



Australian Government

Inspector-General of Taxation

Review into the underlying causes and the management of objections to Tax Office decisions

A report to the Assistant Treasurer

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15 April 2009

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15 April 2009

The Hon. Chris Bowen
Assistant Treasurer
Minister for Competition Policy and Consumer Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to present to you my report on findings and recommendations in respect of the review into the underlying causes and the management of objections to ATO decisions. The report has been prepared under section 10 of the *Inspector-General of Taxation Act 2003*.

The recommendations are focused on improving the objection system and ATO work practices and processes to promote a more efficient, effective and timely objection process. They seek to encourage greater personal contact between the ATO and taxpayers as a means of resolving disputes, revising ATO performance standards for objections and minimising the impact on taxpayers where there is an ATO delay in finalising objections.

I welcome the work begun by the ATO aimed at reshaping its dispute resolution process while this review was being conducted, and believe it represents an important change in the ATO's philosophy and approach to dispute resolution. The ATO has also acknowledged the Inspector General's contribution in developing a model which will inevitably result in improvements for taxpayers, the ATO and tax administration generally.

I have provided the Commissioner of Taxation with the opportunity to respond to the report's findings and recommendations. The ATO's response, including the relevant covering letter, is in Appendix 3 to the report. In finalising the report, I have fully considered the ATO's response.

The review found that the main causes of objections were:

- challenging an ATO decision arising from an audit, default assessment, private binding ruling or where the Commissioner has failed or refused to make a decision;
- taxpayers effectively seeking an amended assessment;
- the ATO's approach during audit; and
- taxpayers failing to properly respond to ATO requests for further information.

A key finding of the review is that for a significant proportion of objections, there is no genuine dispute with the ATO. The objections process is frequently used by taxpayers to seek an amendment to their self-assessed returns where they are out-of-time to do so under the current amendment provisions. As a result, objections are not a good indicator of the level of disputation in tax administration.

The review recommends that the Government consider improving the objection process, and bringing it in line with self-assessment, by confining objections to cases of genuine dispute between the ATO and

taxpayers. Taxpayers' rights to seek an amendment to correct an error or omission to their tax returns where they are out-of-time to do so should also be preserved. At the moment, this can only be done through the objection process. This could be achieved by updating the current amendment provisions.

The ATO has agreed fully with 8 of the 11 recommendations directed at the ATO, agreed in part or in principle to two other recommendations and disagreed with one other. The ATO has disagreed with my recommendation that it remit the general interest charge, as a general rule, where the ATO takes more than 60-days work time to finalise an objection and the particular taxpayer has acted in good faith. I do not believe that taxpayers should bear significant costs of compounding interest where the ATO delays progress of an objection.

I offer my thanks to the support and contribution of professional bodies, business groups and individuals to this review. The willingness of many to provide their time in preparing submissions and discussing issues with myself and my staff is greatly appreciated. I also thank relevant ATO officers for their cooperation and assistance in this review.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ali Noroozi', written over a horizontal line.

Ali Noroozi
Inspector-General of Taxation

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CHAPTER 1: INTRODUCTION

1.1 This is the report on the review conducted by the Inspector-General of Taxation (the Inspector-General) into the underlying causes and management of objections to Tax Office decisions. This report is pursuant to section 10 of the *Inspector-General of Taxation Act 2003* (the IGT Act).

1.2 On 18 January 2007 the Inspector-General announced terms of reference for this review. The terms of reference followed concerns expressed by tax professionals and certain sectors of the community regarding the dispute resolution process. The review follows the Inspector-General's review into the Tax Office's management of litigation, which found that the Tax Office conceded or settled a significant number of disputed assessments in the taxpayer's favour after the objection process but before cases were heard in the Administrative Appeals Tribunal or the Courts.

1.3 This review focused on what causes objections to Tax Office decisions and the management of objections. The Inspector-General sought input and submissions from the community to understand the taxpayers' experience and perspective in relation to lodging objections.

1.4 The terms of reference were as follows:

The timeliness and quality of Tax Office approaches upstream of objections will be explored, including audit, communication, and technical decision making insofar as they may be contributing to potentially unnecessary disputes and litigation.

The review will also examine objection resolution procedures and the administrative framework, including the laws that govern these areas.

This review will examine the extent and reasons for the Tax Office conceding cases after the objection process, focusing on the quality of decision making and processes employed in determining taxpayers' objections.

In the context of potentially unnecessary litigation, it would determine whether disputes (and their associated costs) could have been prevented and whether the broad system and sequence of amended assessment, objection, and dispute resolution could be improved. The review will also examine whether the current system minimises any disproportionate effects on taxpayers, in particular corporations and encourages alternative dispute resolution processes.

The review focus is not only on the Tax Office conduct and approaches to dispute resolution but also on the administrative systems established by the tax laws for resolving disputes between taxpayers and the Tax Office.

1.5 The aim of the review was to identify and recommend changes that would assist the Tax Office to improve the efficiency, effectiveness and fairness of the current approaches. This review is part of a wider examination by the Inspector-General of the Tax Office's approaches to settling and finalising issues with taxpayers.

1.6 The review was conducted pursuant to subsection 8(1) of the IGT Act, being a review conducted on the initiative of the Inspector-General.

ACKNOWLEDGMENTS

1.7 Sincere thanks are extended to the Commonwealth Ombudsman, Law Council of Australia, the Institute of Chartered Accountants in Australia and the Taxation Institute of Australia who prepared written submissions for this review. The Inspector-General would also like to thank other tax practitioners and lawyers who participated in this review.

1.8 The Inspector-General acknowledges the cooperation of the Commissioner of Taxation and his staff in this review.

STRUCTURE OF THE REPORT

1.9 Chapter 2 sets out a background summary and an overview of the key findings, conclusions and recommendations for this review.

1.10 Chapter 3 provides contextual information relevant to the Tax Office's role in the administration of objections.

1.11 Chapter 4 provides a more detailed presentation and discussion of the Tax Office's performance regarding objections, including the extent and outcome of objections, the Tax Office's handling of objections from a Taxpayers' Charter perspective, and the outcome of objection decisions that proceed to litigation.

1.12 Chapter 5 discusses the causes of objections, stakeholder views on aspects of the Tax Office's compliance activity actions and sets out the Inspector-General's findings and conclusions on the various identified causes.

1.13 Chapter 6 considers in greater detail a number of aspects relating to the Tax Office's management and handling of objections. It draws from both stakeholder concerns raised in the course of the review and also other reviews that have examined internal review systems and the objections framework.

1.14 Chapter 7 sets out a brief discussion of stakeholder views on possible improvements to the objection and related review and appeal framework.

CHAPTER 2: OVERVIEW

BACKGROUND

2.1 The objections framework is an important part of tax administration. First, an objection enables a taxpayer to seek an internal review of a Tax Office decision. It provides an opportunity for a taxpayer to have their case reconsidered independently of the original decision maker. Second, the objection decision also provides the basis for a taxpayer to seek an external review by either lodging an application for merits review at the Administrative Appeals Tribunal or appealing to the Federal Court. Given these features, it is imperative that the objection process ensure that an objection is resolved fairly, efficiently and quickly, and that disputes do not become positional.

2.2 A common misconception is that objections are one indicator of the level of disputation between the Tax Office and taxpayers, but this is not entirely true. Currently, the objection process can be used by taxpayers to seek an amendment to their self assessed returns where they are out of time to do so under the amendment provisions.

2.3 Between 2004-05 and 2007-08 there was a steady increase in the total number of objections (excluding Aggressive Tax Planning cases) received by the Tax Office, with an increase from 12,216 to 14,627 objections received.

2.4 The review found that a major cause of objections was taxpayers seeking an amendment to their own income tax returns without any prior Tax Office-initiated action or decision. Quite often the objection process is used by taxpayers to seek an amendment to their self assessed returns where they are out-of-time to do so under the amendment provisions.

2.5 This practice has increased taxpayer compliance costs, the Tax Office's administrative costs and the time taken to effect amendments. It has militated against the objection process becoming a more efficient and effective internal review and dispute resolution system.

2.6 Over this four-year period, approximately 47 per cent of assessments that were objected to by taxpayers were varied to some extent in favour of the taxpayer by the objection being allowed in full or in part. Also, approximately 47 per cent of objections were finalised with no variation in the original assessment, either because the objection was disallowed or the taxpayer withdrew their objection.

