

Review into aspects of the  
Tax Office's settlement of  
active compliance activities

Report to the  
Assistant Treasurer

October 2009

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20 October, 2009

Senator the Hon Nick Sherry  
Assistant Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Minister,

I am pleased to present to you my report on the review into the Tax Office's settlement of active compliance activities. This report has been prepared under section 10 of the *Inspector-General of Taxation Act 2003*.

My office has worked extensively with the Tax Office to agree on a significant range of actions aimed at improving Tax Office settlement administration, including closely related 'upstream' active compliance matters.

Overall, I believe that settlements are a necessary and important feature of tax administration. Providing they are appropriately administered and there is community confidence in the integrity of the system, settlements are an efficient and effective means of finalising many cases. I would be concerned if action was taken to reduce access to settlements as a means of resolving tax disputes.

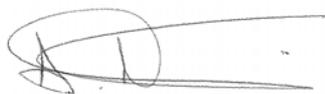
In examining the basis for concerns raised by interested parties, I found that although the Tax Office has a substantial framework of policies and procedures for the conduct and finalisation of active compliance activities and settlements, there were a number of areas with scope for improvement. In this regard we have made 24 recommendations, with all of which the Tax Office has agreed. These recommendations are not only aimed at improving settlement administration but are also intended to increase community confidence in the transparency, consistency, correctness and integrity of settlement decisions and the upstream processes. The Tax Office's detailed comments are set out in Chapter 4.

In accordance with current practices, I will review the implementation of this work at a future date.

The Commissioner of Taxation has also commented positively on this review's process and outcomes. His formal response is reproduced in Appendix 3. I welcome these comments and intend to build on this goodwill to further improve my office's and the Tax Office's handling of my reviews.

## Review into aspects of the Tax Office's settlement of active compliance activities

I also offer my thanks to the support and contribution of professional bodies, business groups and legal practitioners to this review. The willingness of many to provide their time and expertise in preparing submissions and discussing the issues with my office is greatly appreciated.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

Ali Noroozi  
Inspector-General of Taxation

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## CHAPTER 1 — EXECUTIVE SUMMARY

1.1 The Inspector-General of Taxation (IGT) announced terms of reference for this review on 12 October 2007 following concerns raised by industry, tax practitioners, the public and Parliament relating to the Tax Office's settlement of active compliance activities. The review aimed to determine whether the Tax Office's settlement approaches, policies and practices strike an appropriate balance between the interests of individual taxpayers and taxpayers as a whole.

1.2 Overall, the IGT concludes that the settlements process is a necessary and important feature of tax administration. Providing there is community confidence in the integrity of the system, settlements are an efficient and effective means of finalising appropriate cases. The IGT would be concerned if Tax Office actions and processes were to reduce access to settlements as a means to resolve tax disputes.

1.3 The review looked at information, systems and processes that related to the Tax Office's settlement of 15,637 active compliance cases over a five-year period (the 2003-04 to 2007-08 income years). It examined files relating to 2,773 cases involving a reduction of \$3.6 billion from the Tax Office's initial active compliance position to reach agreed liabilities of \$1.56 billion in settlement.

1.4 During the review, the Tax Office acknowledged the need to take a more 'whole of dispute' approach with emphasis on moving dispute resolution closer to the point of the original decision.

1.5 The IGT examined the basis for concerns raised by interested parties (see Appendix 1) and found that the issues and potential improvements to the Tax Office's settlement processes fell into two broad categories: Code of settlement processes; and Active compliance matters affecting settlements.

1.6 Code of settlement processes start from considering the finalisation of a tax case by a formal settlement process, including the procedures set out in the Tax Office's Code of Settlement Practice. The IGT found that at a systemic level, the cases examined generally evidenced compliance with the relevant Tax Office policies and processes. However, the IGT identified a number of areas with scope for improvement (see chapter 3, paragraphs 3.16 to 3.17).

1.7 Active compliance matters affecting settlements occur 'upstream' of the formal settlement process. They may bring about settlement or underlie why it becomes a necessary consideration, or influence how settlement processes are undertaken. The IGT found that the Tax Office has a substantial framework of policies and procedures for the conduct and finalisation of active compliance activities. However, some of the cases examined evidenced areas in which more could be done to improve transparency and the taxpayer experience as well as to reduce delays and taxpayers' costs (see chapter 3, paragraphs 3.18 to 3.21).

## Action arising as a result of the review

1.8 As a result of this review, the Tax Office has agreed to commence a program of work to make both short-term and longer term improvements in the administration and integrity of the end-to-end settlement process and the upstream processes. This work includes (more detail is given in chapter 4):

- improving the Tax Office's recording, analysis and public reporting of settlements;
- improving settlement decision-making by strengthening compliance with the existing Tax Office procedures that support settlement decision-making;
- amending templates for settlement deeds to enable taxpayers, in certain circumstances, to reopen settlements where the Tax Office later changes its view of the law;
- improving the taxpayer experience in relation to the settlement process by providing a 'circuit breaker' or 'reference point' for taxpayers that will provide a fresh set of eyes for settlement decisions drawing on significant alternative dispute resolution and settlement experience;
- ensuring that taxpayers do not have any misconceptions about their likely 'out-of-pocket' liability, by requiring officers to disclose changes to the Tax Office's approaches that would reduce the range of settlement points;
- strengthening compliance with existing Tax Office procedures that require escalation of technical matters and, where the Tax Office view changes, requiring transparent communication to affected taxpayers and complete and transparent rectification action;
- improving auditor technical discipline in dealing with evidentiary matters and explanations of the role that evidence has played in active compliance decisions; and
- minimising public perceptions of favourable treatment of certain taxpayers by improving the comprehensiveness and detail of public reporting on settlements and the net contribution to revenue of active compliance activities, and by publicly reporting summaries of the related analysis of these figures.

1.9 The overall aim of this work is for the Tax Office to make a fundamental improvement in settlement administration and risk mitigation by considering all stages of settlement administration and decision-making. It also aims to recognise settlements as an integral part of the disputes process, and recognise the impact that upstream processes have on settlements.

1.10 The agreed intended outcome is increased community confidence in the transparency, consistency, correctness, integrity and administrative soundness of settlement decisions.

1.11 The IGT will, in accordance with current practices, review the implementation of this work at a future date.

## CHAPTER 2 — CONDUCT OF REVIEW

2.1 This is a report on the IGT's review into aspects of the Australian Taxation Office's settlement of active compliance activities. The report is produced pursuant to section 10 of the *Inspector-General of Taxation Act 2003*.

2.2 The IGT announced terms of reference for this review on 12 October 2007 following a number of concerns raised by industry, tax practitioners, the public and Parliament. Appendix 1 specifies the concerns brought to the IGT's attention and reproduces a copy of the terms of reference for this review.

2.3 The IGT received 37 submissions from taxpayers and their representatives. The IGT review team also met with interested taxpayers, their representatives, legal practitioners and selected tax professional and lawyers' bodies to understand their experiences and obtain perspectives on the settlement process and its context within the active compliance activity and dispute resolution processes.

2.4 The IGT review team looked at information, systems and processes that related to the Tax Office's settlement of 15,637 active compliance cases over a five-year period (the 2003-04 to 2007-08 income years).

2.5 During the review, the Tax Office also conducted its own review and analysis of the accuracy of its settlement register and supporting processes. Specific outcomes of this Tax Office review are also incorporated in this document as part of the agreed action arising as a result of this review.

2.6 The IGT review team examined settlement cases to obtain an understanding of why active compliance cases ultimately ended in settlement.

2.7 The IGT review team visited the Tax Office's Box Hill, Casselden Place, Moonee Ponds, Northbridge, Waymouth, National and Sydney offices to interview Tax Office staff and access documents that related to 2,773 cases (some cases involved multi-case industry disputes), involving a reduction in aggregate of \$3.6 billion from the Tax Office's initial active compliance position to reach agreed liabilities of \$1.56 billion in settlement. These cases spanned a range of different types of taxpayer and Tax Office areas, and included:

- individual and small business taxpayers;
- mid-sized businesses;
- large corporate groups;
- Tax Office business areas (including the large business and international, high-wealth individual, small and medium-sized business, aggressive tax planning, goods and services tax and personal tax areas); and
- various aspects of income tax and GST.

2.8 The settlement cases examined involved a range of amounts in dispute from over \$1 billion of disputed tax, penalties and interest, through to \$2000. The IGT examined a range of different types of cases including:

- some of the largest settlements in the past five years;
- common industry group issues (for example, Division 7A and margin schemes); and
- multiple-case active compliance projects (for example, charter boats and retirement villages).

2.9 The IGT review team discussed its analysis of settlement cases and the emerging systemic areas for improvement with a range of Tax Office staff drawn from various areas, including:

- the initial active compliance activities function;
- the technical advisers and business line managers; and
- Tax Office Executive Committee members, (including the Second Commissioner for Law and the Second Commissioner for Compliance).

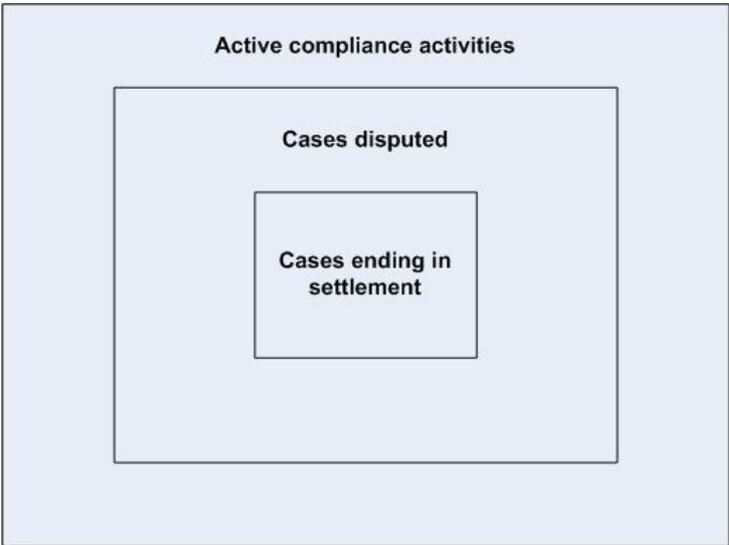
2.10 The IGT review team summarised the issues that emerged and worked progressively with Tax Office senior management to distil the scope for improvement and to agree on specific actions. The review team also discussed these issues with interested external stakeholders.

