



Australian Government

Inspector-General of Taxation

Inquiry into the 2016-17 Annual Report of the Australian Taxation Office

**A submission to the House of Representatives
Standing Committee on Tax and Revenue**

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February 2018

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1. INTRODUCTION

1.1 The Inspector-General of Taxation (IGT) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Tax and Revenue's (Committee) *Inquiry into the 2016-17 Annual Report of the Australian Taxation Office* (Inquiry).

1.2 The role of the IGT includes addressing complaints about the administrative actions of Australian Taxation Office (ATO) and the Tax Practitioners Board (TPB) as well as conducting broader reviews into the administration of the tax system for the benefit of all taxpayers and making recommendations to the ATO, the TPB and the Government for improvement.

1.3 This submission seeks to assist the Committee in its performance review of the ATO's 2016-17 Annual Report (Annual Report). The primary purpose of annual reports of government agencies has been described as ensuring accountability. For example, annual reports serve to inform the Parliament, educational and research institutions, the media and the general public about the performance of agencies in relation to services provided.¹

1.4 The IGT has drawn on findings of his completed reviews and complaints data in examining the Annual Report in this submission which seeks to identify areas that may benefit from further exploration. It does not contain in-depth analysis or conclusions.

1.5 The submission is structured around four primary observations:

- tax debt collection and reporting;
- lodgment compliance;
- dispute resolution; and
- services and support for tax practitioners.

1.6 The IGT has also made additional observations including those relating to the consultation on his work programs and the implementation of the Committee's previous recommendations.

¹ Department of Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and Other Non-Corporate Commonwealth Entities* (2015) p 3.

2. TAX DEBT COLLECTION AND REPORTING

2.1 Raising revenue through taxation to fund Government activities and public purposes, such as welfare and defence, is a fundamental feature of modern societies.

2.2 The ATO is responsible for managing the tax and superannuation systems as well as optimising the collection of the vast majority of the Commonwealth's revenue. Accordingly, the way in which the ATO collects taxes may impact upon Government policy and services for Australians as well as the operation of commercial enterprise and the broader economy.

2.3 The Annual Report and those of prior years show the level of tax debt. The amount and composition of tax debt between the 2013-14 and 2016-17 financial years is shown in the table below.

Table 2.1: Amount and composition of tax debt between 2011-12 and 2016-17

	2013-14	2014-15	2015-16	2016-17
Total debt	\$34.2 billion	\$35.1 billion	-	-
Collectable debt	\$19.5 billion	\$19.2 billion	\$19.2 billion	\$20.9 billion
Disputed debt	\$8.5 billion	\$9.6 billion	-	-
Insolvency debt	\$6.2 billion	\$6.3 billion	-	-
Debt irrecoverable at law	\$2.3 billion	-	-	-
Uneconomic to pursue	\$1.1 billion	\$1.4 billion	\$1.7 billion	- ²

Source: Commissioner of Taxation, *Annual Report 2013-14* (2014) pp 14, 50; Commissioner of Taxation, *Annual Report 2014-15* (2015) pp 4, 44-45; Commissioner of Taxation, *Annual Report 2015-16* (2016) pp 16, 19, 25, 37, 80, 133; Commissioner of Taxation, *Annual Report 2015-16* (2016) p 80.

2.4 The primary observation from the table above is that the amount of collectable debt has increased in the 2016-17 financial year by approximately \$1.7 billion. Furthermore, 'collectable debt'³ is only one element of total debt.⁴ The other elements and the total amount of debt are not reported.

2.5 The Annual Report also indicates that individual and small business taxpayers owe \$2.3 billion and \$13.9 billion respectively in collectable tax debt (11 and 67 per cent of total collectable debt). The amount of collectable debt owed by these taxpayer segments has increased from the prior year by 2 per cent and 7 per cent respectively.⁵ The Annual Report does not provide further analysis or interrogation of tax debt, such as, a deeper analysis of the taxpayer population (i.e. debts owed by micro businesses) or the age of tax debts.