2.7 The Inspector-General also found that the Tax Office appears to be taking more than 56 days to finalise a large proportion of routine objections which require no new information to resolve them. These include where an extended finalisation date has not been negotiated, and where (for some business lines) a significant number of these objections are essentially no more than taxpayer requests to change their self assessed tax return.

2.8 The Review of Business Taxation (the 'Ralph Review') noted in its discussion paper that the tax system that operates today had its origins over 60 years ago and since that time

there have been major structural changes in the Australian tax system.¹ In particular, self assessment, the electronic lodgement of tax returns and information and a binding rulings system have been introduced.

2.9 The Ralph Review expressed the view that the existing arrangements for resolving disputes, such as the objection process, were established well before the introduction of self assessment and have long passed their 'use-by date'.² It described these processes as 'needlessly torturous, often unacceptably slow and costly, and intrinsically overly adversarial'. It recommended a shift in emphasis from adversarial structures based on objections and appeals to arrangements that employ concepts of dialogue, mediation and arbitration. The Ralph Review went on to suggest that the streamlining of dispute management should ensure that disputes are identified at the earliest possible stage and dealt with on a timely basis.

2.10 Before self assessment, taxpayers provided the Tax Office with the relevant information to apply the law and assess their liabilities. A taxpayer's primary obligation was to make a full and true disclosure to the Tax Office and the Tax Office was required to determine a taxpayer's tax liability and make an assessment. After making an assessment, the Tax Office could amend that assessment to correct errors of fact or calculation, but they could not fix their mistakes of law. Accordingly, the notice of assessment was a Tax Office decision as the law required it to examine the facts, apply the law and assess a taxpayer's tax liability.

2.11 With the move to self assessment, the Tax Office still issues notices of assessment (to create the formal obligation to pay tax), but returns are generally taken at face value, subject to post-assessment, risk-based audit and other verification processes. The issuing of an assessment has become a mechanical processing task rather than a Tax Office decision as to the taxpayer's liability. With a greater emphasis on post-assessment verification, the Tax Office is allowed to amend errors of calculation, mistakes of fact and mistakes of law after issuing the assessment and collecting the tax payable or paying a refund. Depending on the circumstances, returns may be reopened many years after the original assessment. In this way, the introduction of self assessment meant a change in the balance of costs and risk between the Tax Office and the taxpayer. The change also meant that the Tax Office's resources could be used more efficiently, so that more revenue could be collected for the same administrative cost.

2.12 It is the Inspector-General's view that the role, purpose and processes of objections should be updated to be consistent with:

- self assessment – the objections process should reflect the changes to returns processing introduced by self assessment and the consequential changes to what should qualify as a genuine dispute;
- the Tax Office's technical decision making process – acknowledging that the objection officer would be subject to the same Tax Office precedential view and cultural influences as the auditor, making it unnecessary and inefficient for an objections officer to carry out a second investigation of the same magnitude; and

1 Review of Business Taxation (Ralph Review), *A Strong Foundation*, November 1998, p 119.

2 Review of Business Taxation (Ralph Review), *A Tax System Redesigned*, July 1999, p 147.

- the Administrative Review Council's framework for good internal review systems.

IMPROVEMENTS TO THE MANAGEMENT AND HANDLING OF OBJECTIONS

Main causes of objections

2.13 The Inspector-General identified four main causes of objections:

- the objections process being used to challenge a Tax Office decision arising from an audit, default assessment, private binding ruling or where the Commissioner has failed or refused to make a decision;
- the objections process being used to effect amendments with no prior Tax Office decision or action;
- taxpayers' failure to properly respond to Tax Office requests for further information, leading to the Tax Office issuing an amended assessment; and
- the Tax Office's approach during audit.

Reasons for tax disputes being resolved

2.14 There are a variety of reasons why a tax dispute may be resolved either during or after the objection process and without recourse to litigation.³

- Taxpayers and their representatives may provide additional information either with their objection or in response to a Tax Office request made as part of considering the objection. This additional information may or may not have been requested at the earlier audit stage.
- A tax dispute could be resolved through direct negotiation between the Tax Office, the taxpayer and, where applicable, their representative. Resolution may be through settlement discussions, mediation or arbitration.
- A taxpayer may withdraw their objection (or application for review or appeal if the matter has proceeded to litigation) after having sought advice.
- A re-examination of the case during the objection or litigation stage results in a change in the Tax Office view or a different result on the application of the Tax Office view to the facts.
- A re-examination of the case considers the evidence available to support the Tax Office's decision which may lead to the conclusion that there is insufficient admissible evidence.

2.15 The last two scenarios would result in the Tax Office either allowing the objection in full or conceding or abandoning the case even if it has proceeded to litigation.

3 Based on Tax Office response in National Tax Liaison Group Minutes, Item 20, 17 June 2008. Available at: <http://www.ato.gov.au/taxprofessionals/pathway.asp?pc=001/005/036>.

Objections limited to genuine disputes

2.16 The review found a significant number of cases where the objections process is used but there is no amended assessment or genuine taxpayer dispute with a Tax Office-initiated action or decision. The current legislative and administrative framework for the lodgement of amendments and objections allows objections to be lodged where there is no real dispute between the Tax Office and the taxpayer. For example, in out-of-time amendment request cases, this framework effectively drives taxpayers into the objections process where there is no real dispute as an objection is the only mechanism to have an administrative matter, such as a self amendment, addressed.

2.17 For example, in 2007-08 the Tax Office advised that it finalised 15,558 objections, with 9,349 of those within the Micro Enterprise and Individuals (MEI) business line. A further break-up of these numbers indicates that 2,934 of the MEI objections were extension of time requests with 78 per cent of these being allowed in full. Apart from audit and out-of-time extension requests, objections may also arise from private binding rulings, default assessments and Tax Office refusal to action a taxpayer's amendment request. The table below provides a break-up of genuine disputes across business lines.

Table 2.1: Number of objections relating to genuine disputes, non-genuine disputes and extension-of-time requests for the 2007-08 income year

Business lines	Genuine dispute	Non-genuine dispute	Extension-of time requests
Individuals	3,498	4,127	2,041
Micro	296	1,306	451
GST	1,443	0	99
LBI	179	37	N/A
SME	168	413	80
SPR	3,480	0	1,049
Total	9,064	5,883	3,720

2.18 Objections from genuine disputes entail different drivers, risks and taxpayer behaviours and expectations from other objections. The Inspector-General considers that objections from genuine disputes cannot be considered as simply another source of technical advice, given the fact that they represent a dispute between the Tax Office and the taxpayer and give rise to potential conflict.

2.19 Broadly, a genuine dispute is a dispute that arises from an event that the Commissioner makes a decision that adversely affects a taxpayer but that is more than simply processing a return or activity statement. Genuine disputes would include the following class of Tax Office decisions or actions:

- amended or default assessments;
- private binding rulings;
- GST assessments, or amended assessments, following an audit; and
- where the Commissioner has made a decision (for example, to cancel GST registration or disallowed an amendment request) or refused to make a decision.

2.20 The Inspector-General is of the view that the processing of a return and the issuing of a notice of assessment should not constitute a considered primary decision for the

purposes of the objection system. Objections are also not an efficient mechanism for processing administrative matters such as self amendments. In instances where a taxpayer wishes to challenge a Tax Office view but chooses to lodge in accordance with the Tax Office view, then the appropriate course of action would be to seek an amendment.

2.21 The review concludes that there is a need for the objection process to reflect the changes introduced by self assessment and allow for a greater differentiation between genuine and non-genuine disputes. Consequently, this review recommends that the objection process be improved by confining objections to cases of genuine dispute between the Tax Office and taxpayers. The Tax Office has advised that the present law, including the Commissioner's general powers of administration, do not allow the Tax Office to give full effect to the differentiation of genuine and non-genuine disputes.

2.22 Taxpayers' rights to seek an amendment to correct an error or omission to their tax returns where they are out-of-time to do so should also be preserved. At the moment, this can only be done through the objection process. The Inspector-General considers that this should be achieved by updating the current amendment provisions.

2.23 Both these improvements will allow the objection process to be tailored to handling and resolving genuine disputes. Matters that are not genuine disputes (which could be more accurately described as taxpayer requests for administrative actioning by the Commissioner) should be dealt with in a more streamlined, cheaper and timely process.