2.11 In accordance with section 25 of the IGT Act, the Commissioner of Taxation was provided with an opportunity to give submissions on any implied or actual criticisms contained in this report. The Commissioner's formal response is reproduced in Appendix 3.

# CHAPTER 3 — FINDINGS AND ISSUES

## Background

3.1 Each year the Tax Office conducts a large number of active compliance activities, many of which result in increased tax liabilities. A proportion of these cases are disputed by taxpayers, which may be resolved by a number of means, including by way of settlement. The relationship between active compliance activities and cases that end in settlement can be represented visually as follows.



3.2 Disputed tax liabilities are often resolved by agreement between the Tax Office and the taxpayer – generally resulting in the taxpayer’s assessment being amended to a lower sum than originally determined by the Tax Office. Further background to the Tax Office settlement processes is found in Appendix 1.

3.3 An accurate comparative analysis on the precise quantum raised in active compliance activities and settlements is currently not possible due to recording limitations that arise because of the different systems on which data is recorded and the different purposes for which the differing data was originally created. This is explained in more detail below.

3.4 The data that is available, however, does provide a valuable indication of the areas that may warrant further analysis. Tables 1 and 2 below provide a compilation of the available data over the last five years.

**Table 1: Compilation of available data for case numbers and aggregated liabilities raised in active compliance activities, disputed liabilities and amounts reduced through settlement over the 2003-04 to 2007-08 income years (five-year period)**

Activity	Number of activities	Amounts excluding notional amounts (c) in \$m	Amounts including notional amounts (c) in \$m
All active compliance activities (a)	9,151,000	32,798	45,650
All disputed active compliance activities (e)	86,000 — 101,000 (f)	n/a	n/a
Settled active compliance activities — amounts disputed (b)	15,637	9,729	15,257 — 21,835 (d)
Settled active compliance activities — amounts settled (b)	15,637	5,199	10,647

(a) Source: Commissioner of Taxation annual reports

(b) Source: Tax Office settlement register

(c) Notional amounts are generally the potential tax effect of carried forward losses.

(d) Ranges can only be given because of functional limitations for recording losses in the settlement register.

(e) n/a = not available (includes activities disputed but not settled — for example, litigation and objection)

(f) A range is given because of the potential data overlap between different dispute categories.

**Table 2: Compilation of available data for case numbers and aggregated liabilities raised in active compliance activities, disputed liabilities and amounts reduced through settlement over the 2003-04 to 2007-08 income years (five-year period) by Tax Office business line and active compliance activity**

Tax Office business line	All active compliance activities (a) \$m	All disputed active compliance activities (c) \$m	Amounts disputed in active compliance activities ultimately ending in settlement (b) \$m	Amounts settled in active compliance activities ending in settlement (b) \$m	Numbers of settlements (b)
LBI	23,029	n/a	11,833	8,378	380
SME/SB	6,445	n/a	1,629	1,132	10,505 (d)
MEI/ATP/Pta	11,427	n/a	641	597	3,879
GST	7,814	n/a	580	310	326
Other	486	n/a	208	125	547

(a) Source: Commissioner of Taxation annual reports. Amounts include notional amounts. Note: due to annual reporting changes in the 2006-07 and 2007-08 income years an amount of \$3,552 million attributable to GST is unable to be extracted from the other categories.

(b) Source: Tax Office settlement register.

(c) n/a = not available (includes activities disputed but not settled — for example, litigation and objection).

(d) A significant number of cases in this category relate to settlement of aggressive tax planning cases which at the time of recording were managed within the SME/SB area (and would now be handled by the ATP area).

3.5 While the above data may be useful for broad indicative analysis, care must be exercised in using it for specific quantum analysis because it is unclear how much of the disputed amounts derived from the settlement register were active compliance amounts reported in the annual reports. The different systems on which these two amounts were recorded do not allow for direct tracing or linkages between the two figures. Additionally, the Tax Office's systems do not currently record whether a dispute (other than a complaint) relates to an active compliance activity or not.

3.6 During this review the Tax Office also identified problems with the accuracy of figures recorded on the settlement register and, since late 2006 it has made changes to improve recording of its settlement data. Accordingly, for the years prior to these changes, it is difficult to determine the level of reductions made to primary tax,

penalties and interest as discrete categories. A break-up of settlements by business line and tax, penalty and interest in the 2007-08 year is provided in Table 3.

3.7 Care must also be exercised in drawing specific conclusions from these figures for a given year because of the impact that larger settlement cases can have on proportions in any one year. For example, over two-thirds of the total quantum varied in settlements during the 2007-08 year occurred in just 10 cases, and the large variance for penalties in the GST area was primarily due to three cases. Aggregated amounts over a greater period of time would help to smooth the effect that these larger cases may have.

**Table 3: Variance in Tax Office’s pre-settlement position for settlement cases finalised in the 2007-08 income year by Tax Office business line and revenue type**

Tax Office business line	Case numbers	Variance in the Tax Office’s pre-settlement position to position at settlement (c)				
		Primary tax	Penalties	Interest	Notional (a)	Totals
		\$m	\$m	\$m	\$m	\$m
LBI	30	256.8	54.7	35.1	62.0	408.6
SME	65	84.2	24.7	36.9	0.0	145.8
MEI/ATP	558	5.7	11.5	6.1	0.0	23.3
GST	87	72.4	27.8	38.3	0.0	138.5
SNC	32	1.3	3.6	3.0	0.0	7.9
EXC/SPR	3	0.0	0.0	0.0	0.0	0.0
<b>Totals (b)</b>	<b>775</b>	<b>420.4</b>	<b>122.3</b>	<b>119.4</b>	<b>62.0</b>	<b>724.1</b>

Source: Tax Office settlement register

(a) Notional amounts are generally the potential tax effect of carried forward losses.

(b) Totals may not equal the sum of entries on the settlement register because of rounding.

(c) ‘Pre-settlement position’ is as defined in the Commissioner of Taxation’s annual reports.

3.8 Tables 4 and 5 break-up the 2007-08 settlement case numbers and variance of liabilities by the point in the dispute resolution process at which the settlement occurred.

**Table 4: Settlement case numbers recorded over the 2007-08 income year by Tax Office business line and resolution point**

Tax Office business line	Resolution point				Totals
	Audit	Objection	AAT	Federal Court	
LBI	21	4	1	4	30
SME	48	8	7	2	65
MEI/ATP	232	135	189	2	558
GST	14	32	35	6	87
SNC	28	1	3	0	32
EXC/SPR	0	2	1	0	3
<b>Totals</b>	<b>343</b>	<b>182</b>	<b>236</b>	<b>14</b>	<b>775</b>

Source: Tax Office settlement register

**Table 5: Settlement case liability variances recorded over the 2007-08 income year by Tax Office business line and resolution point**

Tax Office business line	Resolution point				Totals (a)
	Audit \$m	Objection \$m	AAT \$m	Federal Court \$m	
LBI	139.6	*	*	*	408.5
SME	124.8	*	*	*	146.3
MEI/ATP	5.7	8.0	*	*	23.3
GST	84.3	47.0	8.0	1.3	140.7
SNC	7.4	*	*	0.0	7.9
EXC/SPR	0.0	*	*	0.0	0.1
<b>Totals (a)</b>	<b>361.9</b>	<b>317.2</b>	<b>25.0</b>	<b>22.6</b>	<b>726.8</b>

Source: Tax Office settlement register

Note: Caution must be exercised in drawing any firm conclusions from these figures because of the impact that larger settlement cases can have on proportions in any one year.

Note: \* denotes omission of figure to preserve confidentiality of tax affairs.

(a) Totals may not equal the sum of entries because of rounding.

3.9 The current data is useful in helping to identify potential anomalies and patterns. This provides a starting point for greater investigation, analysis and management's understanding as to why amounts may be reduced. The IGT is pleased that the Tax Office has recently commenced some of this work – such as examining the reasons for the amounts of losses varied in settlement.

3.10 A major focus for the IGT review was to determine the reasons for the Tax Office's departure from initial active compliance positions in settlement and why these settled positions could not have been reached earlier in the active compliance activities, on the basis of the available information.

3.11 During the IGT review, the Tax Office acknowledged the need to take a more 'whole of dispute' approach with emphasis on moving dispute resolution closer to the point of the original decision through a range of measures including the use of alternative dispute resolution and differentiated approaches to dispute resolution. This issue is discussed further in another IGT review, the *Review into the underlying causes and the management of objections to Tax Office decisions*. This review builds on that aim in the context of settlements.

3.12 This review, and the case studies undertaken, showed that issues and potential improvements to the Tax Office's settlement processes fell into two broad categories:

- **Code of settlement processes:** the processes that start from considering the finalisation of a tax case by a formal settlement process, including the procedures set out in the Tax Office's Code of Settlement Practice; and
- **Active compliance matters affecting settlements:** the processes upstream of the formal settlement process that may bring about settlement or underlie why it becomes a necessary consideration, or influence how settlement processes are undertaken. These processes include the compliance activities themselves including the formulation and application of the Tax Office view of the law, the issue of amended assessments, and links to dispute resolution processes such as objections and appeals.