² Whilst the quantum of debt uneconomical to pursue is not separately reported, it is expressed as a ratio of net tax collections being 0.4%: Commissioner of Taxation, *Annual Report 2016-17* (2017) p 227.

³ Collectable debt is defined as 'debt that is not subject to objection or appeal or to some form of insolvency administration': Commissioner of Taxation, *Annual Report 2016-17* (2017) p 249.

⁴ 'Total debt' includes 'disputed debt' and 'insolvency debt' in addition to 'collectable debt'. These components may be further classified as 'debts irrecoverable at law' or debts 'uneconomic to pursue'.

⁵ Commissioner of Taxation, *Annual Report 2016-17* (2017) pp 16, 25.

2.6 The ATO reported that it has long-term strategies to improve taxpayers' payment experiences and is undertaking research to better support them. The ATO also noted some contributing factors to the above results, including the failure of its storage hardware in December 2016 and February 2017 which impaired payment and debt-related activities.⁶

IGT OBSERVATIONS

2.7 In July 2015 the IGT completed a review into the ATO's *Debt Collection*⁷ which was prompted by the escalating collectable tax debt as well as stakeholder concerns about the ATO's recovery action which they considered, at times, to be disproportionate to circumstances of the affected taxpayers.

2.8 In the above review, the IGT recommended that the ATO publish more statistical information and analysis about tax debt as well as its strategies to address it. However, the Annual Report contains less information making it difficult to conduct comparisons with prior years. It contains high level information without clearly showing the total level of debt in the system and whether the ATO's strategies are proving effective. The IGT notes that the Committee had also made a recommendation that more detailed differentiation of data on irrecoverable debt be provided.⁸

2.9 At the time of the above review, the ATO had acknowledged that its previous approach to debt collection was 'random and ad hoc' and had not reduced overall growth of tax debt. It had begun developing a program of work to explore alternatives and improve its recovery action. Accordingly, the IGT recommendations focused on improving the ATO's strategic focus and interim measures such as targeting main debt holdings which were owned by individuals and micro businesses. The underlying causes of cash flow and payment difficulties for these taxpayers were to be investigated and preventative strategies developed to combat them.

2.10 In total, the IGT had made 19 recommendations some of which were quite specific such as those relating to garnishee notices, whilst others were more general or structural. These included recommendations to take more frequent and proportionate debt recovery action to minimise the need to take firmer action later and to consider merging the Debt Business Line into the Compliance or Client Engagement Group.

2.11 It is now timely to assess the ATO's implementation of the IGT recommendations and their effectiveness in practice. The Committee may also wish to consider those recommendations with which the ATO did not agree. Furthermore, as mentioned earlier, the ATO, had only just embarked on a program of improvement before the IGT began the review and, as a result, the IGT was not able to gauge their effectiveness. The Committee may also wish to examine these programs, given that collectable tax debt is continuing to grow and that tax debt related complaints have consistently formed more than 20 per cent of all complaints made to the IGT.

⁶ Ibid pp 25, 80.

⁷ Inspector-General of Taxation (IGT), *Debt Collection* (2015).

⁸ Australian Government, *Australian Government response to the House of Representatives Standing Committee on Tax and Revenue Report: 2016 Annual Report of the Australian Taxation Office – Performance Review 2015-16* (December 2015) Recommendation 13.

3. LODGMENT COMPLIANCE

3.1 Tax assessments are fundamental to tax collection. They represent the end result of the process of ascertaining a taxpayer's taxable income and calculating the tax payable on that income. In Australia, a critical part of the assessment process is the completion and lodgment of income tax returns and activity statements.

3.2 The ATO's Annual Report states that 89 per cent of individual taxpayers who were expected to lodge a 2015-16 income tax return had done so by 30 June 2017.⁹ It is not clear whether this rate may also represent the rate of non-lodgment or whether the latter is lower due to late lodgment.

