



Australian Government

Inspector-General of Taxation

**REPORT BY THE INSPECTOR-GENERAL OF TAXATION TO THE
MINISTER FOR REVENUE AND ASSISTANT TREASURER**

**Identification of the Main Systemic Tax Administration Issues and Concerns
Facing Taxpayers**

15 December 2003

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Identification of the Main Systemic Tax Administration Issues and Concerns Facing Taxpayers

1. At the time of the announcement of the appointment of the Inspector-General of Taxation, the Minister for Revenue and Assistant Treasurer, Senator the Hon Helen Coonan, requested the Inspector-General to:
 - *consult with taxpayer organisations to identify the main systemic tax administration issues and concerns facing taxpayers; and*
 - *provide a report to the Government on these findings providing initial views on the possible priorities for the future work of the office of Inspector-General of Taxation in helping the Government to address these concerns.*
2. This report responds to the Minister's request for a review of the main systemic tax administration issues and concerns facing taxpayers. Consultation has been conducted with a wide range of individuals and organisations, and the broad context and approach has been documented in Issues Paper Number 1 which has been published on the Inspector-General of Taxation website. A comprehensive listing of parties consulted is attached to the Paper, as is an overview of the Commonwealth tax system and a description of Australia's taxation administration systems.
3. Subsequent to the initial request, the Minister advised that regard should be had to the Treasurer's announcement of a review of the Self Assessment System, to be conducted by Treasury. The Minister also has requested, under section 8(3)(a) of the *Inspector-General of Taxation Act 2003*, that the Inspector-General undertake a review of the systems established by the Australian Taxation Office (ATO) for exercising the Commissioner of Taxation's power to remit the General Interest Charge (GIC) in relation to disputed tax debts involving groups of taxpayers.
4. The initial consultation process identified some 60 potential review topics (including GIC matters), and the issues raised have been incorporated into a series of discussion papers which are available publicly on the Inspector-General website (Issues Papers 3, 4 and 5). For convenience, the three main categories of taxpayer concern have been grouped as:
 - First; concerns about the risk and uncertainty associated with self assessment. This includes concerns about rulings, the extended periods which the Commissioner may review assessments, and the imposition of the General Interest Charge when the Commissioner issues amended assessments.
 - Second; concerns about the ATO's law enforcement responsibilities and governance arrangements.
 - Third; the range of complaints about the way in which the ATO relates to, and communicates with, taxpayers and their advisers.
5. Further community input will be sought to assist in quantifying and clarifying issues, and to assist in prioritising matters for an ongoing work program. Continuing community input will be welcomed.

6. To assist the community and the Inspector-General in determining priorities for the work program, Issues Paper Number 2 has been published as a draft framework for assessing issues. Broad community feedback is also being sought on this model.
7. In terms of initial review activity, it is considered very important that the community has the opportunity to review and clarify, if necessary, the issues that have been raised, and to provide guidance on the relative priority of the potential topics. Consultation with the Treasury will also need to occur to assess the impact of the Review of Self Assessment on the future workplan – so as to avoid any possible duplication of effort. As such, immediate priority will be given to:
 - Further consultation to prioritise the forward work program. This will require specific discussion with Treasury given the particular feedback received on matters associated with the Self Assessment System, and
 - Undertaking a formal review of the ATO's systems for remission of GIC in respect of disputed tax debts involving groups of taxpayers. This topic had emerged strongly during the consultation process, and has been specifically requested by the Minister.
8. The potential topics covered in the various Issues Papers are only matters that have been drawn to the attention of the Inspector-General of Taxation to date. They do not purport to represent an exhaustive list of all issues that taxpayers have with tax administration in Australia, and it is proposed to publish further Issues Papers as matters are raised.
9. The Commissioner of Taxation was given an opportunity to comment on review topics, as discussed below.
10. The short timeframe for this review limited the rigorous testing of issues raised by taxpayers and tax advisers. The fact that issues have been covered in the Issues Papers should not be construed as a finding that a problem exists.