2.24 In line with this thinking, the Tax Office has also been working towards adopting a more differentiated approach to objections processing as a means to improve responsiveness. This involves trying to streamline the handling of non-genuine disputes (for example, those seeking an amendment to an assessment) and take a more risk-based approach to objections processing. While this is welcomed, the Inspector-General considers that the use of the objections process for both administrative issues and genuine disputes has constrained the development of a more efficient and effective internal review system.

RECOMMENDATION 1

The Government should consider improving the objection system established by Part IVC of the Taxation Administration Act by ensuring that the objections process can only be used for genuine disputes arising from amended assessments, default assessments, private binding rulings or where the Commissioner has failed or refused to make a decision in relation to a matter in dispute. All other requests, regardless of whether the taxpayer labels them as objections, should be treated as self amendment requests.

Taxpayers' rights should be preserved by allowing the Commissioner to extend the period in which a taxpayer may amend their tax return.

Tax Office response

2.25 This is a matter for Government to consider.

Tax Office approach to objections

2.26 The Inspector-General welcomes the work begun by the Tax Office in respect of working towards reshaping its dispute resolution process while this review was being conducted. The Tax Office has also acknowledged the Inspector-General's contribution in

developing a model which will inevitably result in improvements for taxpayers, the Tax Office, and tax administration in this country.

2.27 The Tax Office has acknowledged the need to take a more 'whole of dispute' approach with an emphasis on moving dispute resolution closer to the point of the original decision. It has recognised that there was a tendency in the past to focus compartmentally on the particular stage of the progression of the case (audit stage, objection stage or litigation).

2.28 The Tax Office has also acknowledged a number of indicators which suggest that there is a need to focus holistically on case management to improve its dispute resolution approach, including the number of objections that are allowed in full or in part, the number of appeals that are settled, conceded or abandoned before being heard in court or the tribunal, the poor objection processing times, and a previous piecemeal approach to improvement.

2.29 The Tax Office has recently stated that the following principles now shape its dispute resolution system:

- identification and resolution of disputes as early as possible;
- differentiated approaches to objection processing to improve responsiveness;
- use of alternative approaches to dispute resolution, as appropriate; and
- where tax litigation is inevitable, then the Tax Office is 'litigation ready'.

2.30 The Inspector-General considers that the newly stated dispute resolution principles represent an important change in the Tax Office's philosophy and approach, from one that previously viewed objections as simply one form of advice or technical decision making that is undertaken within the Tax Office to one that begins to acknowledge the true nature of a dispute between the Tax Office and taxpayers. This may span from the original decision through to final resolution – which may include objection and litigation or may be some alternative form of resolution. These principles provide a useful foundation for a more broad-reaching articulation of the Tax Office's philosophy and approach on objections and disputes more generally. However, the Inspector-General believes that the challenge ahead lies in translating these new dispute resolution principles into improvements in the day-to-day management and handling of objections and disputes.

2.31 A Tax Office statement on its philosophy and approach to objections should be issued as a public document to provide guidance to the community on how it will manage and handle objections, to help shape and reinforce an appropriate culture within the Tax Office regarding objections, to act as a yardstick of Tax Office performance, and set out clear and appropriate expectations for the community on objections.

2.32 Consistent with the views expressed in the Ralph Review, the Administrative Review Council (ARC) framework and the Commonwealth Legal Services Directions, the Tax Office's philosophy and approach to objections must emphasise the resolution of disputes through dialogue, mediation and arbitration. It should be consistent with a self assessment environment, where the original decision maker (most often the auditor) has ample opportunity to investigate a matter, request and then compel the production of further information where necessary.

2.33 The objections process should also reflect the fundamental aims of administrative practice in providing procedural justice and a review of the merits of decisions in individual cases. As such it should enable taxpayers to test the lawfulness and the merits of a decision that affects them; to ensure the timely resolution of a dispute; and to act as a necessary accountability tool by improving the quality, efficiency and effectiveness of the Tax Office's decision making process.

2.34 In aligning the objection framework with the Tax Office's business intent of optimising voluntary compliance, and with the role of internal review, the Tax Office needs to look at how it handles objections from an efficiency perspective but also the effectiveness of objections in its end-to-end dispute process. It should clearly articulate the risks associated with objections and have a differentiated approach to dealing with different classes of risk. In addition, the Tax Office needs to develop strategies and processes for objections that align with its corporate principles and the role of internal review.

2.35 The objections stage of the end-to-end disputes process must add value by providing opportunities to resolve disputes as early as possible, to narrow the issues for external review, should this be necessary, and promote the use of case conferences, the availability of mediation and settlement negotiations.

RECOMMENDATION 2

The Tax Office should finalise and issue a comprehensive public statement that sets out its philosophy on, and value-add approach to, objections including the outcomes it is seeking to achieve through its management and handling of objections. It should ensure that this public statement contains a clear commitment to the following critical elements:

- *a differentiated and risk-based approach to objections handling and management;*
- *an emphasis on resolving disputes as early as possible and narrowing issues for potential external review; and*
- *the Tax Office's business intent of optimising voluntary compliance and the role of an independent internal review.*

Tax Office response

2.36 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.25 and 6.26) that work being undertaken by the Tax Office is addressing the recommendation.

Handling of objections arising from genuine disputes

Work practices

2.37 The Tax Office should adopt work practices and procedures that align with its philosophy on and approach to objections, including its adoption of a differentiated approach to handling objections. These practices and procedures should promote risk-based approaches to the timely and effective resolution of genuine disputes.

2.38 The Tax Office also needs to bring considerations and approaches it is already taking at litigation (in an attempt to resolve the dispute without recourse to a hearing), with a view to minimising the number of genuine disputes going on to external review to only

those cases where all avenues of resolution (including settlement considerations) have been exhausted.

2.39 By way of example, this review has identified two distinct scenarios of genuine disputes which require different Tax Office conduct and approaches.

2.40 The first scenario is where the objections officer determines that the original audit decision was made without all the necessary information. The objection officer should promptly request this necessary information (if it was not already included with the objection) and then re-apply the Tax Office view on the available facts and evidence. The request for necessary information at the objection stage should not be the norm, given that the Tax Office would have had ample opportunity at the audit stage to obtain all relevant information through a comprehensive investigation and to make a well-reasoned decision. The need for the objection officer to have to do so should form part of the quality control process and feedback to auditors.

2.41 The second scenario is where taxpayers have failed to respond properly to Tax Office requests for further information, which has led to the issuing of an amended assessment. The assessment may crystallise the issue for the taxpayer who may then include the requested information with their objection. If not, good administration requires the Tax Office to again seek all necessary information before proceeding to determine the objection. Following the receipt of further information, or if the taxpayer still does not respond within a reasonable period, the objection officer should promptly determine whether the Tax Office view has been correctly applied and is supportable on the available facts and evidence.

2.42 Where the objection officer determines that the Tax Office view is not supportable on the available facts or evidence or has been incorrectly applied, then the Tax Office should proceed to allow the objection.

2.43 Where the objection officer determines that the Tax Office view has been correctly applied and is supportable, then they should consider whether the dispute can be resolved through dialogue, mediation and arbitration. The Inspector-General notes that the Commonwealth Legal Services Directions also emphasise the importance of agencies doing all they can to resolve disputes without recourse to litigation. The directions state that the Commonwealth or its agencies are only to start court proceedings if other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations) have been considered. While the Tax Office does not initiate Part IVC litigation, its conduct and approach during the objections stage has an important bearing on whether a dispute proceeds to litigation.

2.44 When it is clear that a matter will not be able to be resolved by dialogue or mediation, then provision should exist for the matter to move quickly to resolution through the Administrative Appeals Tribunal (AAT) or the Federal Court. This should mean that, where the Tax Office disallows an objection in full or in part, it is satisfied that it has reasonable prospects for its decision being upheld at litigation.

Independent role of objections

2.45 Stakeholders expressed concern with the perceived lack of independence between objection officers and the original decision makers. Some suggested that the organisational structure of the Tax Office into business lines and the fact that objections are handled by the

business lines impacts directly on the objection process. This is because it is more likely that the original decision maker (usually the auditor) responsible for the dispute (or tax officers closely related to the original decision maker) may also be involved in the resolution of the objection, particularly in the early stages of a dispute subject to the objection process.