## IGT findings

### Code of settlement processes

3.13 The Tax Office created its Code of Settlement Practice in 1991. Since then, the Tax Office has made a number of business improvements to the settlements process, including a 15-point program endorsed by the Tax Office Executive in July 2003. Improvements include:

- corporate assurance arrangements, including mandatory quality reporting and analysis;
- fixing accountabilities for process management;
- mandatory registration of settlement details in a corporate register;
- data checking;
- improvements to the Code of Settlement Practice itself;
- communications and education activities, with supporting on-line resource materials; and
- improvements to policy and work practices.

3.14 Despite these improvements, the Tax Office's settlement processes continue to attract community criticism and media attention. These criticisms reflect perceptions of:

- a lack of transparency and equity in relation to settlement cases, with a resulting push to publish details of settlements including the amounts involved;
- the integrity of settlement information held and reported by the Tax Office;
- consistency of settlement decisions across different types of taxpayers, including perceptions that large taxpayers get better access to settlements and better settlement 'deals' than less powerful taxpayers; and
- settlement processes being used by the Tax Office to finalise matters where easier and cheaper approaches could have been more appropriate, but where the Tax Office seeks to 'quarantine' cases that may erode its public position on an issue by using settlement processes to prevent any further action.

3.15 In recognition of these criticisms, and the available data considered by this review, including certain active compliance activities ending in settlement (case studies), the Tax Office itself recognised that these perceptions existed and acknowledged that there were problems in some aspects of its management of settlement processes. The Tax Office recognised that there is obvious scope for further improvement in its overall administration of settlements.

3.16 The IGT's findings in respect of the code of settlement processes are that at a systemic level, the cases examined by the IGT generally evidenced compliance with Tax Office policies and processes aimed at promoting consistency and transparency of access to settlements, treating taxpayers in comparable circumstances consistently and requiring its officers to be, and be seen to be, fair and equitable in their official dealings, including negotiation of settlements. However, the IGT's, and some of the Tax Office's internal analysis, also substantiated the criticisms and negative perceptions outlined above as follows.

### Settlement register

- 1 The settlement register is the Tax Office's key system for recording settlements made formally under the Code of Settlement Practice. The register is used as the basis for reporting information on settlements, including in the Tax Office's annual reports. In a proactive response to this review, and its own concerns about the quality of data in the register, the Tax Office mounted an internal audit of the integrity of the recording settlement cases in the settlement register. An analysis of a sample reconciliation of settlement source documents (such as audit papers and settlement deeds) with the information contained on the settlement register, found a 1 in 4 error rate for the sampled entries recorded on the settlement register. The errors were found to be high in number but generally low in value. The Tax Office advises that the errors detected by the internal audit had no impact on the Tax Office's financial statements. Nevertheless, the integrity of the Tax Office's management of the register and the quality of data in the register clearly need improvement.

### Consistency of settlement terms

- 2 The IGT case studies uncovered an example where a taxpayer's representative asked for certain favourable terms of settlement – a reduction in the settlement amounts that was equivalent to the tax effect of future deductions for that interest which accrued from the liabilities settled. These terms appeared to be available to certain taxpayers but were not generally available to other taxpayers. Although these terms did not reduce the overall revenue, they helped the taxpayers concerned to increase their cash flow. The example does, however, raise the principle that the terms of settlement should be consistent, and consistently available to taxpayers, in similar circumstances.

### Perceptions of favouritism

- 3 Where the Tax Office made significant reductions of tax in settlements with large taxpayers, this appeared to be a product of the large amounts involved in original position papers or assessments, the complexity of the issues and the Tax Office's difficulty in sustaining its view of the law, rather than any systemic favouritism or leniency towards large taxpayers. It is likely that perceptions of favouritism have persisted because the Tax Office has not provided more detailed, public explanations for large amounts varied in large taxpayer settlement cases.

## Perceptions of code of settlement processes

- 4 The Tax Office has a framework of policies and processes aimed at promoting consistency and transparency of access to settlements, treating taxpayers in comparable circumstances consistently and requiring its officers to be, and be seen to be, fair and equitable in their official dealings, including negotiation of settlements. At a systemic level, the cases examined by the IGT generally evidenced compliance with these policies and processes. However, some cases had features which showed how negative community perceptions of code of settlement processes could arise, and indicated opportunities to improve community confidence.
- Perceptions of fair Tax Office treatment were challenged in cases where in negotiations the Tax Office did not disclose material changes to its approach or view of the law. Disclosure would have reduced the range of settlement points, and avoided taxpayers' uncertainty and misconceptions about their likely liability.
  - Some cases showed how perceptions arise when pressure is brought to bear by debt collection action (either as part of the 50/50 concessional policy or active debt recovery) on disputed liabilities raised in the following circumstances.
    - Taxpayers had 'disengaged' from the Tax Office, or refused to communicate with the Tax Office in whole, or for a period. In these circumstances, the Tax Office issued assessments on the available evidence – resulting in tax liabilities that were in excess of an amount that would have been raised if the taxpayer had not disengaged from the Tax Office and had provided the best evidence available to the taxpayer.
    - In the absence of taxpayer engagement, debt collection action commenced.
    - Taxpayers sought to re-engage with the Tax Office during debt collection action, or earlier. However, taxpayers perceived unfair Tax Office treatment when debt collection action was being taken at the same time as they were seeking to provide better evidence. This perception was compounded where taxpayers became aware that the Tax Office was considering settlement to resolve the dispute.
    - The Tax Office's functional separation of debt collection and tax liability dispute resolution resulted in missed opportunities to successfully re-engage with taxpayers to resolve the matter efficiently. These missed opportunities increased costs, by pursuing a debt that was in excess of that ultimately determined, and promoted perceptions of unfair treatment in the circumstances.

- Other cases evidenced the Tax Office using settlements where it had conceded the technical point and where allowing objections would have therefore been more appropriate. There will however continue to be circumstances where the Tax Office does not concede the technical point but will for other reasons enter into settlement. In circumstances when the Tax Office concedes a technical point, this should be done by allowing the objection rather than through settlement; otherwise, taxpayers will be disadvantaged.
- The Code of Settlement Practice sets out circumstances that indicate whether settlement is appropriate or inappropriate (see Appendix 2 for the text of paragraphs 25-27). Some cases examined revealed a difficulty in applying these paragraphs in a manner that appeared to be consistent and provided fair outcomes. Greater clarity on these circumstances would help to improve fair outcomes.
- Paragraph 25 of the code (amongst other things) says that it would be generally inappropriate to settle where, for example, the settlement would involve inconsistency of treatment for taxpayers in comparable circumstances. However, in some cases involving a number of taxpayers, taxpayers with materially similar circumstances were treated on a more concessional basis over time. The IGT accepts that the conditions of settlement may change over time in multi-case issues and that the Tax Office should not be required to reopen all settled cases to ensure that all are given exactly the same terms of settlement. However, the IGT believes that the Tax Office should reopen settlements where it has changed its view of how the law applies to an issue in a way that would have materially reduced (or negated) amounts settled on an earlier, different Tax Office view. The IGT drew cases of this type to the Tax Office's attention and the Tax Office undertook to re-examine earlier cases to determine whether to afford the more concessional view of the law to taxpayers with materially similar circumstances. The IGT does not believe that the Tax Office should be required to proactively reopen all cases in these circumstances. However, settlement deeds should give taxpayers the right to reopen their cases in defined circumstances.
- Settlement deeds examined by the IGT in some cases showed that taxpayers were being required to agree to conditions that were not related to the matter being settled, including making broad commitments to being compliant taxpayers or agreeing to raise all tax-relevant transactions with the Tax Office in the future. The IGT considers that conditions of settlement imposed on taxpayers should relate only to the matter being settled.
- Settlement deeds also required taxpayers to have made a 'full and true disclosure of all relevant facts'. This allows the Tax Office to reopen the basis for the settlement if the taxpayer has withheld material facts. However, the clause also requires the taxpayer to undertake an extensive and onerous examination of documents and other potential evidence before the taxpayer can be confident that this condition is satisfied – thus defeating the purpose of an early and comparatively less costly resolution

of the dispute. The clause also unfairly favours the Tax Office because taxpayers are unable to reopen the settlement if they discover material information that favours their position. The IGT considers that an appropriate balance between providing a reliable basis for finalising a dispute and avoiding imposing unduly onerous compliance costs could be struck by requiring the taxpayer to enter settlements on the basis that the taxpayer has revealed all material facts known by them at the time of settlement and requiring them to disclose any further material facts which may become known after the execution of the deed of settlement. The IGT has also been made aware of a number of settlements in which the Tax Office has agreed with these terms of settlement.

### Broader conclusions and observations

3.17 The IGT also reached some broader conclusions and observations about the code of settlement processes as follows.

- 1 The settlements process is a necessary and important feature of tax administration. Providing there is community confidence in the integrity of the system, settlements are an efficient and effective means of finalising appropriate cases. The IGT would be concerned if Tax Office action and processes were to reduce access to settlements as a means to resolve tax disputes. However, where cheaper, quicker and more conventional resolution approaches are available, notably the allowing of taxpayers' objections, they should be used in preference to the settlements process.
- 2 There is a perception that the Tax Office cannot settle primary tax amounts. This appears to be based on paragraphs 15-17 and 27 of the code. The code sets out the general rule that the Commissioner does not forego tax properly payable, and will, as soon as practicable, seek to collect the full amount of that tax. 'Even if the application of the law is uncertain, or there is insufficient information to draw a firm conclusion, it has always been open to the Tax Office to consider whether or not an adjustment on a particular issue should be made. In cases of this nature, consideration of the law is often on an "all or nothing" basis' (paragraph 16). Paragraph 27 also states that 'as a general rule, the Tax Office will not enter into a settlement where the outcome would be contrary to its established view of the law (for example, in a public ruling)'.