3.3 The Annual Report also sets out the proportion of all taxpayers who have met their lodgment obligations for income tax returns and activity statements between the 2014-15 and 2016-17 financial years. These statistics are reproduced in the table below.

Table 3.1: Proportion of taxpayers who have met their lodgment obligations between 2014-15 and 2016-17

	2014-15	2015-16	2016-17
Income tax returns	87.8%	88%	88.5%
Activity statements	90.8%	90.5%	88.2%

Source: Commissioner of Taxation, *Annual Report 2016-17* (2017) p 226.

3.4 The above table does not clearly stipulate the non-lodgment rate. However, it does indicate that the proportion of all taxpayers meeting their income tax lodgment obligations has incrementally improved in recent years whilst compliance with activity statement lodgments is declining. In this respect, the ATO has reported that it did not meet its on-time lodgment targets for both income tax returns and activity statements in the 2016-17 financial year. It has explained that lodgment outcomes are being analysed to develop tailored strategies for improving performance.¹⁰

3.5 Earlier ATO analysis had found that 12.5 million taxpayers had lodged their 2007-08 income tax returns by 30 June 2009. This result was considered to be an 'all-time' high lodgment rate of 96 per cent or non-lodgment rate of 4 per cent. It was attributed to the then Government's tax bonus stimulus payment.¹¹ Such payments were calculated based on prior year's returns which had to be lodged.¹² As a result, it led to many taxpayers ensuring their lodgment obligations were met. Shortly before this event, the IGT had found the non-lodgment rate for individual taxpayers to be 9.35 per cent in his Non-lodgment Review.¹³

⁹ Commissioner of Taxation, above n 5, p 15.

¹⁰ Ibid pp 15, 23-25, 100.

¹¹ Senator the Hon. Nick Sherry, 'Tax Bonus Pushes Tax Return Lodgements to Record 96%' (Media Release No. 071, 16 October 2009).

¹² The Hon. Wayne Swan, 'Joint Media Release with the Prime Minister: \$950 One-Off Cash Bonus to Support Jobs' (Media Release No. 11, 3 February 2009).

¹³ IGT, *Review into the Non-lodgement of Individual Income Tax Returns* (2009).

IGT OBSERVATIONS

3.6 As noted above, the report of the IGT's Non-lodgment Review was released in 2009. It was undertaken in response to stakeholder concerns that non-lodgment of tax returns may pose a risk to the integrity of the system. In that review the IGT had found that, generally, the ATO was managing the risk well.

3.7 A number of areas for improvement were also identified including: the need for the ATO to enhance its public reporting on the levels of non-lodgment; clearer identification of high and low risk non-lodgers in ATO systems; and increasing the use of default assessments in appropriate circumstances. Recommendations were also made for the then Government to consider whether support for the ATO's use of third party data to identify non-lodgers should be increased and whether the failure-to-lodge penalty regime, particularly for high-risk taxpayers, should be strengthened.

3.8 The ATO had agreed to all recommendations directed to it and the IGT had acknowledged that the ATO had made progress towards implementation of those recommendations in his follow up review.¹⁴

3.9 As noted above, shortly after the report of Non-lodgment Review was completed and released, the ATO was able to reduce the non-lodgment rate down to 4 per cent largely due to the tax bonus stimulus payments. The Annual Report, however, does not indicate whether the ATO has been able to maintain this rate or improve it.

3.10 The Committee may wish to inquire into the rate of non-lodgment in the years following the 2009-10 financial year. If the non-lodgment rate is found to have increased, the Committee may wish to consider whether more could have been done to keep taxpayers in the system following the tax bonus payment, for example, through use of lodgment reminders, default assessments, more robust penalties and prosecution action in appropriate cases. Such findings could then be used to develop strategies aimed at achieving a non-lodgment rate of 4 or 5 per cent.