2.46 Other stakeholders believed that decisions on objection were not ordinarily subject to review within the Tax Office by someone entirely independent of the officers responsible for the amended assessment to which the objection relates, and that the objection process is merely a stepping stone to real independent review. Some practitioners asserted that this gives rise to cases being litigated where the facts have not been properly collected as well as the normal human tendency to defend the position previously taken. This same concern was raised by the Joint Committee of Public Accounts, in its 1993 *An Assessment of Tax* report, where it noted that it was difficult to characterise the function of the internal review as one of 'independent review', given that objection officers will be subject to the same culture, corporate goals and values as the rest of the Tax Office.⁴

2.47 The Inspector-General found that, in most of the relatively simple cases within the Tax Office, there is an 'independent review' of decisions by objection officers with an understanding of the respective roles of the objection officer and the original decision maker, in particular where a taxpayer is able to substantiate or provide evidence of what they assert happened. The Inspector-General also found that most business line work practices emphasise the importance of ensuring independence between the objection officers and the original decision makers.

2.48 However, the Inspector-General found that the division between the respective roles of the objection officer and the original decision maker becomes blurred in more technical and complex matters. Due to the complexity of the facts or the law, there is a tendency for the objection officer to seek greater assistance from the original decision maker in understanding the facts and evidence and in seeking to make a decision. The Inspector-General also notes the stakeholders' sentiments and perceptions that there is a greater need for the objections function to be seen as an independent review and separate from the business lines. Clearly, the stakeholder feedback to date does not suggest that current management and handling of objections is perceived as being independent or impartial.

2.49 The Tax Office's current organisational arrangements generally satisfy the ARC framework, with a division between officers handling audit work and those handling objections. However, the Inspector-General believes that the Tax Office has to take further steps, along the lines suggested by the ARC, to reinforce the role of objections in tax administration and to promote its independent character.

2.50 The Tax Office also needs to place greater importance on culture in promoting independence in the objection process. The ARC emphasised the key role of management in promoting the importance of internal review.⁵ It commented that it is important for management to send a strong message to staff as a whole and the community that the role of objection officers is different from mainstream operational objectives. The Joint Committee of Public Accounts also considered that, to the extent that an objection officer is seen to be

4 Joint Committee of Public Accounts (JCPA), *Report 326: An Assessment of Tax*, 1993, p 325.

5 Administrative Review Council (ARC), *Report No. 44: Internal Review of Agency Decision Making*, November 2000, paragraph 6.46.

culturally bound to determine a matter in favour of the Tax Office, means that 'internal review' is fundamentally flawed as a process of 'independent' review.⁶

Reconsideration of the Tax Office view at objection

2.51 A common theme in submissions was that the current objection process seems inherently incapable of resolving a dispute a taxpayer may have with the correctness of the Tax Office's position on a particular matter of law, leading to increased costs and delay in resolving a dispute. Some commentators observed that in such instances objections are likely to be a shallow exercise as the objection officer is unable to depart from the prevailing Tax Office view, and their major function will be limited to ensuring that the original decision maker has applied the Tax Office view correctly.⁷

2.52 It was suggested that the objection process should be able to resolve disputes according to the law, whether complex or simple. Currently, there is a risk that the objection process amounts to no more than ensuring that current Tax Office policy has been applied and enforced, even though this may not always be the correct position at law. It was submitted that the Tax Office should implement measures that improve the likelihood of achieving the correct legal outcome at the objection stage.

2.53 Objection officers are constrained in their decision making as they are required to apply the established precedential Tax Office view, even though the taxpayer may disagree with the correctness of this view, and it was the same view that was applied by the original decision maker during audit. Importantly, objection officers are not able to re-examine or redetermine the Tax Office view. This responsibility lies with the Tax Counsel Network (in relation to priority technical issues) and the Centres of Expertise (establishing precedential view) and is designed to ensure consistency in the Tax Office's decision making.

2.54 Where the objection officer believes that there is some question about the technical correctness of the Tax Office view, or concern that the view produces an anomalous or unintended outcome, then there is a requirement that the issue be escalated to senior technical officers.

2.55 The Tax Office has established processes which rightfully place a very high value on consistency in its decision making role. The Inspector-General does not believe that objection officers should be able to unilaterally re-examine or redetermine the Tax Office view as this will lead to potential inconsistent treatment of taxpayers. Rather, it is appropriate that where challenges are made to the correctness of a Tax Office view, then these issues are promptly escalated to either the Tax Counsel Network or the Centres of Expertise for timely reconsideration.

2.56 As was noted by the Joint Committee of Public Accounts, it is important that the Tax Office demonstrate a willingness to accept, evaluate and critically respond to taxpayer submissions on all aspects of administration and interpretation.⁸ Where such escalation occurs, then it is necessary that the earlier technical decision is subject to review by a person of sufficient authority.

6 JCPA, *An Assessment of Tax* report, p 325.

7 Gumley W, 'The Taxation Appeals System: An Administrative Law Perspective', Monash University Working paper 96/5, 1996, p 10.

8 JCPA, *An Assessment of Tax* report, p 326.

2.57 If the Tax Office view is to be maintained, then it is important that the objection is quickly determined and that the taxpayer is provided with reasons for the decision so as to be able to understand why a particular position on the Tax Office view, or the application of that view, has been maintained. This will then allow the taxpayer to properly determine whether to exercise their external rights of review and appeal.

2.58 If such a matter does proceed to litigation, and there is no additional information either provided by the taxpayer or requested by the Tax Office, then compensation for defective administration could be warranted for litigation costs incurred by taxpayers where the Tax Office subsequently concedes or abandons the case. The Inspector-General believes that the Tax Office should seek to take into account such considerations as part of its new dispute resolution system.

2.59 The Inspector-General considers that the following recommendation, which sets out a number of work practices and considerations, will promote the independent character of objections and allow for a timely reconsideration of a disputed Tax Office decision.

RECOMMENDATION 3

The Tax Office should continue to develop work practices and procedures that recognise and respect the role of objections within an end-to-end dispute environment and promote a culture consistent with the function of internal review. The Tax Office should ensure that its work practices and procedures incorporate the following measures to implement these arrangements.

- The respective roles of the original decision maker and objection officer are set out to ensure that they are understood and adhered to.*
- Objection officers promptly consider whether the Tax Office view is correct and supportable on the available facts and evidence.*
- Objection officers consider whether alternative approaches to dispute resolution, such as settlement or mediation, may be appropriate, how the dispute could be resolved without recourse to litigation, when escalation should occur and when case-conferencing could be appropriate. This should also involve providing expertise to assist objection officers in determining what approaches to use with specific cases.*
- A fast-tracked process to external review be made available that would allow an objection decision to be expedited where resolution of the dispute at the objection stage is unlikely as it deals with the Tax Office view of the law (as expressed in a ruling, determination or other interpretative advice) and the facts are agreed.*
- Where an objection officer has sought input from the original decision maker on material facts, evidence or technical view, and the objection officer is likely to disallow the objection, the taxpayer is given an opportunity to respond on these material facts, evidence or technical view.*
- Objection officers have the skills and authority to decide the objection, or the ability to access appropriate skills and escalate the case to a person of sufficient authority where required. Where the Tax Office's technical view is challenged, this should result in its reconsideration by a person of sufficient technical authority.*
- Appropriate training is developed for objection officers in line with its philosophy and approach on objections in the context of its end-to-end dispute resolution system.*

Tax Office response

2.60 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.55 to 6.60 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

Alignment of time frames with self assessment environment

Performance standards

2.61 In its submission, the Ombudsman indicated that one of the more common areas of complaint with respect to the objection process is delay. The submission stated that the Ombudsman's investigations suggest that there is ongoing scope for the Tax Office to

improve its administration in particular instances to minimise the potential for unnecessary delay and inadequate communication with the taxpayer and their advisers.

2.62 The Taxpayers' Charter sets a '56-days available-to-the-Tax Office or as otherwise negotiated' standard (the 56-day finalisation standard) for the finalisation of objections not arising from a private binding ruling request and a 14-day standard for further information requests. A 'stop-the-clock' mechanism applies for the 56-day standard where the Tax Office is awaiting further information from a taxpayer or where the Tax Office has requested further information.

2.63 The Tax Office also measures its performance against a 120-day standard for the completion of objections (the 120-day completion standard), although this is not a Taxpayers' Charter standard. The 120-day completion standard measures the total time (elapsed days) taken to finalise an objection irrespective of Tax Office or taxpayer delays.