However, when paragraphs 17, 19 and 25-27 of the code are read together they expressly provide that settlement is an exception to this general rule. This exception recognises that 'there will be circumstances in which the strictness of that general rule must be tempered by the need for reasonable and sensible administration and good management of the tax system'. Further, the second dot point in paragraph 26 expressly provides that settlement is appropriate where 'there are complex factual or quantum issues in contention, or evidentiary difficulties, or there is genuine uncertainty as to the proper application of the law to the facts, sufficient to make the case problematic in outcome or unsuitable for resolution through the AAT or courts, (for example, where the issue is peculiar to the particular taxpayer, and the opposing positions are each considered reasonably arguable)'. Even though the Tax

Office may have an established view of the law, paragraph 27 expressly provides that the Tax Office is prepared to reconsider the correctness of this view.

The IGT considers that the code (when read as a whole) provides an appropriate balance between the general rule of not foregoing tax properly payable (that is, minimising the risk of treating tax liabilities as negotiable debts), and providing scope for the Tax Office to consider on a case-by-case basis whether primary tax should be discounted to reflect litigation risk in circumstances where the particular facts, evidence, application of the law or application of the Tax Office's view of the law to the facts presents sufficient difficulties that warrant settlement. On a procedural level, where the Tax Office settles contrary to its public position, it should also quickly consider whether its public position should be amended to reflect the effect of sustainable alternative views – for example, considering whether the public view should acknowledge that a particular type of factual matrix may lead to a different outcome.

- 3 The IGT does not favour publication of details of individual settlement cases. As well as raising privacy concerns, publication of settlement details would be likely to deter taxpayers from entering into settlement arrangements where it is in the interests of good administration to do so. Transparency should be achieved by publicly reporting the aggregate amounts of tax reduced from original Tax Office compliance-raised liabilities in all categories of cases including objections, appeals, and settlements.
- 4 Integrity of the Tax Office's management of settlements should be assured by applying the Tax Office's Integrated Quality Framework (IQF) and by managing settlements on the Tax Office's corporate case management system (Siebel) with strong systematised controls. The IGT notes that the Tax Office is already planning to adopt both these approaches.
- 5 Greater confidence in the Tax Office's settlement processes would also be engendered by improving its upstream active compliance processes.

### **Active compliance matters affecting settlements**

3.18 The quality of active compliance activities can directly affect subsequent dispute resolution processes in terms of the costs, time taken and the quality of the taxpayer experience.

3.19 The Tax Office has a substantial framework of policies and procedures for the conduct and finalisation of active compliance activities, including a supporting framework for technical and strategic issues management. However, some of the cases examined evidenced areas in which more could be done to reduce costs and delays in subsequent dispute resolution processes.

3.20 Certain cases examined in this review (those involving numbers of taxpayers with common issues in dispute) highlighted a further opportunity for the Tax Office to reduce costs and delays in subsequent dispute resolution processes by improving the

robustness of initial Tax Office views, announcing those views and giving taxpayers sufficient time to adjust their arrangements to meet the Tax Office’s announced views before compliance activities are started.

3.21 The IGT’s findings in respect of the active compliance matters affecting settlements are as follows, and in some cases are highlighted as systemic issues that have surfaced in earlier IGT reviews.

#### Technical escalation and communication processes

- 1 The Tax Office has processes aimed at ensuring that active compliance decisions are taken on the basis of pre-existing precedential Tax Office views unless the application of the law is ‘straightforward’. Where those precedential views later become unsustainable, the Tax Office requires them to be formally amended and communicated to affected taxpayers and their representatives. However, some cases examined highlighted that more could be done to ensure that these processes are complied with. In some cases examined, there were clear signals that the Tax Office’s view of the law was not sustainable, but Tax Office compliance officers persisted with the unsustainable view. Problems were also compounded by delays in escalating matters to technical areas.

#### Active compliance management approaches

- 2 Cases examined by the IGT (including multi-case issues) revealed a tendency for compliance officers to look for short cut, over-simplified technical approaches to be applied across the board. The IGT believes that this tendency is in no small part the product of the Tax Office pursuing ‘leveraged’ active compliance strategies that seek to enforce compliance with the minimum amount of field effort by the Tax Office. In the fourth report of the IGT’s major, complex issues review, the Tax Office agreed to improve the project management capability for large, complex issues, including undertaking adequate field work to identify the issue and differentiate categories of taxpayers’ circumstances, and testing the quality of information provided to taxpayers to help them meet their obligations before a compliance strategy is designed and commenced. Cases examined in this review reinforced the need for this improvement across all levels of active compliance strategies. The quality and robustness of Tax Office active compliance views of the law is emerging as a major systemic issue that underlies much of the tension in tax administration.

#### Communication

- 3 The Tax Office seeks to promote a high level of communication during active compliance activities. A high level of communication allows matters to be resolved relatively quickly, cheaply and more transparently. This is so long as it is directed towards ensuring both parties have a strong understanding of the strengths and weaknesses of each party’s case (including aspects such as the evidence relied upon and the weight of

evidence). Cases examined highlighted opportunities to improve communication in the following types of cases:

- breakdowns in communication during active compliance activities, which result in the Tax Office issuing amended assessments before testing its position with the taxpayer;
- the Tax Office not sufficiently explaining its position (including why the auditor rejected the taxpayer's evidence, how the auditor weighed the evidence and how the evidence was relevant to the issues); and
- the Tax Office not clearly communicating which portion of liability represents a 'protective position' (a position taken in the absence of evidence or rejection of the taxpayer's evidence without sufficient explanation) and what further evidence would likely affect the taxpayer's liability.

### Evidentiary matters

- 4 A good evidentiary basis for decisions improves their robustness and minimises the potential for a subsequent need to settle, thereby reducing time and costs and improving the taxpayer experience. The Tax Office has policies and processes to support auditors in determining the relevant evidence on which to support conclusions of fact in reaching compliance decisions. However, in many settlement cases examined, there was a substantial gap between the Tax Office position and the settled position. In some cases, this was because the taxpayer had initially disengaged from the process, but re-engaged during settlement negotiations. In other cases, this was due to a lack of compliance officer discipline in dealing with evidentiary matters. The Tax Office advises that it has already commenced work to address these issues and improve auditor discipline in a range of matters, including dealing with evidentiary issues.

### Penalty outcomes

- 5 The settlement register shows that for settled cases over a five-year period (2003-04 to 2007-08), on average, approximately 30 per cent of penalty amounts were conceded by the Tax Office. Adjustments of penalty amounts can occur as an automatic consequence of adjustments to primary tax as well as changing the rate of penalty. A break-up of the tax, penalty, interest and notional amounts varied in settlement over the last five years cannot be provided because of errors in how notional amounts were recorded in the settlement register and the mixing of notional amounts with primary tax amounts.

In some large variance cases examined by the IGT review team, the original estimated penalties were approximated for the purposes of the register. They were not communicated to the taxpayer or imposed, but might have been imposed were it not for the Tax Office subsequently

taking into account significant factual, evidentiary and legal matters which occurred or came to light in the course of the settlements.

In other cases, the penalties were communicated and imposed on taxpayers, but were later reduced (by either reducing the rate or withdrawing the penalty) because of a subsequent reconsideration of the evidence that was already at hand before the compliance activity was finalised.

The IGT believes these cases evidence unsustainable penalty decisions because of a lack of compliance officer discipline in dealing with evidentiary matters for the rate of penalty sought to be imposed. Unsustainable penalties act as pressure on taxpayers in settlement and promote perceptions that penalties are used to leverage settlement outcomes.

As stated above, the Tax Office advises that it has already commenced work to improve auditor discipline in a range of matters, including dealing with evidentiary issues. For compliance cases which may lead to the imposition of higher levels of culpability penalties (including serious non-compliance cases, some high-wealth individual cases and cases where a reasonably arguable position is absent), the Tax Office advises that it will mandate a range of new processes to improve compliance decision-making and review such decisions through its IQF processes before decisions are communicated to taxpayers.

## Valuations

- 6 In cases involving taxpayer-obtained valuations, the Tax Office relies on expert valuer advice to test these valuations. However, different experts can reasonably disagree on some matters. Clause 26 of the Code of Settlement Practice specifically gives disputes over valuations as an example of where settlement may be appropriate. However, in some cases examined, the Tax Office waited until litigation was imminent before considering whether a negotiated settlement might be appropriate. This exposed the Tax Office and taxpayer to unnecessary costs and delay that could have been minimised if the potential downstream treatment (AAT's or Court's treatment) of evidentiary aspects of these disputes was considered earlier.



## CHAPTER 4 — ACTION ARISING AS A RESULT OF THE REVIEW

4.1 The Tax Office has worked internally and with the IGT to agree on a significant range of actions aimed at improving its settlement administration and active compliance matters affecting settlements. The Tax Office has commenced a program of work for making both short-term and longer term improvements in the administration and integrity of the end-to-end settlement process. The overall aim of this work is for the Tax Office to make a fundamental improvement in settlement administration and risk mitigation by considering all stages of settlement administration and decision-making, as well as considering settlements as an integral part of the disputes process. The intended outcome is increased community confidence in the transparency, consistency, correctness, integrity and administrative soundness of settlement decisions. The IGT will, in accordance with current practices, review the implementation of these actions at a future date.

4.2 The agreed range of actions is set out below.

### Settlement administration

- 1 With the aim of improving the quality of settlements recording, the Tax Office will complete a six-month body of work that commenced in February 2009 that focuses on putting in place 'immediate next step' improvements to raise the quality of settlement register recording (in terms of completeness and accuracy) and reporting to Parliament for the 2008-09 year.