3.11 In terms of strategies aimed at improving the non-lodgment rate, the ATO itself had recognised in an IGT follow up review that more work could be undertaken to improve its models for identifying taxpayers required to lodge and those not required to lodge. The IGT had also commented that there were additional opportunities available to the ATO to improve lodgment compliance given its increased automation and greater use of data matching programs.¹⁵ More recently, in a submission¹⁶ to the Committee, the IGT has noted that behavioural insights may be useful in assessing taxpayer compliance in a broader sense.¹⁷

¹⁴ IGT, *Follow up review into the Australian Taxation Office's Implementation of Agreed Recommendations in Five Reports Released between August 2009 and November 2010* (2014).

¹⁵ Ibid pp 34-41.

¹⁶ IGT, Submission No 5 to House of Representatives Standing Committee on Tax and Revenue, Parliament of Australia, *Inquiry into Taxpayer Engagement with the Tax System*, February 2017.

¹⁷ Ibid pp 33-36.

4. DISPUTE RESOLUTION

4.1 The phrase 'Alternative Dispute Resolution' (ADR) refers broadly to processes, other than judicial determination, in which an impartial person assists those in dispute to resolve the issues between them.¹⁸ Key ADR processes employed by the ATO include in-house facilitation, independent review and settlement.

4.2 In the Annual Report, the ATO conveys the achievements of in-house facilitation which has been most successful with individual and small business taxpayers.¹⁹ In particular, the ATO has stated that:

Every dispute resolved through in-house facilitation saves taxpayers, on average, more than \$50,000. This service also has a positive impact on the relationship between the ATO and taxpayer and promotes trust and confidence in the tax system.²⁰

4.3 The Annual Report also announces the commencement of a pilot program called Dispute Assist to support vulnerable unrepresented individual taxpayers during a dispute such as the elderly and those dealing with family illness, domestic violence or mental health issues. By 30 June 2017, 64 taxpayers received an independent ATO guide to help them navigate the dispute process and address related issues, such as ongoing tax debts or issues with other government agencies. The feedback from taxpayers to date has been positive and demonstrates this initiative has had a positive effect on their social and economic wellbeing. Dispute Assist will be expanded in 2017–18 to include small business taxpayers.²¹

4.4 With respect to the ATO's internal independent review of audit positions for large business taxpayers, the ATO has stated that it has completed 12 reviews of which four supported the ATO position, one supported the taxpayer position and seven partially supported each party's position. The ATO believes that the independent review process has led to ongoing reductions in the number of review applications being lodged with the Administrative Appeals Tribunal (AAT) and the number of cases proceeding to litigation.²²

4.5 In relation to settlements, the ATO has reported that it uses a range of internal assurance mechanisms to ensure sound and appropriate decisions are reached.²³ However, the ATO explains that it is aware of community concerns as to whether it is settling the right cases in the right way. Accordingly, the ATO has engaged three retired Federal Court judges to conduct independent assurance of some of the ATO's largest and most significant settlements with a focus on large markets and multinational enterprises. In 2016–17, five such reviews of settlements were completed

¹⁸ National Alternative Dispute Resolution Advisory Council, *Dispute Resolution Terms* (2003) p 4.

¹⁹ Commissioner of Taxation, above n 5, p 65.

²⁰ Ibid.

²¹ Ibid.

²² Ibid p 66.

²³ Ibid p 69.

which concluded that the ATO's treatment of these were a fair and reasonable outcome for the Australian community.²⁴

4.6 The ATO has stated that as a result of their approach to disputes, including the above, litigation which proceeds to hearing is now inherently complex. It has achieved improved litigation results in 2016-17 with 89 per cent of Part IVC cases found either fully or partly favourable to the ATO.²⁵

4.7 It should also be noted that the ATO has a test litigation program which seeks to clarify complex areas of law through the court system. The Annual Report indicates that only five test cases were funded in the 2016-17 financial year – less than a quarter than in the 2012-13 financial year. There has been a steady decrease in the number of such cases in the intervening years.²⁶

4.8 The ATO provides data, in the table below, on the level of disputation in the system between the 2014-15 and 2016-17 financial years.