2.64 This review found that a significant proportion of objections (79 per cent) are finalised within the 56-day finalisation standard, which exceeds its 70 per cent benchmark target. The Inspector-General notes that this performance achievement is influenced by the high number of extension-of-time requests and other non-genuine disputes and that the performance achievement may be significantly lower if only genuine disputes are included in the measure. Also, stakeholders suggest that they are somewhat powerless if the Tax Office requests an extension of time to finalise a dispute as they do not necessarily want to proceed to litigation.

2.65 The Tax Office's 56-day finalisation standard is the lowest of its suite of performance standards and the same as its standard for processing paper amendments to tax returns. This may be a remnant from pre-self assessment days and from a time when Tax Office processing was predominantly paper-based rather than electronic. It is not in line with its standard for objections to private binding rulings, which is 28 days and for which the Tax Office's performance exceeds its 88 per cent benchmark.⁹

2.66 It should be emphasised that these Tax Office performance results represent instances where the delay in the finalisation or completion of the objections can be attributed solely to Tax Office action or inaction. This is because for the 56-day finalisation standard there is a 'stop-the-clock' mechanism if the Tax Office is awaiting information from a taxpayer or there is taxpayer delay.

2.67 A fairly constant proportion of objections have met the 120-day completion standard over the last three years (71 per cent), which is considerably below the Tax Office's benchmark of completing 99 per cent of objections within the 120-day elapsed timeframe irrespective of further information requests. The Tax Office's corporate Heartbeat report shows that the reasons why objections exceeded the 120-day completion standard include requests for further information, internal technical advice or awaiting a court or tribunal decision.

2.68 For some business lines, there is a significant difference between the proportion of objections that meet the finalisation standard and those meeting the completion standard. This might be due to the Tax Office negotiating longer than 56-day finalisation timeframes

9 This standard has been temporarily reduced to 85 per cent during the implementation of the Change Program between 2007 and 2009.

with taxpayers, or it might be due to taxpayers taking a long time to meet requests for more information.

2.69 The Inspector-General considers that, in the context of confining objections to genuine disputes (which would reduce current numbers), the administrative performance standards need to be revised to bring them into line with a self assessment environment and with the recent changes introduced as a result of the *Report on Aspects of Income Tax Self Assessment* (RoSA).

2.70 In its *Better Decisions* report, the ARC also concluded that as a general principle time limits should be introduced for internal review, in order to reduce the potential prejudice to clients that can result from lengthy delays in internal review. It noted that generally a 28-day limit would be appropriate, although this could be modified in appropriate circumstances.¹⁰ It also stressed that internal timeliness standards should be adopted using an appropriate balance between realism and responsiveness to the community, and that workloads for internal review officers should be designed to allow the deadlines to be met.¹¹

2.71 The Inspector-General believes that following the implementation of the Recommendation 1, there would be increased scope for the performance standard for the finalisation of objections being reduced to '28-days available-to-the-Tax Office' for a significant number of objections. This would arise from the following:

- better utilisation of objection resources, with objection officers no longer having to handle out-of-time amendment requests;
- all objections would be from amended assessments, default assessments, private binding rulings or where the Commissioner has failed or refused to make a decision in relation to a matter in dispute. This will mean that the Tax Office would have had an opportunity to obtain all relevant information and make a well-reasoned decision. Upstream work practices and approaches should ensure that the Tax Office is able to meet this commitment; and
- nearly 95 per cent of all objections are classified as routine, with the rest being classified as complex.

RECOMMENDATION 4

Over the next two years, the Tax Office should work towards revising its performance standard for the finalisation of objections from the current 70 per cent in 56 days to 85 per cent in 28 days in line with other relevant Taxpayers' Charter and Tax Office standards.

Tax Office response

2.72 Agree in part.

10 Administrative Review Council (ARC), *Report No. 39: Better Decisions: review of Commonwealth Merits Review Tribunals*, 1996, paragraph 6.57.

11 ARC, *Internal Review of Agency Decision Making*, Recommendation 24, p 69.

2.73 The Tax Office is committed to reviewing our performance standards to improve services to the community. However, we are not in a position to commit to the standards specified in this recommendation. We plan to have made appreciable progress over the next two years; however, the rate and extent of change is dependent on a variety of matters, including those mentioned at paragraph 6.71 of the Inspector-General's report.

2.74 The Inspector-General notes that the Tax Office's successful implementation of this recommendation is dependent upon the objection process being confined to only genuine disputes and it completing the migration of its objection workload to its new Siebel case management system. For these reasons, the Inspector-General accepts that the implementation of this recommendation would occur over a reasonable period of time.

2.75 The recommendation also makes an allowance for complex objections and assumes that up to 15 per cent of all objections will fall into this category (such objections currently represent only 5 per cent of all objections). For such objections, the Inspector-General believes that a '56-days available-to-the-Tax Office or as otherwise negotiated' performance standard would remain in place. However, given that the most complex objections will arise from the large business and small to medium enterprise taxpayers, where there would have been far greater engagement and interaction at the audit stage, then objection officers should promptly consider whether a fast-tracked process for determining the objection is appropriate. This will be particularly relevant for objections where the facts are agreed and the dispute is about the Tax Office view.

Tax Office delay

2.76 The Inspector-General considers that it is not fair and reasonable that the General Interest Charge (GIC) be imposed where there has been Tax Office delay in finalising an objection. The Inspector-General considers that the Tax Office should remit the GIC where it delays finalising an objection, or where it seeks information at the objection stage that it should have requested during audit. Remitting GIC in these circumstances would be consistent with the underlying policy intent of the legislation, especially after RoSA.

2.77 There are a number of strong grounds from a fairness perspective for the adoption of such a position. First, section 8AAG of the *Taxation Administration Act 1953* (TAA) provides the Tax Office with the broad power to remit GIC in certain circumstances. This includes where the delay in payment was not caused by the taxpayer and the taxpayer has taken reasonable action to mitigate the delay. In addition, the Commissioner may remit all or a part of the GIC if he is satisfied that there are special circumstances because of which it would be fair and reasonable to remit all or a part of the charge, or it is otherwise appropriate to do so.

2.78 Second, and consistent with the approach adopted by RoSA in relation to the Shortfall Interest Charge (SIC), remission should generally occur where circumstances justify the revenue bearing part of the cost of delayed receipt of taxes. Such circumstances would include delay, contributory cause or fault on the part of the Tax Office in finalising an objection and where the taxpayer has acted in good faith.

2.79 One example of when remission would generally be appropriate is where the Tax Office has taken longer to finalise an objection than could reasonably have been expected, having regard to all the facts and circumstances of the case.

2.80 The Inspector-General is of the view that a reasonable, maximum period of time to finalise an objection would be 60 days 'available to the Tax Office' after the objection was lodged, consistent with the rights of taxpayers to give the Commissioner written notice requiring an objection decision to be made. Remission of the GIC would then apply for time taken by the Tax Office to finalise the objection beyond this 60 days 'available to the Tax Office' period.

2.81 In line with the Tax Office's position in Practice Statement PS LA 2006/8, where the taxpayer unreasonably delays, obstructs or obfuscates the progress of an objection, and the objection is finalised beyond the 60 days 'available to the Tax Office' period, then remission will not generally be warranted. Examples of such conduct include:

- repeated failure by the taxpayer to keep appointments or supply information; or
- repeated failure by the taxpayer to respond adequately to reasonable requests for information. This will include excessive or repeated delays in responding, not replying to the request for information, giving information that is not relevant or does not address all the issues in the request or supplying inadequate information. This would include circumstances where the taxpayer has failed to reply to further information requests during audit and subsequently provides that additional information during the objection stage.

2.82 A stop-the-clock mechanism should apply where the Tax Office is awaiting further information from a taxpayer or where the Tax Office has requested further information within the 14-day service standard period. If information is not requested within 14 days, the full period up to the time the request is made should count towards the 60-day maximum interest period.

2.83 As part of the objections acknowledgment letter, taxpayers should be informed of their right to compel the making of an objection decision within 60 days, pursuant to section 14ZYA of the TAA.

2.84 Where the Tax Office first requests further relevant information at the objection stage, and it would be expected that this information should have been requested during audit, then the Tax Office should consider whether the remission of the GIC to the SIC rate is appropriate. Again, in circumstances involving blatant obstruction, delays or obfuscation this remission should not apply.