*Tax Office comments: Agreed – All of the entries entered on the Settlement Register for the 2008-2009 year have been checked for accuracy and completeness against the source settlement documentation as part of a dedicated project on settlement data integrity led by the Law Infrastructure Branch in the Law and Practice Business Line. This project is now complete. However, the intelligence gathered from this process has been incorporated into integrity and assurance processes for settlement register data going forward (these are outlined in agreed Change 2 below).*

- 2 With the aim of improving the integrity checks on data recording, the Tax Office will reduce the number of accountability points involved in the settlement registration process and centralise the settlement register's management within the Law Infrastructure Branch in Law and Practice.

*Tax Office comments: Agreed – As from 1 July 2009, the accountability for the integrity of the settlement register data rests with a network of business line settlement co-ordinators, and the overall responsibility for settlement integrity rests with the Law Infrastructure Branch. These co-ordinators have responsibility for carrying out integrity checks on the data that is entered into the settlement register. The integrity of the settlement register data is measured against integrity measures relating to timeliness, accuracy and completeness and will be reported on a quarterly basis to the Tax Office Integrity Adviser (with the first report due in*

*November 2009). The Law Infrastructure Branch in Law and Practice will continue to monitor the integrity of the business line data and provide advice or take corrective action as appropriate.*

- 3 With the aim of improving management reporting on settlements, the Tax Office will increase the management reporting in relation to the settlement register information.

*Tax Office Comments: Agreed – A suite of special purpose reports, in addition to the information supplied for the annual report, has been developed. These reports analyse the settlement register data on different bases (for example, business line, nil variance cases, notional loss cases). These special purpose reports can and will be supplied to internal stakeholders and internal fora for the purposes of examining settlement activity in the Tax Office. In addition, the information in these reports may be used to respond to possible requests from external scrutineers such as the Joint Committee of Public Accounts and Audit, the Australian National Audit Office and Senates Estimates Committees.*

- 4 With the aim of improving understanding of respective roles and responsibilities for officers involved in settlement administration, the Tax Office will clarify accountabilities, roles and responsibilities in relation to settlement administration.

*Tax Office Comments: Agreed – This agreed change will be achieved through (i) putting in place improved corporate governance arrangements for settlements that will examine settlement activity in a systemic way from a whole-of-Tax Office perspective; (ii) including role and responsibility definitions within user documentation to support the Code and register; and (iii) reducing the number of accountability points involved in the settlement registration process (see details at agreed change 2 above). These changes will lead to an improved understanding of the respective roles and responsibilities of those involved in settlements administration.*

- 5 With the aim of improving the quality of settlements decision-making and administration, the Tax Office will promote an integrated approach to the identification, monitoring and actioning of quality issues arising with settlements decision-making and administration, and identify continuous improvement opportunities through Integrated Quality Framework (IQF) implementation.

*Tax Office Comments: Agreed – The process to deploy IQF for settlements commenced on 1 July 2009 and IQF for settlements is expected to be fully operational by July 2010. The IQF deployment for settlements is currently in the scoping and design phase.*

- 6 To facilitate improvements in dispute resolution (including the avoidance of disputes), the Tax Office will implement a framework for ongoing analysis of reasons for differences between initial Tax Office positions communicated to taxpayers and settled positions. The Tax Office will also implement mechanisms to drive improvements in upstream processes that are identified in this analysis. For cases ending in settlement this will include:

- recording the initial Tax Office position communicated to the taxpayer and the settled position; and
- analysis of the specific reasons why the settled position was not reached in the initial Tax Office position, with the aim of identifying improvements that would help to avoid the potential for disputes arising, including:
  - the specific reasons for the material differences between the two recorded positions (that is, an explanation of the reasons for the change in quantum between the positions); and
  - the specific reasons why the settled position was not reached in the initial Tax Office position (including reasons which fell outside of the Tax Office's control, such as taxpayers' failure to provide requested information).

*Tax Office comments: Agreed in principle – The ATO's case management system for active compliance, objection and litigation work, together with mandated work practices, currently requires case officers to record details of all ATO positions that are communicated to taxpayers at each stage of the life cycle of a case. However, integrated end-to-end reporting and analysis across the life cycle of a case is not currently available (see agreed change 19 and our response for more details).*

*The Settlement Register and Settlement Register User Guide are currently being redesigned to ensure more consistent data capture and recording of the Tax Office's pre-settlement position (the ATO position communicated to the taxpayer immediately prior to the commencement of the negotiations that lead to settlement), settlement position, and the reasons for variance between those positions. It is expected that this work will be completed by July 2010. The Tax Office is also working on bringing the settlement process more fully within our Siebel case management system, which should provide for more comprehensive end-to-end and integrated data capture around our settlement activities so as to replace the need for the current settlement register.*

*As indicated in the ATO response to agreed change 3 above, regular reporting and analysis of settlement data, including analysis of the reasons for settlement, analysis of variances, and the identification of opportunities to improve the Tax Office dispute resolution processes, will be part of the integrity management and monitoring role of Law Infrastructure Branch. It is also expected that particular business areas would conduct similar analysis on an ad hoc basis (for example, a review of settlements following a compliance project). Our capacity and capability for this work will develop over time, but is presently constrained by the absence of integrated end-to-end reporting and analysis across the life cycle of a case (see agreed change 19).*

*Agreed change 6 will also inform the design of IQF for settlements (further to agreed change 5 above) to ensure analysis of changes in reasoning and identification of opportunities for improvement is considered in pre- and post-settlement quality assessments.*

- 7 Entries on the settlement register should clearly record the evidentiary basis for asserted compliance with paragraphs 25 and 26 of the Code of Settlement Practice.

*Tax Office comments: Agreed in principle – The current functionality of the Settlement Register has limitations on the amount of text that can be entered to explain the basis of the settlement decision and this would not be the appropriate vehicle to capture this level of detail. However, the evidentiary basis for asserted compliance with paragraphs 25 and 26 should properly be captured within the settlement submission that is prepared by the case officer for approval by the SES delegate who is empowered to make the decision to settle. The Tax Office will examine ways to improve (i) the understanding of the case officers and SES decision makers as to the requirements of paragraphs 25 and 26 of the Code; (ii) the documentation of the reasons for asserted compliance or otherwise with these parts of the Code; and (iii) the decision-makers' understanding of their responsibilities in signing off on a decision to settle. The Tax Office is also working on bringing the settlement process more fully within our Siebel case management system, which should provide for more comprehensive and integrated data capture around our settlement activities so as to replace the need for the current settlement register.*

- 8 Revised and improved user documentation will be made publicly available and required to be followed by Tax Office officers in relation to the following:

- what does and does not constitute a matter appropriate for consideration for settlement (that is, when is it appropriate for the Tax Office and taxpayers to settle a matter), including the principle that settlements would not generally be appropriate where the Tax Office concedes a material change to its precedential view or the application of the precedential view to the facts and evidence of the case in question – this should be done by quicker and less costly means, such as allowing the objection and subsequently updating the precedential view, rather than through settlement;
- practical guidance for application of settlement criteria, such as 'genuine uncertainty as to the proper application of the law to the facts' (this will form part of any assessment by the Tax Office as to whether settlement of a case is appropriate);
- settlement terms in settlement deeds should relate only to the subject matter that affects the basis on which the quantum is settled and any obligation to comply in future in relation to that particular subject matter (and not broad commitments to being compliant taxpayers on non-related matters generally, agreeing to raise all potential tax-relevant transactions with the Tax Office in the future, nor matters under dispute but which do not directly affect the basis on which the quantum is settled); and
- the Tax Office will revise PS LA 2007/5 and 2007/6 to provide improved linkages and reference points to the Code of Settlement Practice.

*Tax Office comments: Agreed – The Tax Office is currently working on improved instructions and guidance to staff which will reflect the changes above. These changes will also inform design and application of the Integrated Quality Framework to settlement decisions and processes. It is expected that this work will be completed by July 2010.*

- 9 Templates for settlement deeds will be amended to ensure fairness and consistency of treatment in certain settlements over time, so that taxpayers have an option to reopen a settled case where the Tax Office subsequently changes its view of the law on which the settlement was based, in a way that would have achieved a better outcome for the taxpayer, subject to the following conditions:

- this applies to settlements that resolved only one matter in dispute (and not multiple issues – ‘global settlements’);
- the taxpayer has requested that the settlement be reopened;
- the timeframe is limited to the relevant amendment period; and
- the settlement was concluded after the public release of this report.

*Tax Office comments: Agreed – Settlements represent an agreement by both parties to a dispute on a mutually negotiated position following a considered assessment by each party of the risks and potential benefits of continuing the dispute. For this reason, the Tax Office does not believe that settlements should be undone lightly or without good reason. However, the Tax Office agrees that, in the interests of fair and reasonable administration, some settlements can and should be reopened in the limited and exceptional circumstances outlined above. The Tax Office will deliver this agreed change through revised guidance for staff.*

- 10 Although the Tax Office has existing mechanisms aimed at providing a quality of taxpayer experience and ensuring probity of the settlements process, there remains room for further improvement. The Tax Office will develop and implement mechanisms to:

- improve the taxpayer experience in relation to the settlement process and access to settlement by providing a ‘circuit breaker’ or ‘reference point’ for taxpayers with the aim of:
  - drawing on significant alternative dispute resolution and settlement experience; and
  - providing a fresh set of eyes for decisions to access the settlement process or disputes arising in the settlement process.

