review during 2005/06:

- § the Tax Office’s ability to identify and deal with major, complex issues within reasonable timeframes
- § revenue bias in private binding rulings
- § the implementation of the small business debt initiative
- § the Tax Office’s response to large numbers of late lodged returns through tax agents
- § the remission of late lodgement penalties and /or interest to late PAYG summary statements, nil BASs and nil tax returns, and unvaried PAYG instalment liabilities
- § the extent, if at all, of the inappropriate use of general anti-avoidance provisions and penalty remission to settle audit adjustments.

Prior to announcing terms of reference for any review, detailed scoping work is carried out to refine the focus of reviews. Concerns raised in relation to the above topics will be considered, as appropriate, in developing the specific terms of reference for each review.

Other issues were discussed during the consultation. These issues will be escalated where there is a demonstrated need to review those issues as a matter of overriding priority. The Inspector-General will continue to review work program priorities on a month to month basis.

The consultative process in determining the forward work program promotes the spirit in which the office of the Inspector-General continues to operate.

FOCUS OF POTENTIAL REVIEWS

The Tax Office's ability to identify and deal with major, complex issues within reasonable timeframes

The Tax Office has introduced various measures to redress the deficiencies in its approaches to managing complex issues. However, concern remains that the Tax Office still may be unable to move quickly and provide certainty to taxpayers when major, complex issues arise. This review would case study the Tax Office's handling of three or more significant issues which appear to have taken too long to come to grips with and satisfactorily resolve:

- Research and Development Syndicates
- Living Away From Home Allowances (LAFHAs)
- Service Trusts

The Inspector-General would report on each of these case studies, consider the adequacy of the Tax Office's resolution strategy, and draw together any consistent themes to identify any continuing systemic deficiencies.

Revenue bias in Private Binding Rulings

Treasury's Review of Income Tax Self Assessment (ROSA) recommended that the Government ask the IGT to evaluate whether the pattern of income tax private binding rulings (PBRs) indicated a pro-revenue bias. Submissions to Treasury's review expressed concern that the Tax Office will take a view of the law that imposes the most tax in those PBRs involving large complex matters and where the correct view is unclear. The Tax Office states that of the 7631 PBRs issued in 2002/03, 67 percent were wholly favourable. However, only 177 PBR applications were from large businesses, only 3 percent of all PBRs were of a complex nature and only 2 percent required an Tax Office precedential view to be established.

This review would examine whether there is evidence of a pro-revenue bias in large business income tax PBRs that involved complexity and where a precedential Tax Office view was required to be established. Due to the significant recent changes to the Tax Office's rulings system this review would be limited to the previous 2 years.

The implementation of the Small Business Debt Initiative (SBDI)

The IGT's review of the Tax Office's small business debt collection practices recorded the commencement and initial results of the SBDI which targeted some 500,000 small businesses and individuals. The Tax Office's intention was to take immediate and "firm" recovery action where SBDI offers were not accepted. Reportedly the results of the initiative so far mean that the Tax Office will be taking firm recovery action in respect of a large number of entities. The IGT noted that the effectiveness of the Tax Office's program "...will not be as a result of the severity of the threatened action, but as a result of the certainty of the action being taken."

The ANAO has announced a potential review into the Tax Office's overall management of collectable debt. however, the IGT's follow-up review would assess the outcomes and implications

of the SBDI specifically, examining the effectiveness of the Tax Office's strategies for "firm action" and evaluating whether those strategies are consistent with the recommendations the IGT made in the small business debt review—particularly whether the Tax Office distinguishes different compliance responses between those small business tax debtors that want to comply with their payment obligations but need short-term assistance to do so and those small business tax debtors that are either incapable of meeting tax payment obligations within a relatively short time frame or are in serial default.

The Tax Office's response to large numbers of late lodged returns through tax agents

The Tax Office reports that 500,000 tax-agent lodged 2002/03 individuals income tax returns were lodged late and after 30 June 2004. The Tax Office is concerned that the same pattern is emerging this year. They have told the tax profession that they will monitor this closely and have indicated increased compliance action including refusal to extend lodgement deadlines and automatically applying penalties. Tax agents argue that the Tax Office is not acknowledging the difficulties agents face in low numbers of skilled staff (many accounting graduates are doing audits and not lodgements) and cannot take problem clients off their list where they are continuing to work with them on lodgement and other problems. Tax agents state they also incur increased unrecovered costs where they seek remission of automatically applied penalties.

A review would examine how well this lodgement enforcement strategy fits with, and the adequacy of, the Tax Office's understanding of the reasons why these return are delayed. It would also consider tax agents call for a differentiated compliance response which, on the one hand provides space for tax agents to work with clients working towards full compliance, and on the other hand comes down hard on those clients avoiding both tax agents and the Tax Office.

The remission of late lodgement penalties and /or interest to late PAYG summary statements, nil BASs and nil tax returns, and unvaried PAYG instalment liabilities

Practitioners state that the Tax Office has apparently recently changed its policy on levying late lodgement penalties as previously it did not apply them to late PAYG summary statements, nil BASs, nil income tax returns and unvaried PAYG instalments. Penalties have not been remitted because they were unable to show that the delay was outside of their control.

For example, taxpayers may receive income which raises a PAYG instalment liability. Where taxpayers' circumstances change so that they no longer receive this income they may incorrectly assume that they do not have to pay the instalment amount or lodge a variation. A failure to do so will attract the GIC and possibly penalties. Taxpayers are concerned that they are either not made aware of the requirement or are not listened to when notifying the Tax Office of their change in circumstances.

Also, practitioners state that self managed superannuation funds (SMSFs) are fined for non-lodgement of PAYG summary statements even where there no PAYG deducted (or should have been) from pension payments made by the SMSFs (i.e. \$550 penalty for failure to lodge what is effectively a nil statement). They state that the Tax Office is also not notifying these funds of time due for lodgement.

A review would examine the fairness in applying late lodgement penalties and GIC in these circumstances.

The extent, if at all, of the inappropriate use of general anti-avoidance provisions and penalty remission to settle audit adjustments.

Stakeholders continue to express concern that the Tax Office threatens to use anti-avoidance provisions and/or applies penalties inappropriately in order to pressure taxpayers to settle audit adjustments.

A review would examine these stakeholder concerns.