RECOMMENDATION 5

The Commissioner should remit the general interest charge for the time taken by the Tax Office to finalise an objection beyond a 60-day 'available to the Tax Office' period where the taxpayer has acted in good faith.

Tax Office response

2.85 Disagree.

2.86 The Tax Office's *ATO Receivables Policy* currently provides a broad and well balanced approach to the recovery of disputed debt and the remission of GIC, and appropriately addresses any instances of Tax Office delay in resolving objections. Remission

decisions will be based on all the facts and circumstances of the case and will not follow any pre-determined formula.

Personal contact with taxpayers

2.87 Stakeholders submitted that opportunity for communication and discussion between taxpayers, their representatives and objection officers is limited, making it more difficult for the parties to engage in discussion which might assist in the early resolution of the matter. It was suggested that to avoid incurring unnecessary costs in escalating the matter to the litigation stage, the preference is for an opportunity to discuss and settle issues with the Tax Office at the objection stage. The *ARC Internal Review Best Practice Guide*¹² recommends that agencies should encourage internal review officers to attempt to contact all applicants as a matter of course and those internal review officers should be allocated enough time per review for this to be possible.¹³

2.88 The Inspector-General believes that the Tax Office's current communication strategies at the objection stage fall short of the *ARC Internal Review Best Practice Guide* standards. Stakeholder submissions confirm this view.

2.89 The objection stage should be an opportunity for communication, discussion or personal contact between taxpayers, their representatives and the Tax Office. This would also reinforce the role and independence of the objection officer.

2.90 Along the lines of what is undertaken by the Administrative Appeals Tribunal when a dispute proceeds to external review, this would require an objection officer and the taxpayer or their representative, where practicable, to discuss the issues in dispute, identify any further material that parties may wish to obtain and explore whether the matter can be settled. In appropriate instances, case conferences would also provide an opportunity to discuss the future conduct of the objection and, in particular, whether another form of alternative dispute resolution may assist in resolving the matter. Objection officers should also take this opportunity to explain the role of objections and its independence from the audit process. This should occur in the early stages of the objection decision making process.

RECOMMENDATION 6

In the early stages of the objection process:

- *the Tax Office should continue to encourage objection officers to contact taxpayers with the view of exploring opportunities for early resolution of the dispute; and*
- *where it could be of some benefit in resolving a dispute, the Tax Office should continue to adopt the practice of case conferencing, in which the objection officer, the taxpayer and Tax Office technical experts discuss the issues in dispute.*

12 Chapter 8 of the Administrative Review Council's *Internal Review of Agency Decision Making* report is in the form of a Best Practice Guide, aimed at giving agencies the opportunity to re-examine their internal review systems with a view to improving them, referred to as the *Internal Review Best Practice Guide*.

13 ARC, *Internal Review of Agency Decision Making*, Recommendation 21, p 69.

Tax Office response

2.91 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.95, 6.99 and 6.100) that work being undertaken by the Tax Office is addressing the recommendation.

Quality control

2.92 The ARC stressed the importance of quality control systems to ensure that internal review was meeting its aims. Some quality control systems suggested include quality assurance processes, maintaining statistics of the number of reviews, timeliness standards, the success and failure rates of appeals, general scrutiny by management and the provision of feedback to original decision makers and management.¹⁴

2.93 The Inspector-General found that the Tax Office already has in place a range of quality control systems. This includes the requirement for completed objection decisions to be sent to an authorising officer for quality assurance before the final letters are sent to the taxpayer and the Tax Office's key quality assurance process for objections, namely its bi-annual Technical Quality Review (TQR).

2.94 However, the Tax Office recognised that the TQR process does not review all aspects of the end-to-end decision making process and work was initiated as early as mid-2004 to develop and implement an improved quality review process. Some of the shortcomings identified in the TQR process included the need to identify root causes of quality gaps, providing better feedback to case and approving officers and identifying technical and procedural 'hot spots'. In addition, the Inspector-General has found that the TQR process does not adequately measure and report the quality of objection decision making. Objection decisions are simply included in the sample category of technical advice decisions to be included in the TQR process. There is no individual reporting of the TQR results for objections and the TQR process does not adequately measure the quality of the end-to-end dispute.

2.95 Moreover, notwithstanding a very high 'A' and 'Pass' rating for technical advice decisions, which include objections, a significant proportion of objections that proceed to external review are settled or conceded by the Tax Office before going on to a hearing. For instance, in 2007-08 approximately 51 per cent of all non-scheme cases were settled wholly or partly in favour of the taxpayer, with a further 25 per cent being conceded or abandoned by the Tax Office. Of the settled cases, approximately 41 per cent of the primary tax in dispute and just over 90 per cent of penalties in dispute were adjusted in favour of the taxpayer.

2.96 The ARC suggested that one way in which the success of internal review mechanisms can be determined is by monitoring the rates of applications for external review.¹⁵ Likewise, in her paper Justice O'Connor suggested that a high settlement rate of matters before the Administrative Appeals Tribunal is an indication that the filtering effect expected at the first tier of review is not working effectively.¹⁶ The Inspector-General found no evidence that the rates of application of external review and its outcomes were being used as an indicator of the quality and effectiveness of the objection process.

14 ARC, *Internal Review of Agency Decision Making*, paragraph 6.37.

15 ARC, *Internal Review of Agency Decision Making*, paragraph 6.40.

16 O'Connor DF, 'Effective Administrative Review: An analysis of two-tier Review (1993) 1 *Australian Journal of Administrative Law* 4.

2.97 The Tax Office accepts that there is a need for improvements in the current TQR process so as to better measure the quality of the end-to-end dispute resolution process, of which the pre-amendment and objection stages are critical stages. As a result, an Integrated Quality Framework (IQF) has been designed. The IQF has been implemented for in-scope interpretative assistance products including objections.

RECOMMENDATION 7

The Tax Office should continue with its development of the Integrated Quality Framework and ensure that the quality control system:

- includes features to properly evaluate the quality of the Tax Office's end-to-end decision making process;*
- is applicable to key objection work practices;*
- includes mechanisms for objection officers to provide and receive feedback as a means to improving the decision making processes;*
- identifies whether critical objection work practices that assist in the resolution of disputes are being followed and applied consistently across the business lines; and*
- includes examination and analysis of further information requests to ensure that relevant information is sought at the earliest opportunity.*

Tax Office response

2.98 Agree.

Information exchange and interaction with taxpayers

2.99 The Tax Office's information management system indicates that approximately 60 per cent of objections did not require further information prior to finalisation. Where there was a further information request, then over three-quarters of such cases failed the Taxpayers' Charter further information request standard. The Inspector-General found that in a large number of cases the receipt of new information was an important factor in the outcome of the objection. New information became available either through the taxpayer providing further material with the lodgement of the objection or the Tax Office requesting further information in the course of determining the objection.

2.100 These findings raise two questions – firstly, why do so many further information requests fail the Taxpayers' Charter service standard and secondly, why is relevant information not provided or obtained earlier in the dispute?

2.101 Audit work processes and the quality of decision making at the primary decision maker level, particularly with regard to evidence collection and the giving of reasons, have an important bearing on the management and handling of objections. Where an audit decision does not clearly set out the relevant issues or facts or the evidence that is being relied upon to support those facts, then it will be difficult for the objection officer to quickly determine what further information is both relevant and required.

2.102 In regard to the second issue, the Inspector-General found that either there was no request for that relevant information at the audit stage or, if it was requested, then it was not provided by the taxpayer.

2.103 As noted by the ARC, there is an inevitable tension between the aims of fairness and correct decision making, and the aim of efficiency in relation to the amount of time taken in undertaking the review and the resource cost of such a review.¹⁷

2.104 Where the Tax Office has requested further information from a taxpayer and provided a reasonable period of time to provide that information, then it should not be making multiple information requests. The Inspector-General does not believe there is any benefit to have a large number of cases awaiting further information for long periods of time. Taxpayers, when they lodge an objection, have an obligation to provide all necessary and relevant information.

2.105 In circumstances where taxpayers have not provided the requested information, then the Tax Office should be seeking to review the case based on the best available facts and evidence and to make a timely decision so as to determine the objection. In such instances, simply determining the objection on the best available facts and evidence and allowing taxpayers to explore their external review rights if they are still dissatisfied would be an appropriate course of action. Where this happens the Tax Office should be able to flag these cases as potential litigation.