*Tax Office comments: Agreed – The Tax Office is currently developing and deploying a more integrated, transparent and cost effective approach to taxpayer dispute resolution. To achieve this, the Tax Office is building infrastructure and providing guidance and training to ensure that tax officers adopt the following dispute resolution principles when approaching their work:*

- *identify and resolve taxpayer disputes as early as possible;*
- *deploy alternative approaches to dispute resolution in all areas, as appropriate; and*
- *ensure, within reason, relevant information and evidence is captured where litigation is inevitable.*

*Alongside existing complaint and escalation processes, the new mechanisms also include opportunities for issues to be escalated for review by more senior and experienced tax officers, who can bring a fresh perspective and act as a 'circuit breaker' for otherwise difficult or intractable disputes.*

- prevent inappropriate use of settlements by implementing a probity check with the aim of:
  - minimising unnecessary cost and delay by providing 'real-time' assurance of the probity of settlements and the use of the settlement process;
  - ensuring that material changes in the Tax Office position are communicated to relevant taxpayers;
  - ensuring that entry into settlement is appropriate;
  - drawing on significant experience in settlement matters; and
  - providing a fresh set of eyes on significant probity decisions in the settlement process.

*Tax Office comments: Agreed – The Tax Office is currently undertaking a program of work to improve the integrity and probity of our settlement processes. These have been outlined in more detail in the Tax Office comments on agreed changes 1-9.*

- 11 The Tax Office will develop and implement a redesigned business model dealing with disputes over tax liabilities as an end-to-end process, including improving the linkages between settlements and its upstream and downstream processes.

*Tax Office comments: Agreed – The Tax Office is currently developing and implementing a more integrated, transparent and cost effective approach to taxpayer dispute resolution. To achieve this, the Tax Office is building infrastructure and providing guidance and training to ensure that tax officers adopt the following dispute resolution principles when approaching their work:*

- *identify and resolve taxpayer disputes as early as possible;*
- *deploy alternative approaches to dispute resolution in all areas, as appropriate; and*
- *ensure, within reason, relevant information and evidence is captured where litigation is inevitable.*

*For settlements, the Tax Office is working towards putting in place improved governance arrangements at both the corporate and business line level. The governance arrangements at the corporate level will allow for a systemic review of settlement activity across the Tax Office and how this activity impacts and connects with other parts of our tax administration and dispute resolution. The governance arrangements at the business line level will focus on improving the robustness of settlement decision-making by ensuring there is access by the SES decision-maker to multiple points of input as and when required.*

- 12 Before entering and during settlement negotiations, the Tax Office will ensure that it discloses changes to its approach which would reduce the range of settlement points and not allow taxpayers to labour under misconceptions about their likely 'out of pocket' liability.

*Tax Office comments: Agreed – The Tax Office expects our staff to discuss issues with taxpayers at all stages of the dispute process to ensure a common understanding of the issues and respective positions reached with respect to any likely tax liability. As part of the Tax Office's integrated approach to early dispute resolution, a range of improvement initiatives have been developed and deployed in the objections and litigation components of our end to end dispute resolution process. In particular, the Tax Office has recently deployed a risk-based indicator and supporting documentation that will help identify cases that may benefit from alternative approaches to resolution (such as case conferencing, mediation, conciliation, settlement, access to expert technical skills, etc.). Where such a case is identified, the Dispute Resolution Network can also provide advice on whether alternative approaches to dispute resolution are appropriate, and which approach would be most beneficial.*

*A similar tool is being developed for the original decision (active compliance) component of our dispute resolution process.*

### **Active compliance matters affecting settlements**

- 13 The Tax Office will extend to all multiple taxpayer or 'leveraged' active compliance cases, implementation of the agreed recommendation C in the IGT's fourth report of its major, complex issues review (namely to undertake adequate field work to identify the issue and to differentiate categories of taxpayers' circumstances, and to test the quality of Tax Office information that was provided to taxpayers to help them meet their obligations before a compliance strategy is designed and commenced). 'Leveraged' active compliance cases are those cases that involve the same compliance concern or technical issue – such as groups of cases that are the subject of a particular Tax Office active compliance project.

*Tax Office comments: Agreed – Tax Office Risk owners for major compliance activities will ensure that:*

- adequate field work is undertaken to identify the issue and differentiate categories of taxpayers' circumstances;*
- direct communication takes place with affected taxpayers and/or their advisers;*

- *regular reappraisal is made of compliance and revenue risk and costs; and*
- *the quality of information provided to taxpayers to help them meet their obligations is tested before a compliance strategy is designed and commenced.*

- 14 In multiple taxpayer or 'leveraged' active compliance cases, the Tax Office will ensure that the Centres of Expertise or Tax Counsel Network assures the correct application of the view to the facts (representative of the types of facts involved) before issuing amended assessments.

*Tax Office comments: Agreed in principle – The Tax Office already employs a range of escalation processes to ensure appropriate application of the Tax Office precedential view to the facts of a case or set of cases, including review by Centres of Expertise or Tax Counsel Network where warranted. In cases involving significant numbers of taxpayers or 'leveraged' active compliance activities involving significant risks or issues, the Tax Office agrees that these matters will generally be escalated for CoE or TCN assurance in accordance with our usual practices (for example, the Priority Technical Issue process).*

- 15 Although the Tax Office has processes and policies that require officers to communicate changes to the Tax Office's view, the Tax Office will ensure that any changes to its view are transparently communicated to affected taxpayers and their representatives.

*Tax Office comments: Agreed in principle – The Tax Office already employs a range of mechanisms to ensure that any changes to the Tax Office view are transparently communicated to affected taxpayers and their representatives. It is not envisaged that any additional activity will be undertaken to meet or address this agreed change.*

- 16 The Tax Office will improve discipline surrounding the requirement for a sound evidentiary basis for active compliance decisions on primary tax and penalty decisions, including improvements in:

- determining the material facts and the relevant evidence;
- testing conflicting facts and evidence; and
- determining the strength of relevance and admissibility of the facts and evidence.

*Tax Office comments: Agreed – The Tax Office's existing processes require a sound basis for our decisions. All cases completed in our Siebel case management system require the identification of facts, evidence and the decision on penalties needs to be related to those facts and evidence and needs to be in line with our tax rulings and practice statements on penalties. In particular, for compliance cases which may lead to the imposition of higher levels of culpability penalties including serious non-compliance cases, some high wealth individual cases or cases where a reasonably arguable position is absent, we will be mandating a range of new processes to improve the documentation and weighing up of our facts, evidence and penalty to be imposed. We have commenced rolling out these new processes across*

*our active compliance capability and will be embedding them into our case management work processes.*

*Furthermore, we are 'rolling out' new up-to-date skilling to embed the capability and discipline of our officers in evidentiary matters and these new processes.*

*Our IQF processes will assist in adopting these new processes and continuously improving over time.*

- 17 The Tax Office will ensure that compliance case management systems and IQF processes reinforce Tax Office rules for auditors to cite the correct Tax Office precedential view in all compliance cases.

*Tax Office comments: Agreed – The design of our case management system with its links to Tax Office Law and our Quality Control system is intended to deliver this outcome. Our IQF processes which are intended to deliver continuous improvements over time, re-enforce this agreed better practice. Our IQF processes will also test and identify whether the rules have been complied with by auditors.*

- 18 During the review, the Tax Office improved its ability to record:
- by liability component (such as primary tax, losses, penalties and interest) and by Tax Office functional area (such as LBI, GST and ATP), the liabilities raised against taxpayers before the formal settlement processes were triggered under the code;
  - by liability component and by Tax Office functional area, the settled position; and
  - the specific reasons for the material differences between the two positions (those differences which underlie the difference in quantum between the two positions).

It also improved its ability to analyse the reasons for difference between the liability components actually imposed pre-settlement and those finally imposed.

In light of the above, the Tax Office will facilitate public understanding of the revenue impact of settlement cases, by publicly reporting on an ongoing basis (for settled cases):

- the aggregated amounts of liability actually imposed pre-settlement and that finally imposed, by liability component (such as primary tax, losses, penalties and interest) and by Tax Office functional area (such as LBI, GST and ATP); and
- a summary of key findings of its analysis for the differences between the liability components actually imposed pre-settlement and those finally imposed.

*Tax Office comments: Agreed – As the ATO indicated in response to agreed changes 3 and 6 above, regular reporting and analysis of settlement data, including analysis of the reasons for settlement, analysis of variances, and the identification of opportunities to improve the Tax Office dispute resolution processes, will be part of the integrity management and monitoring role of Law Infrastructure Branch. These reports will be made publicly available at least once a year. It may be necessary to omit some figures to preserve confidentiality of tax affairs (similar to the treatment in Table 5 of this report).*

- 19 Publicly reporting a more comprehensive and detailed picture of the net contribution to revenue of compliance actions by the Tax Office is hindered at present by the following.
- The regulatory framework around the running balance account and the resulting Tax Office data framework make it difficult to track, over time, active compliance liabilities for taxpayers.
  - The current data recording structures do not identify amounts raised through active compliance activities at the entry and exit points for the data (for example, the Tax Office estimates that between 40 and 60 per cent by number of all objections are self-amendments rather than disputed liabilities raised in active compliance activities – whether the liabilities raised were as a result of active compliance activities or not is not recorded in objection cases).
  - The current priorities of the Change Program are focused on delivering new transactional processing arrangements, which is a substantial body of work. The Tax Office advises that its reporting tools and processes will evolve over time once the new transactional arrangements have been bedded down.

In recognition of the above, the IGT will, at least two years after this report, review the Tax Office's progress towards the goal of internally recording and publicly reporting, by market segment, the aggregate amounts of tax (with losses specifically identified) reduced from original Tax Office compliance-raised liabilities for each category of case including objections, appeals (including those resolved by withdrawing from litigation or entering consent orders) and settlements.