Table 4.1: Past disputes between the 2014-15 to 2016-17 financial years

	2014–15	2015–16	2016–17
Returns lodged	35,366,573	34,561,234	35,540,854
Adjustments arising from audits	453,447	338,000	253,000
Objections	26,143	26,690	24,490
Cases lodged to courts/tribunals	697	481	456
Cases proceeded to decision	154	151	141

Source: Commissioner of Taxation, *Annual Report 2016-17* (2017) p 66.

4.9 The primary observation from the table above is that despite less audit adjustments, there is proportionally more disputation at the objection stage, however, there are fewer cases moving to the AAT or courts.

IGT OBSERVATIONS

4.10 The IGT has examined the ATO's management of tax disputes a number of times.²⁷ His review into *The Management of Tax Disputes*²⁸ (Tax Disputes Review) in 2015

²⁴ Ibid p 68.

²⁵ Ibid p 66.

²⁶ Ibid pp 218-219, 226; Commissioner of Taxation, *Annual Report 2015-16* (2016) pp 108-110; Commissioner of Taxation, *Annual Report 2014-15* (2015) pp 107-109; Commissioner of Taxation, *Annual Report 2013-14* (2014) pp 117-119; Commissioner of Taxation, *Annual Report 2012-13* (2013) pp 106-109.

²⁷ For example: IGT, *Review of Tax Office management of Part IVC litigation* (2006); IGT, *Review into the Underlying Causes and the Management of Objections to Tax Office Decisions* (2009); IGT, *Review into Aspects of the Tax Office's Settlement of Active Compliance Activities* (2009); IGT, *Report into the Australian Taxation Office's large business risk review and audit policies, procedures and practices* (2011); IGT, *Review into the ATO's compliance approaches to small and medium enterprises with annual turnovers between \$100 million and \$250 million and high wealth individuals* (2012); IGT, *Review into the Australian Taxation Office's use of early and Alternative Dispute Resolution* (2012). IGT, *Tax Forum – next steps for Australia, A submission to the Tax Forum* (September 2011).

²⁸ IGT, *The Management of Tax Disputes* (2015).

is the most recent such examination. It was conducted at the request of the Committee to assist with its Inquiry into Tax Disputes.²⁹

4.11 The Committee, in the report of its Inquiry into Tax Disputes, had recognised that the IGT's *Review into the Australian Taxation Office's use of early and Alternative Dispute Resolution*³⁰ (ADR Review), which had broadly examined the ATO's end-to-end dispute management processes, was a catalyst for fundamental shifts in the ATO's dispute resolution approach.³¹ In that review the IGT sought to bring ADR to the forefront of dispute resolution and support early engagement. A major recommendation was to treat all disputes as suitable for use of ADR except for a few cases where the costs may outweigh the benefits, there is public interest in obtaining a judicial decision or the case involves serious criminal fraud or evasion.³²

4.12 In the Inquiry into Tax Disputes, the Committee and the IGT both recommended a separate appeals group, headed by a new and dedicated Second Commissioner.³³ On 1 July 2015, the ATO moved all objections, independent reviews and ADR activities out of its compliance area and into a new Review and Dispute Resolution (RDR) business line within its Law Design and Practice Group. As such, the Government considered that a separate appeals area as recommended by the Committee and the IGT was no longer necessary.³⁴ Furthermore, the ATO has introduced a review of some its settlements by retired judges although only five settlements were subject to this process in the 2016-17 financial year.

4.13 Some time has now passed since the Committee's Inquiry into Tax Disputes. Accordingly, the Committee may wish to examine whether the advent of the RDR business line and the review of the settlement process have delivered the desired outcomes.