2.106 The Tax Office also needs to include a more thorough examination and analysis of further information requests as part of its quality assurance processes for objections. It needs to better understand why relevant information is either requested by the Tax Office, or provided by taxpayers, at later stages in the dispute. It must also be confident that it has requested relevant information at the earliest stage possible. Where a dispute is resolved because of further or new material at later stages in the dispute (objection or litigation), then the Tax Office should be able to attribute that to a failure by the taxpayer to provide information rather than the Tax Office not asking for it. Such an assurance should be included as part of its broader quality control system.

2.107 The Inspector-General considers that it is incumbent on the Tax Office to make clear in its further information requests why the information is relevant and how it relates to the issue in dispute. This would benefit both the Tax Office and taxpayers and encourage a more timely resolution of disputes.

2.108 Further information requests examined in the course of this review tended to set out the class or name of the document or information being requested with little or no explanation of the purpose or importance of that information in resolving the dispute. It is also important that the Tax Office provide assistance to taxpayers, especially those that are self represented, to strengthen their applications for internal review. Such assistance could take the form of pointing out obvious gaps or omitted detail in applications for review, explanations of the review process and explanations of how the objection could be successful.

17 ARC, *Internal Review of Agency Decision Making*, paragraph 5.16.

RECOMMENDATION 8

The Tax Office should continue to implement work practices and procedures that address the following:

- when asking for information during objections, the Tax Office should ensure that information requests are tailored to the dispute on hand by clearly articulating the type of information it is seeking and the purpose and relevance of the information to the issues under examination;*
- self represented taxpayers in particular should be provided with plain language advice on making objection applications and assistance in ensuring that all relevant information and evidence is before the objection officer for reconsideration of the earlier Tax Office decision; and*
- communications between the objection officer and the taxpayer should also be aimed at improving understanding of the reason for the objection to facilitate early resolution of the dispute.*

Tax Office response

2.109 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.153 to 6.157 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

Reporting and analysis of objections

Indicators

2.110 The Inspector-General considers that as part of setting out its philosophy and approach on objections in the context of its end-to-end dispute resolution system, the Tax Office should establish indicators to evaluate the quality, efficiency and effectiveness of its management and handling of objections. These indicators should include both quantitative and qualitative measures and allow the Tax Office to know whether its stated objectives and outcomes have been achieved. The performance of the Tax Office in meeting these indicators should be the catalyst for improvements, not only in objection processes, but also in upstream processes that have an impact on objections.

Reporting

2.111 At the corporate level, the Inspector-General found that there is a large quantity of information being reported at different levels of the Tax Office (aged case status reports, certain performance standards reports and technical quality review reports). However, the Inspector-General believes that the Tax Office should supplement its important focus on efficiency and cycle times with information evaluating the effectiveness of its management and handling of objections, and its operation in the context of the Tax Office's end-to-end dispute resolution process. This requires the Tax Office to develop a range of measures and indicators that allow it to assess and report on how well it has performed in achieving the stated outcomes of objections.

2.112 The Tax Office's current reports do not provide an accurate account of the true level of disputation given the inclusion of non-genuine disputes such as out-of-time extension requests and amendment type objections. The Inspector-General considers that it is

important for the Tax Office to be able to accurately report on the level of disputation in the tax system, the source of that disputation (primary tax versus penalties) and the respective outcomes. This is not only important from a compliance perspective in terms of identifying how well targeted and successful the Tax Office's active compliance activities are, but also from the perspective of appropriate resource allocation and utilisation. The Inspector-General notes that the exclusion from the objections process of non-genuine disputes, as set out in Recommendation 1, will allow for a more accurate determination of the level of disputation in the tax system.

2.113 For transparency, the Tax Office should make publicly available a more complete picture of the nature and level of disputation in the tax system and its performance in the management and handling of objections.

RECOMMENDATION 9

Aligned with the Tax Office's philosophy, approach and agreed outcomes on objections, the Tax Office should continue to design, monitor and report against a broad range of indicators and measures that allow it to evaluate the quality, efficiency and effectiveness of the objections function within its end-to-end dispute process. Some of these measures and indicators should be reported externally, where appropriate, with consideration being given to:

- *the level of disputation in the tax system including the source, cause and nature of objections;*
- *all its service standards (completion and further information requests) included in the Tax Office's annual report;*
- *outcomes; and*
- *age profiles.*

Tax Office response

2.114 Agree in principle.

2.115 The Tax Office already reports against a broad range of indicators and measures including some of those suggested in the recommendation. In our ongoing work to improve reporting measures, we will give careful consideration to the Inspector-General's suggestions and we note the Inspector-General's acknowledgment (paragraphs 6.170 to 6.174 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

Analysis and feedback

2.116 The ARC noted that the analysis of statistics of internal review reversal rates can be used, among other purposes, to monitor trends, identify problems in policy and legislation,

and identify training needs.¹⁸ Such statistics are a useful tool that can be used by agencies to maximise the normative impact of internal review.

2.117 The ARC also observed that the ultimate aim of a dispute resolution system must be to improve original decision making and listed a number of problems identified through internal review. The *ARC Internal Review Best Practice Guide* recommended that internal review officers should be encouraged to communicate with original decision makers, and their managers, about problems that they may have detected with administration and decision making.¹⁹ It considered that contact between internal review officers and original decision makers is important in fostering cultural acceptance of internal review decisions and facilitating the improvement of original decision making.²⁰

2.118 The Inspector-General found that there was limited Tax Office analysis from a corporate perspective that aimed to bring together the current reported information to identify trends and problems in the objection process and the broader dispute resolution framework. As part of this analysis the Tax Office should investigate the cause, source and nature of disputes and how it could instigate proper remedial action. This should include a thorough analysis of litigation outcomes so as to identify why a dispute was resolved prior to hearing and why it could not have been resolved earlier at the objection stage. The Inspector-General also considers that there is scope for the Tax Office to improve its internal feedback mechanisms. These feedback mechanisms should be targeted at improving all facets of the end-to-end dispute resolution system, including the quality, efficiency and effectiveness of the Tax Office's objection process.

RECOMMENDATION 10

The Tax Office should adopt a more corporate emphasis and better analyse the trends and outcomes of objections and litigation as a source of improvement of its end-to-end dispute resolution process and feedback to both objection officers and primary decision makers. This analysis should include the identification of potential systemic issues in the end-to-end dispute resolution process and the effecting of improvements.

Tax Office response

2.119 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.170 to 6.174 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

Pre-amended assessment work practices

2.120 This review found that the Tax Office's actions during audit activities have an important bearing on the number of taxpayers objecting to Tax Office decisions. If the Tax Office does not ensure that these pre-amended assessment work practices encourage the correct identification of the facts, evidence, issues and application of the law or promote direct communication between the taxpayer and the Tax Office with the view of resolving the dispute, then it will lead to cases unnecessarily going on to objections. The Tax Office must also ensure these work practices are being properly followed by staff. In addition, the ARC observed that the prospect of internal review can sometimes have a negative impact on

18 ARC, *Internal Review of Agency Decision Making*, paragraph 6.36.

19 ARC, *Internal Review of Agency Decision Making*, Recommendation 36, p 71.

20 ARC, *Internal Review of Agency Decision Making*, paragraph 7.16.

decision making, with the availability of an appeal sometimes being used as an excuse for less than thorough work or a failure to deal properly with a dissatisfied person.²¹

2.121 It is important that these pre-amended assessment work practices adequately support the role and aims of objection. The Ralph Review emphasised the need for an administrative regime that is seamless and keeps disputes – and their associated costs and delays – to a minimum. It suggested that processes need to be considered on an integrated – that is, a ‘whole-of-transaction’ – basis, in order that the best possible administrative regime can be designed and implemented.²² Audit work practices need to align with and adequately meet the needs and expectations of the objections process. In turn, the work, practices and outcomes of objections need to properly feed into litigation. This means that reworking, duplication of tasks or having to rectify less than thorough work from the early stages should not occur.

2.122 In the course of the review, the Inspector-General found evidence of staff not complying with the requirements of the audit work practices to provide interim findings to taxpayers, to formally discuss the audit findings with the taxpayer and to conduct an exit interview.