*Tax Office comments: Agreed as aspirational – The ATO currently reports on overall net revenue consistent with our obligations to government, as evidenced by our annual reporting to Parliament. For the purposes of greater transparency and improved management of our tax administration, the ATO agrees on the importance of integrated end-to-end reporting and analysis across the life cycle of a case. This would enable more detailed analysis of activities and their outcomes, including the net contribution to revenue of particular compliance activities. However, we do not currently have the reporting tools and processes to deliver the on-going, time series disclosures necessary to deliver a complete and detailed picture of net revenue contributions from any particular activity.*

*As noted above, our Change Program is currently focusing on delivery of new transactional processing arrangements which is a substantial body of work. Our reporting tools and processes will evolve over time once the new transactional arrangements have been bedded down.*

*We will continue to improve our publicly available reports over time as our reporting tools and processes permit.*

- 20 With the aim of promoting early and comparatively less costly resolution of disputes and providing the Tax Office with reasonable assurance that the taxpayer is not hiding any relevant facts, the Tax Office will replace the wording ‘full and true disclosure of all relevant facts’ in its model settlement deed with wording that makes the settlement conditional upon the taxpayer having revealed all material facts known by them at the time of settlement and requiring them to disclose any further material facts which may become known after the execution of the deed of settlement.

*Tax Office comments: Agreed – The Tax Office will replace the relevant clause in the model settlement deed with the following wording:*

*‘the taxpayer warrants to the best of his/her/its knowledge and belief that he/she/it has made a true and correct disclosure of all facts reasonably required in pursuance of settlement to the Commissioner prior to entering into this deed and agree to disclose any further material facts which may become known after the execution of this Deed of settlement.’*

*It is important to stress the status of the model settlement deed which is contained as an appendix to the Code of Settlement Practice. It is a reference tool to be used during settlement negotiations to support any resolutions between the parties and can be departed from. It is open to both parties to negotiate the terms of the deed to ensure it is fair to the taxpayer and supports an outcome consistent with the Commissioner’s administrative duty.*

- 21 During the review, the Tax Office improved its linkage between the active compliance and debt collection functions by involving its debt collection function in the active compliance design of project-based compliance activities. The Tax Office has improved its guidance to those officers tasked with approving active compliance decisions. It has also improved its independent checks to ensure that there is appropriate evidence to support the decision. Although these improvements have been made, there remains room for further improvement in relation to the following circumstances and tension points in administration that may arise in active compliance activities.
- Taxpayers may ‘disengage’ from the Tax Office, or refuse to communicate with the Tax Office in whole, or for a period. In these circumstances, the Tax Office will need to determine a course of action on the best available evidence. This may result in the issuing of an assessment and the raising of a tax liability that may be in excess of an amount that would have been raised if the taxpayer had not disengaged

from the Tax Office and had provided the best evidence available to them.

- In the absence of taxpayer engagement, debt collection action is generally appropriate to collect the liability.
- Where taxpayers seek to re-engage with the Tax Office during debt collection action or earlier, the Tax Office's processes should accommodate this re-engagement where taxpayers are seeking to provide better evidence in reducing the liability amount. However, taxpayers may perceive unfair Tax Office treatment when debt collection action is being taken at the same time as taxpayers are seeking to provide this evidence. This perception is likely to be compounded where taxpayers become aware that the Tax Office is considering settlement to resolve the dispute.
- Delays in determining objections may mean that debt collection action is taken on liabilities that are based on evidence that is not as accurate as evidence that has been provided by taxpayers in the objection.
- The Tax Office's functional separation of debt collection and tax liability dispute resolution may also result in missed opportunities to successfully re-engage with the taxpayer to resolve the matter efficiently. These missed opportunities may increase costs, by pursuing a debt that may be in excess of that ultimately determined, and promote perceptions of unfair treatment in the circumstances.

Where assessments are issued in the above circumstances, the Tax Office will aim to promote future voluntary compliance behaviours and avoid the potential for perceptions of unfair treatment, by ensuring that it:

- clearly explains to the taxpayer why it is raising such assessments and the role that the available evidence has played in the decision, and gives an indication of which further evidence would likely affect the taxpayer's liability;
- ensures that tax officials (including debt collection officers) are alert to signals that the taxpayer is seeking to re-engage on the liability issues by providing better material evidence;
- where the taxpayer seeks to re-engage on the liability issues by providing better material evidence, explores this re-engagement as an opportunity to efficiently and effectively resolve the dispute; and
- quickly reassesses the liability on the basis of this further evidence (for example, as a fast-tracked objection, or as the audit area reconsidering the basis for liability and withdrawing the amendment and reissuing another, where appropriate) before further debt collection action is taken.

*Tax Office comments: Agreed – The Tax Office will continue to build on existing good practices around communication with taxpayers, including ensuring that tax officers clearly inform taxpayers of the reasons for our decisions, including more detailed explanations around evidentiary issues. Increased engagement with taxpayers is also a key element of our more integrated approach to dispute resolution (see our response to agreed changes 10 and 11 for more detail).*

*With respect to debt collection activity in a dispute context, it has been a long-standing and well accepted legal and policy position that the Tax Office can collect debts notwithstanding that the liability may be in dispute. Our debt collection activity is guided by principles of reasonableness and proportionality, and balances the rights and interests of individual taxpayers and the community. The Tax Office Receivables Policy (which is publicly available on [www.ato.gov.au](http://www.ato.gov.au)) sets out the Tax Office's approach to disputed debt – see Chapter 3 'Risk Management' paragraphs 21-23. Many factors are considered when assessing the level of risk associated with a disputed debt which in turn impacts on the Tax Office's decision to institute debt collection activity. Where there are potential indicators of high risk such as evidence of dissipation or alienation of assets, it will be appropriate for the Tax Office to institute immediate legal action, even in the circumstances outlined above. The ATO will nevertheless continue to improve its linkage between the active compliance and debt collection functions.*

- 22 Where there are significant internal or external signals that the Tax Office's existing precedential view may need to be at least reviewed, the Tax Office will require officers to escalate the matter to the Centres of Expertise or Tax Counsel Network for their decision.

Where there are significant internal or external signals that the Tax Office's existing compliance approach (for example, its approach to calculating an arm's length amount for a particular set of circumstances being reviewed in a number of cases) may need to be at least reviewed, the Tax Office will require officers to escalate the matter to the appropriate senior tax official (for example, the SES Risk owner) for their decision.

If there is a change to that existing precedential view in a given compliance approach, the Tax Office will ensure:

- it fully informs those known impacted taxpayers at the earliest possible time; and
- it undertakes quick, complete and transparent rectification action with those known taxpayers where appropriate.

Examples of 'significant internal or external signals' would include:

- a tribunal or court decision which materially affects the basis for the Tax Office's view of the tax law – such as a decision on trust law which may affect treatment of income under Division 6, or a tribunal decision which indicates the tribunal's preferred approach to findings of fact; and

- internal reconsideration of a Tax Office approach to a compliance issue that indicates a need to materially alter the approach for a particular factual matrix.

*Tax Office comments: Agreed – The Tax Office already employs a range of escalation processes to ensure appropriate levels of review where warranted, including review by Centres of Expertise or Tax Counsel Network, and including some of the situations identified above (for example, where a court or tribunal decision materially affects the basis for the Tax Office's view of the tax law). The improvements being delivered through the integrated dispute resolution processes (see ATO response to agreed changes 10 and 11) will further deliver guidance and mechanisms for escalation of disputes for further review.*

23 The Tax Office will move towards implementing its good communication practices across all its active compliance cases, including:

- clearly explaining to taxpayers the role that the evidence has played in the decision, including, in relation to conflicting material evidence, the reasons why certain evidence was preferred; and
- in circumstances where taxpayers fail to provide material evidence, explaining to taxpayers the impact that not providing the information will have on the compliance decision in their particular case, and following a reasonable opportunity for taxpayers to respond, quickly finalising these cases.

*Tax Office comments: Agreed – The Tax Office will continue to build on existing good practices around communication with taxpayers, including ensuring that tax officers clearly inform taxpayers of the reasons for our decisions, including more detailed explanations around evidentiary issues. Increased engagement with taxpayers is also a key element of our more integrated approach to dispute resolution (see our response to agreed changes 10 and 11 for more detail).*

24 Although the Tax Office has processes and policies concerning valuations, there remains room for further improvement in resolving disputes over valuations. The Tax Office will, within one year, examine recent settled cases that involved disputes over valuations, in order to:

- identify the relevant facts, the events that indicated the dispute was imminent, how the dispute was resolved and why the dispute was ultimately settled;
- identify early dispute resolution opportunities; and
- develop and test strategies that will minimise the time and cost to both the taxpayer and the Tax Office in resolving disputes over valuations.

*Tax Office comments: Agreed – Disputes and settlements involving valuations will be used as a key area for exploring earlier resolution opportunities and strategies as part of our ongoing work around extending our integrated approach to dispute resolution into active compliance.*

## APPENDIX 1 — TERMS OF REFERENCE

This document contains the terms of reference for the review which the Inspector-General of Taxation will undertake into how the Australian Taxation Office (Tax Office) settles active compliance activities. It also outlines how the Inspector-General proposes to consult the community on this review.

### Background

Disputed tax liabilities are often resolved by agreement between the Tax Office and the taxpayer – generally resulting in the taxpayer’s assessment being amended to a lower sum than originally put by the Tax Office. In Law Administration Practice Statement (PSLA) 2007/5, the Tax Office makes a distinction between settling the amount of the liability and compromising a debt as follows:

The settlement process aims to establish an agreed tax liability where the taxpayer and Tax Office do not initially agree on the tax liability. Compromise occurs when the Tax Office and taxpayer agree on the amount of the tax liability but the Tax Office agrees to accept less than the agreed amount in finalisation of the debt ...

In the two financial years 2004–06, the Tax Office settled more than 5,000 cases. Six of these cases involved a total of more than \$1 billion in revenue.

In February 2006, the Inspector-General announced this topic on his short list of potential reviews. Until 2006, the Commissioner of Taxation had not previously published settlements statistics but agreed that publication would promote openness and transparency. Some statistics have since been provided in his annual reports.