4.14 It is pleasing that the Commissioner has reported savings of more than \$50,000 on average for taxpayer disputes resolved through in-house facilitation which the IGT had recommended for resolving smaller, less complex disputes in his ADR Review. To further assist individuals and small business, the IGT had observed in his Tax Disputes Review that pre-assessment reviews, including independent reviews, which consider the merit of cases, should be available to all taxpayers, including small businesses and individuals who are least able to contest ATO decisions and ultimately proceed to litigation.³⁵ Accordingly, the Committee may also wish to examine whether the independent review process should be expanded to all taxpayers. It could complement or be part of the expansion of Dispute Assist.

²⁹ House of Representatives Standing Committee on Tax and Revenue, Parliament of Australia, *Inquiry into Tax Disputes* (2015).

³⁰ IGT, *Review into the Australian Taxation Office's use of early and Alternative Dispute Resolution* (2012).

³¹ House of Representatives Standing Committee on Tax and Revenue, above n 29, p 2.

³² IGT, above n 30, pp 10-11.

³³ Ibid p 120; House of Representatives Standing Committee on Tax and Revenue, above n 29, p 108.

³⁴ Australian Government, *Australian Government response to the House of Representatives Standing Committee on Tax and Revenue report: Tax disputes* (2015) p 5.

³⁵ IGT, above n 30, p 54.

4.15 The ATO has stated that litigation is now inherently complex. However, despite the complexity, the ATO has reported that 89 per cent of Part IVC cases were found either fully or partly in favour of the ATO. Given lower proportion of matters proceeding to litigation, high rate of litigation success and the small number of funded cases for test litigation, there are stakeholder concerns as to whether the ATO is appropriately clarifying areas of the law through the Court system. Accordingly, the Committee may wish to examine the ATO's litigation decision processes, including the use of its test case litigation program. The latter has been raised a number of times with the IGT in consultations on his work programs.

4.16 For completeness, the IGT notes that the Australian National Audit Office (ANAO) has recently published its performance audit into the ATO's use of settlements³⁶ which broadly found that the ATO was effectively using settlements to resolve disputes with taxpayers and made three recommendations for improvement. Accordingly, the Committee may wish to consult with the ANAO in considering the above matters.

³⁶ Australian National Audit Office (ANAO), *The Australian Taxation Office's Use of Settlements* (2017).

5. SERVICES AND SUPPORT FOR TAX PRACTITIONERS

5.1 Maintaining a positive relationship between the ATO and tax practitioners³⁷ is critical to the functioning of the self assessment system as the latter assists approximately 73 per cent of individual and 97 per cent of business taxpayers to comply with their tax obligations.³⁸ They are also an invaluable source of knowledge and practical experience which may be drawn upon to develop more effective and efficient tax laws and administrative practices.

5.2 The Annual Report acknowledges the important role of tax practitioners:

Tax professionals are important conduits and influencers of taxpayer behaviour and we recognise that a healthy tax profession supports a healthy tax system. Earlier this year, the Commissioner released a statement publicly acknowledging the important relationship between the ATO and the profession....³⁹

5.3 The ATO reports that it had continued to transition lodgment services from its Electronic Lodgment Service (ELS) to its newer Practitioner Lodgment Service (PLS) which requires tax practitioners to use Standard Business Reporting compatible software. During the 2016-17 financial year, tax practitioners use of the PLS had grown from 4 per cent to 31 per cent of tax agent lodgments whilst it had progressively withdrawn certain services from the ELS. The ATO expects that all lodgment services will be delivered through PLS by Tax Time 2018.⁴⁰

5.4 In addition, the ATO reports that core online services had continued to be delivered via both the ATO portals, the online gateways for tax practitioners to access a number of ATO services, and the ATO Online system which will eventually replace the former and is intended to provide much improved service.⁴¹

5.5 The ATO has acknowledged the challenges that tax practitioners had faced as a result of its system failures in December 2016 and February 2017. In this respect, the ATO has explained that it had sought to effectively communicate with tax practitioners and provided additional time for them to meet tax obligations.⁴²

IGT OBSERVATIONS

5.6 The IGT in 2015, had undertaken a review into *The Australian Taxation Office's services and support for tax practitioners*⁴³ in response to concerns raised by tax

³⁷ The term 'tax practitioner' includes tax and business activity statement agents, tax financial planners and lawyers.