TAXPAYERS' SYSTEMIC TAX ADMINISTRATION CONCERNS

11. Many different tax administration concerns were raised in the course of this review.
12. Behind these systemic tax administration matters are some broad themes of taxpayer unease. These themes include:
 - Apprehension about the **complexity** of the tax laws;
 - Including the lack of differentiation between large/small or high risk/low risk taxpayers; and
 - The differential tax treatment of certain capital and revenue items where there is a timing difference of when tax is paid but causes significant compliance burdens; (ref: for example, pp 12 and 15 of Issues Paper Number 5)

- Concern that **over-engineered delivery** mechanisms have been developed for tax administration;
 - Apprehension about the **capability** of tax administration officers, in both the private and public sector;
 - Disquiet about the way in which **clarification of the tax laws** is achieved when taxpayers dispute tax administration decisions;
 - Including through rulings and test litigation;
 - Anxiety about tax **debt collection** procedures and policies;
 - Disquiet about a **lack of commercial orientation** in aspects of tax administration;
 - Reflected in the time taken to finalise rulings and to settle claims for compensation for damage resulting from defective tax administration;
 - Uncertainty about what type or degree of **tax planning** constitutes illegal ‘aggressive tax planning’; and
 - Concern about the systems that the ATO has in place for **risk assessment** and **market intelligence**, associated with aggressive tax planning.
13. These broad themes underlie many of the systemic issues discussed in the Issues Papers.

CONSULTATION WITH TAXPAYER GROUPS AND TAX ADVISERS

14. The foundation of the initial work has been consultation with taxpayer groups (as required in the Terms of Reference), with tax advising professions, and with business groups.
15. Submissions to this process will not be published at this stage. Certain key submissions were lodged in confidence, and their publication is restricted under Section 26 of the *Inspector-General of Taxation Act 2003*. It would be inappropriate to attribute the broad range of views expressed in this report to a subset of submissions that could be released publicly. The list at Appendix A of Issues Paper Number 1 includes all parties who were **invited** to make submissions, some of whom took up the opportunity and some of whom participated in meetings.
16. This review adopted a three-stage approach to consultation. First, there were meetings between the Inspector-General of Taxation and key taxpayer groups, professional organisations and business groups in Sydney and Melbourne in late August. Second, 100 organisations were invited to lodge submissions on 25 August 2003. Finally, the Inspector-General of Taxation conducted breakfast and luncheon workshops in Perth and Brisbane with ‘focus groups’ of taxpayers and tax practitioners, to hear from a broad cross-section of people who deal with the Australian Taxation Office (ATO) on a daily basis.

CONSULTATION WITH THE COMMISSIONER OF TAXATION

17. Section 25 of the *Inspector-General of Taxation Act 2003* gives the Commissioner of Taxation a right of reply before the Inspector-General can report any matters that are expressly or impliedly critical of the ATO.

18. The Commissioner of Taxation received advance notice of the issues that had been raised with the Inspector-General in submissions and meetings, via a summary of those issues provided to the ATO on Tuesday 7 October 2003. The Commissioner gave his preliminary comments on these issues on 14 October 2003.
19. The Commissioner was given a copy of the draft Issues Papers on 20 October and responded to the issues raised in that draft on 27 October. The Commissioner also met with the Inspector-General of Taxation on 27 October.
20. Many of the Commissioner's specific comments on review topics have been incorporated in Issues Papers 3, 4 and 5.

CONSULTATION WITH THE AUDITOR-GENERAL

21. The Inspector-General of Taxation met with the Deputy Auditor-General and officers of the Performance Audit Services Group, Australian National Audit Office (ANAO) on 29 October 2003.
22. The meeting enabled a discussion of the respective independent roles of the Auditor-General (as an officer of the Parliament) and the Inspector-General of Taxation (as an adviser to the Government).
23. In 2003-04, the Auditor-General is undertaking, or is proposing to undertake, a series of audits which have implications for the tax system – see listing in Issues Paper Number 1.
24. While some of the topics are also mentioned in Issues Papers, the Inspector-General is not proposing to review any of these matters in 2003-04.

CONSULTATION WITH THE TAXATION OMBUDSMAN

25. The Inspector-General met with the Ombudsman on 28 October 2003.
26. The Taxation Ombudsman is currently reviewing the ATO's use of statutory search and entry powers. It is not proposed that the Inspector-General will review this matter.

CONCLUDING COMMENTS AND THANKS

27. This initial process has been undertaken in a very tight timeframe. This has only been achieved with the cooperation and help of key stakeholders. Sincere thanks are extended to those taxpayer groups, tax practitioners, representatives of the legal profession, and business groups, who participated in meetings and workshops in August and early September, often on short notice. Those who prepared written submissions to this review made a particularly important contribution.
28. The Inspector-General of Taxation acknowledges with thanks the assistance of the Auditor-General and the ANAO. Thanks are also due to the Taxation Ombudsman and his Special Tax Adviser.
29. The Inspector-General of Taxation recognises the cooperation of the Commissioner of Taxation and his staff. The Commissioner hosted an information session on the ATO's corporate and compliance strategies for the Auditor-General, Taxation Ombudsman and Inspector-General of Taxation on 28 August 2003.