Also in 2006, the Tax Office reviewed its Code of Settlement Practice and as part of that review sought feedback from the community on its practices. As a result of this review in early 2007 the Tax Office issued two practice statements, PS LA 2007/5 and 2007/6, and a revised Code of Settlement Practice.

Public confidence in the Tax Office’s accountability and independence in settling disputes is critical to Australia’s tax administration system of self assessment. This system relies on voluntary compliance, which is promoted when taxpayers have confidence in the Tax Office’s administration of the system. Confidence in Tax Office settlements is engendered through adherence to principles of horizontal equity, consistency, transparency, clear communication, reduction of compliance costs, maintenance of appropriate checks and balances, and alignment of approaches with the expanded Tax Office compliance model.

Aspects of Tax Office settlements have been reviewed by the Auditor-General, Ombudsman and Parliamentary Committees. In 2000, the Auditor-General found that the Tax Office complied with its settlement processes in relation to 15 cases it reviewed.<sup>1</sup> However, in 2001

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<sup>1</sup> Auditor-General, *Audit Report No. 46 1999-2000, Performance Audit, High Wealth Individuals Taskforce*, Canberra, June 2000, p 41.

the Ombudsman and Senate Economics References Committee identified some shortcomings in relation to settlements with certain groups of taxpayers and certain settlement practices and recommended remedial action.<sup>2</sup>

The Inspector-General has recently received the following representations as reasons for conducting this review:

- Taxpayers in dispute with the Tax Office argue that the Tax Office:
  - increases their compliance costs by sometimes unnecessarily causing disputes, inefficiently resolving disputes or ineffectively using lead cases to resolve disputes in common with other taxpayers;
  - sometimes 'quarantines' cases by settling cases that may erode the Tax Office's public position on an issue; and
  - sometimes makes ambit claims to force taxpayers to settle because the Tax Office's initial position is not cogent, is not supported by probative evidence or does not apply penalties which correctly reflect the culpability of the taxpayer.
- Taxpayers who want to comply with the law argue that settlements do not properly promote taxpayer voluntary compliance behaviours because settlements do not appropriately recognise compliance histories or encourage changes in compliance behaviours.
- Taxpayers within groups who are in dispute with the Tax Office argue that widely offered settlement terms lead to inequitable settlements because they do not sufficiently reflect individual circumstances.
- The community is also concerned that the Tax Office may sometimes inappropriately offer more favourable settlements to high profile or large business taxpayers.

The Tax Office says that it has a very serious and sound process of checks and balances to ensure settlements are conducted and struck in a proper way. It says that it has struck an appropriate balance between administrative efficiency and effective implementation of mechanisms which address the above concerns.

In the context of taxpayer and community concerns, the Inspector-General intends to review whether the existing Tax Office approaches, policies and practices appropriately balance the interests of individual taxpayers and those of the community.

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2 See Second Economics References Committee, *Operation of the Tax Office*, Canberra, 2000. Commonwealth Ombudsman, *The Tax Office and Main Camp Report of the investigation into the Australian Taxation Office's handling of claims for deductions by investors in a mass marketed tax effective scheme known as Main Camp*, Report under section 35A of the *Ombudsman Act 1976*, Canberra, February 2001; Senate Economics References Committee, *Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection*, Interim Report (June 2001), Second Report (September 2001) and Final Report (February 2002).

## Terms of reference

In accordance with subsection 8(1) of the *Inspector-General of Taxation Act 2003*, the Inspector-General conducts the following review on his own initiative.

The Inspector-General will review whether the Tax Office's settlement approaches, policies and practices strike an appropriate balance between the interest of individual taxpayers and taxpayers as a whole. It will focus on:

1. the effectiveness that Tax Office governance processes and assurance measures (including those aimed at ensuring Tax Office positions are cogent and supported by probative evidence) have in engendering confidence in Tax Office settlements;
2. (for those settlements on issues which are common to groups of taxpayers in dispute with the Tax Office), the effectiveness that settlement terms, criteria for entry into settlement and internal review processes have in sufficiently and appropriately differentiating treatment between the circumstances of individual taxpayers;
3. the alignment of Tax Office settlement approaches, processes and practices with the principles of the expanded compliance model;
4. the effectiveness that transparency measures in relation to settlements have in addressing perceptions of potential favouritism;
5. practices which may minimise the adverse impacts that disputes have on businesses while providing reasonable assurance that the risk to the revenue is minimised; and
6. the effectiveness and quality of communication occurring during disputes to enable a shared understanding of the merits of each party's position and the consequences of alternative processes for resolution.

## Consultation processes

The Inspector-General will:

- publish a copy of the terms of reference for this review on his website at [www.igt.gov.au](http://www.igt.gov.au);
- take submissions on this review from members of the public generally, with a particular interest in those submissions detailing finalised active compliance cases in which settlements were considered or struck; and
- request the Commissioner of Taxation to provide information and/or documents relevant to this review.

## **Contacting the Inspector-General of Taxation**

To ensure consideration, submissions should focus on the terms of reference and be lodged by 19 December 2007.

Submissions may be given:

By telephone: (02) 8239 2111

By email: [settlements@igt.gov.au](mailto:settlements@igt.gov.au)

By post: Tax Office's Settlements  
Inspector-General of Taxation  
GPO Box 551  
SYDNEY NSW 2001

By facsimile: (02) 8239 2100

## **APPENDIX 2 — PARAGRAPHS 25 TO 27 OF THE CODE OF SETTLEMENT PRACTICE**

### **Circumstances where it would generally be inappropriate to settle**

25 Circumstances where it would be generally inappropriate to settle include where:

- the outcome of the settlement would be contrary to an articulated policy reflected in the law;
- the matter is subject to escalation to settle the Tax Office view;
- the matter is clear-cut or there is a clearly established and articulated Tax Office view on the issue, and there are no special circumstances such as those described in paragraph 26;
- the settlement would involve inconsistency of treatment for taxpayers in comparable circumstances;
- it is in the public interest to have judicial clarification of the issue and the case is suitable for this purpose — in such cases, it may be appropriate to fund the litigation under the test case funding program;
- litigation of the matter through the courts could have a significant flow-on compliance effect and the case is suitable for this purpose;
- a similar matter is being litigated and awaiting outcome;
- the taxpayer's case is poor and unlikely to be pursued through the Administrative Appeal Tribunal (AAT) or Court. Care is necessary to ensure the settlement practice does not encourage frivolous objections and appeals; and
- inability to pay a tax debt as it falls due has been deliberately created and it would be inappropriate to consider settlement without first escalating the matter (see paragraph 35).

### **Circumstances where it may be appropriate to settle**

26 As a general guide, settlement may be an appropriate way to resolve a matter if:

- the cost of litigating (including internal Tax Office costs) is out of proportion to the possible benefits, having regard to the prospects of success (including collection of the tax), and likely award of costs, assessed as objectively as possible;
- there are complex factual or quantum issues in contention, or evidentiary difficulties, or there is genuine uncertainty as to the proper application of the law to the facts, sufficient to make the case problematic in outcome or unsuitable for resolution through the AAT or courts, (for example, where the issue is peculiar to the particular taxpayer, and the opposing positions are each considered reasonably

arguable). This is particularly so where the settlement includes an agreed approach for future income years;

- a participant or group of participants in a tax avoidance or other arrangement has come to accept the Commissioner's position and settlement is around the steps necessary to unwind existing structures and arrangements;
- the settlement will achieve compliance by the taxpayer, group of taxpayers, or section of the public, for current and future years, in a cost-effective way; and
- unique or special features exist which make it unsuitable for resolution through litigation, for example, a dispute about the valuation of a unique asset.

27 As a general rule, the Tax Office will not enter into a settlement where the outcome would be contrary to its established view of the law (for example, in a public ruling). However, this should not be taken to mean that the Tax Office is not prepared to reconsider the correctness of its view. Should cases come to light where the application of a ruling or an otherwise accepted Tax Office view would produce a result which could be regarded as unintended, unreasonable or incorrect, steps should be taken to have the matter reviewed, or to approach Treasury to recommend to government that there be legislative change.

## APPENDIX 3 — COMMISSIONER OF TAXATION'S RESPONSE



Mr Ali Noroozi  
Inspector-General of Taxation  
GPO Box 551  
Sydney NSW 2001

Dear Ali

***Review into aspects of the Tax Office's settlement of active compliance activities***

Thank you for your letter of 1 October 2009, submitting the final draft report of your *Review into aspects of the Tax Office's settlement of active compliance activities* for our comments and response.

The Tax Office welcomes the review and insights of the Inspector-General of Taxation into important areas of our tax administration. In particular, your finding that:

[t]he Tax Office has a framework of policies and processes aimed at promoting consistency and transparency of access to settlements, treating taxpayers in comparable circumstances consistently and requiring its officers to be, and seen to be, fair and equitable in their official dealings, including negotiation of settlements... [and that, at] a systemic level, the cases examined by the IGT generally evidenced compliance with these policies and processes

should provide reassurance to the community that it can have confidence in this important aspect of our tax administration.

Your review has provided us with useful insights and understanding about how our actions in relation to settlements are sometimes perceived, understood and acted upon by taxpayers. The review has also confirmed that we are on the right track in some of the improvements that we have underway or planned.

I am pleased to be able to endorse all of the agreed recommendations and our responses. I was particularly pleased to see that the report recognised our improvement efforts to date and incorporated our further planned improvements into the suite of agreed recommendations, leading to a more efficient implementation of changes than might otherwise have been the case.

Finally, comments I have received from ATO staff involved in this review indicate that the process used by both sides to achieve this final draft report was comprehensive, highly collaborative and well-considered. I understand that there were frank, robust but always constructive discussions from both sides in the course of this review. This is a good outcome and reflects a good working relationship between our two offices.

Yours sincerely



Michael D'Ascenzo  
Commissioner of Taxation

19 October 2009