³⁸ Commissioner of Taxation, above n 5, p 56.

³⁹ Ibid.

⁴⁰ Ibid p 57.

⁴¹ Ibid.

⁴² Ibid.

⁴³ IGT, *The Australian Taxation Office's services and support for tax practitioners* (2015).

practitioners and their representative bodies. These concerns related to access and adequacy of ATO support and services and the resulting strained relationship between tax practitioners and the ATO. The reliability and functionality of the ATO portals was a key source of the discontent as they believe they had caused productivity loss, missed deadlines, irrecoverable costs as well as damage to their reputation and relationship with their clients.

5.7 In the above IGT review, the ATO acknowledged the concerns and believed that, in the long term, the majority of the concerns would be addressed by migrating to the ATO Online system. At the time, the IGT had taken comfort from the ATO maintaining the current ATO portals and operating them in parallel with the new system.

5.8 However, the IGT had observed that the ATO had no timeframe set for the migration of the ATO portals' functionality to ATO Online and had considered that it may be necessary to maintain and improve the portals if full migration was quite some time away. In response, the ATO indicated that portal functionality was expected to be available via ATO Online within two years and would limit current portal enhancements to maintenance and stability assurance.⁴⁴

5.9 It has been more than two years since the IGT's review and the ATO has commenced migration to the ATO Online system. However, no timeline has been provided for reaching full migration to ATO Online and the eventual discontinuance of the ATO portals. Accordingly, the Committee may inquire about such a timeline and examine the ATO's progress. It is important that the new system is fully operational before the ATO portals are retired and that the transition is accompanied by effective communication with tax practitioners.

5.10 With respect to the major ATO systems outages which had occurred in December 2016 and February 2017, the IGT notes that there have been a number of reviews including a review by the ATO itself as well as two others by PwC and Hewlett-Packard Enterprise respectively.⁴⁵ The ANAO is due to table its performance audit, into the *Unscheduled Taxation System Outages*, in February 2018.⁴⁶ However, the reliability of ATO system issues remains a concern for tax practitioners as evidenced by recent submissions to one of the current IGT reviews.⁴⁷ The Committee may wish to examine the three reviews, conducted on the major outages, and consult with the ANAO to assess the situation for itself, taking into account the frequency of less significant system outages and the compounding impact on tax practitioners and taxpayers.

⁴⁴ Ibid pp 53-63.

⁴⁵ ATO, *ATO Systems Report* (2017) <www.ato.gov.au>; PwC, Australian Taxation Office: Post-incident Review (draft v9.0) (undated) <www.ato.gov.au>; Chris Jordan, 'Commissioners opening statement Budget Estimates Tuesday May 30 2017' (Delivered at the Budget Estimates, 30 May 2017) p 5-6.

⁴⁶ ANAO, *Unscheduled taxation system outages: Audit criteria* (undated) <www.anao.gov.au>.

⁴⁷ Future of the Tax Profession: IGT, *IGT Work Program 2017* (2017) <www.igt.gov.au>.

6. ADDITIONAL OBSERVATIONS

6.1 This section contains additional observations made in the course of an IGT review, namely the Employer Obligations Review,⁴⁸ and consultations on IGT work programs. It also contains general comments on the ATO's implementation of agreed recommendations which the Committee had made in its performance review of the ATO's 2015-16 Annual Report.

EMPLOYER OBLIGATIONS REVIEW

6.2 In 2016 the IGT undertook the Employer Obligations Review which focused Pay As You Go Withholding, Superannuation Guarantee and Fringe Benefits Tax obligations. Since this review, the Government has undertaken substantial work in this area, including announcing consultation on its Superannuation Guarantee Integrity Package which, amongst other things, extends the Single Touch Payroll (STP) system to all employers.⁴⁹

6.3 With respect to STP, the IGT had made recommendations in the above review that the ATO explore the possibility of providing low or no cost STP software for qualifying small employers and alternative methods of electronic access for employers facing technological challenges to improve their uptake of the software and thereby realise the intended benefits of the STP initiative. The ATO had disagreed with these recommendations and considered them to be premature as small businesses had no obligation to report under STP at the time. The ATO had also stated that it would explore the mechanisms that would best support small business usage of STP. Accordingly, given the Government's proposed extension of STP to all employers, the Committee may wish to examine how the ATO is intending to support small businesses in this regard and consider whether the IGT's earlier recommendations should be reconsidered.

6.4 In the above review, the IGT had also observed additional concerns with unreasonable delays in obtaining an Australian Business Number (ABN) and insufficient reasoning being provided when ABN applications have been refused by the ATO. However, as these concerns were outside the scope of the review, the IGT commented that it may be an area for future review if concerns persist.⁵⁰ The IGT notes that there has been recent media attention regarding the cancellation of ABNs.⁵¹ As such, the Committee may also wish to consider examining the ATO's activities to maintain the integrity of ABNs.

⁴⁸ IGT, *Review into the Australian Taxation Office's Employer Obligations Compliance Activities* (2016).

⁴⁹ The Hon. Kelly O'Dwyer MP, 'Consultation on protecting your superannuation entitlements' (Media Release, 24 January 2018).

⁵⁰ IGT, above n 48, p 22.

⁵¹ Miranda Brownlee, 'ATO cancels thousands of ABNs in non-lodgment blitz', *Accountants Daily* (29 November 2017) <www.accountantsdaily.com.au>; Robert Gottlieb, 'The tax office should collect tax, not attempt to engineer business', *The Australian* (7 December 2017) <www.theaustralian.com.au>.

IGT WORK PROGRAM CONSULTATION

6.5 Periodically, the IGT identifies areas of tax administration for review following extensive community consultation as well as drawing on themes arising from the IGT's complaint handling service. This consultation assists the IGT to direct his limited resources to the issues of greatest community concern or significance in achieving a more efficient, fair and transparent tax administration.

6.6 The outcomes of the consultation process are programs of reviews which the IGT has or is conducting. Other topics are also identified for review which may not be undertaken due to resource constraints. The Committee may wish to consider investigating these topics as part of its inquiries:

- influencing willing participation in the tax and superannuation systems;
- advice and guidance;
- fraud or evasion opinions;
- research and development;
- administration of the General Anti-Avoidance Rules;
- public consultation arrangements; and
- information gathering activities.⁵²

ATO IMPLEMENTATION OF PRIOR COMMITTEE RECOMMENDATIONS

6.7 The Committee may wish to review the implementation of its prior recommendations by the ATO. For example, in the Committee's inquiry into the ATO's 2015-16 Annual Report, one of the recommendations was:

...the ATO report against its fairness measures – on the basis of taxpayer and tax agent experience of the outcome; the process; the information provided; and interaction with staff – for specific business lines, including audit, advice and debt work, in its next annual report.⁵³

6.8 The ATO had agreed to this recommendation and, in its Annual Report, has provided statistics on perceptions of fairness with respect to tax disputes and audit processes as well as individual taxpayer's perceptions of the ATO's administration of the tax and superannuation systems.⁵⁴ However, it does not appear to have done so on the basis of taxpayer and tax agent experience of the outcome, the process, the information provided and the interaction with staff for specific business lines.

⁵² More information on these topics can be found in the IGT work program documents available at www.igt.gov.au.

⁵³ Australian Government, above n 8, p 6.

⁵⁴ Commissioner of Taxation, above n 5, pp 20, 95, 96