2.123 The Tax Office should ensure that it has adequate quality control mechanisms around these critical upstream points. This could include managerial sign-off, improved quality review processes and information technology system features to ensure that the Tax Office’s work practices are being followed and applied consistently across business lines.

RECOMMENDATION 11

The Tax Office should review its current audit work practices and training programs in relation to the role of original decision makers to ensure that they align with the Tax Office’s philosophy and approach to end-to-end dispute resolution and that they conform appropriately to the Administrative Review Council Best Practice Guides. In particular, the Tax Office should identify critical audit work practices that can have significant implications for dispute resolution at the objection and litigation stages. It should also encourage open and direct communication between the parties and the timely exchange of information and views.

Tax Office response

2.124 Agree.

2.125 The Tax Office’s current audit work practices and training programs have been designed in accordance with sound administrative principles. However, we agree to conduct a review of these practices and programs to consider the matters raised in your recommendation.

21 ARC, *Internal Review of Agency Decision Making*, paragraph 7.9.

22 Ralph Review, *A Tax System Redesigned*, p 146.

RECOMMENDATION 12

The Tax Office should continue with its development of the Integrated Quality Framework and ensure that the quality control system:

- adequately measures and provides for the continuous improvement of the overall quality of original decision making;*
- includes identifying whether critical audit work practices and processes are being followed and applied consistently across business lines;*
- assesses how well original decision makers have identified and considered the issues, the relevant facts, the reliability and weight of evidence supporting the findings of facts and the application of the law; and*
- includes a causal analysis of quality in relation to the end-to-end process, so that comparisons between audit and related objection decisions can be undertaken, including an evaluation of the effect of internal review on original decision makers so as to minimise the potential negative effects of internal review.*

Tax Office response

2.126 Agree.

CHAPTER 3: BACKGROUND

LEGISLATION

What is an objection?

3.1 A uniform code of procedures applies in relation to all objections, reviews and appeals under Commonwealth tax statutes, including the *Income Tax Assessment Act 1997* (ITAA 1997), *Income Tax Assessment Act 1936* (ITAA 1936), *Taxation Administration Act 1953* (TAA), *Fringe Benefits Tax Assessment Act 1986* (FBTAA), *A New Tax System (Goods and Services Tax) Act 1999* and *Superannuation Guarantee (Administration) Act 1992*. This uniform code is contained in Part IVC of the *Taxation Administration Act 1953* (TAA).

3.2 The uniform code in Part IVC does not apply unless a provision in a relevant Act (for example, ITAA 1936 or ITAA 1997) specifically gives a person 'dissatisfied with' a decision the right to object against it in accordance with Part IVC of the TAA.

3.3 For example, section 175A of ITAA 1936 gives taxpayers the right to object against an assessment. Taxpayers may also object against the Commissioner's failure to make a private ruling. However, a decision refusing to grant an extension of time to make an election under section 139E of ITAA 1936 (to include the discount on employee share options in assessable income for the year the options are acquired) is not reviewable under Part IVC. Similarly, Part IVC does not apply to decisions relating to the amount to be withheld under the Pay As You Go withholding system.

3.4 The expression 'dissatisfied with' is not defined in Part IVC, but it seems that it means more than its ordinary dictionary meaning of 'displeased with' and that an entity cannot object against a taxation decision unless the decision has legal effect in relation to that entity (*CTC Resources NL v FC of T* (1994) 27 ATR 403 at 414, 435). A mere curiosity or interest in the decision will not suffice. It should be noted that most taxation decisions may be challenged under Part IVC.

3.5 For instance, taxpayers' objection rights are not limited to instances where taxpayers are dissatisfied with an amended assessment arising from audit activity but include instances where taxpayers are seeking to correct their own assessment. This was confirmed in *Case X2 90 ATC 105* where Senior Member Roach held that a taxpayer whose taxable income is assessed in accordance with his own erroneous return maintains the right of objection to an excessive assessment, stating that such a person is 'dissatisfied with the assessment'. Senior Member Roach went on to say that a taxpayer does not have to point to some 'wrongdoing' on the part of the Commissioner and it is sufficient that he is dissatisfied with the assessment, even though he is the sole cause of that dissatisfaction.

3.6 The relevant assessment, determination, private ruling, notice or decision objected against is referred to as a 'taxation decision' for the purposes of Part IVC and the objection is referred to as a 'taxation objection'.²³ If two or more taxation decisions are notified in the one notice, they are treated as one decision for Part IVC purposes, except to the extent that a

23 A taxation decision is defined as an assessment, determination, notice, decision or failure to make a private ruling against which a taxation objection may be or has been made.

decision consists of an ineligible income tax remission decision — that is taken to be a separate objection decision for the purposes of any review or appeal.²⁴

3.7 Where Part IVC of the TAA does not apply to taxpayers, then a taxpayer has to seek alternative remedies, for example, review under the *Administrative Decisions (Judicial Review) Act 1977*.

Types of taxation decisions

3.8 Listed below are examples of some common taxation decisions that are made and details of whether they can be objected to in the manner set out in Part IVC of the TAA.

Income and fringe benefits tax assessments

3.9 Section 175A of the ITAA 1936 provides that taxpayers dissatisfied with an income tax assessment may object against it in the manner set out in Part IVC of the TAA.

3.10 Section 78A of the FBTA provides that taxpayers (employers) dissatisfied with a fringe benefits tax assessment may object against it in the manner set out in Part IVC of the TAA.

Administrative penalties

3.11 Taxpayers can request a remission of a failure-to-lodge penalty under section 298-20 of Schedule 1 to the TAA by writing to the Tax Office, setting out the circumstances and basis on which remission is sought.

3.12 If the failure to lodge penalty remaining after the remission request has been considered is more than \$220 per document and a taxpayer is dissatisfied with the decision, then subsection 298-20(3) provides for objection rights under Part IVC of the TAA. No objection rights exist if the penalty is \$220 or less per document.

3.13 Section 298-20 also applies to other administrative penalties, such as the failure-to-withhold penalty.

Penalties relating to statements

3.14 Where taxpayers are dissatisfied with an assessment of the amount of an administrative penalty imposed by Division 284 of Schedule 1 to the TAA (statements, unarguable positions and schemes), then section 298-30 of Schedule 1 to the TAA allows them to object to it in the manner set out in Part IVC of the TAA.

Objections against interest charges

3.15 The Commissioner has the discretion to remit all or part of the GIC under section 8AAG of the TAA. There is no provision which allows for an objection under Part IVC of the TAA against the GIC.

24 Paragraphs 3.1 to 3.6 have been sourced from p 1,699, *Australian Tax Handbook 2008* (published by Thomson Legal & Regulatory Limited).

3.16 The Tax Office's work practices provide that where taxpayers have sought to object to the GIC only, then they should be advised that their objection is invalid but that their request will be treated as a request for remission. Where an otherwise valid objection contains a request for remission, the GIC issue should be determined together with the objection. However, the part of the decision relating to GIC remission does not form part of the formal objection decision.

3.17 A decision refusing to remit all or part of the GIC can be reviewed only by way of judicial review.

3.18 SIC applies to shortfalls of income tax that are revealed when the Commissioner amends a taxpayer's assessment.²⁵ The Commissioner may remit all or part of the SIC under section 280-160 of Schedule 1 to the TAA. The Commissioner must provide taxpayers with a written statement of the reasons for a decision not to remit an amount of SIC where the taxpayer requested the Commissioner, in the approved form, to remit the amount.

3.19 Where the amount of SIC not remitted by the Commissioner exceeds 20 per cent of the tax shortfall, then, under section 280-170 of Schedule 1 to the TAA, taxpayers have the right to object to the SIC in the manner set out in Part IVC of the TAA.

Indirect tax reviewable decisions

3.20 Indirect tax decisions that attract objection rights are referred to as 'reviewable indirect tax decisions'.

3.21 The making of an assessment under section 105-5 of Schedule 1 to the TAA or the amendment of an assessment under section 105-25 of Schedule 1 to the TAA are both reviewable indirect tax decisions.

3.22 Section 110-50 of Schedule 1 to the TAA provides that an entity that is dissatisfied with a reviewable GST decision may object to it in the manner set out in Part IVC of the TAA. The section also provides an exhaustive list of reviewable GST decisions and also applies to reviewable GST transitional decisions.

3.23 Importantly, a recipient of a private indirect tax ruling cannot object directly against the ruling as it is not a reviewable decision under the TAA. However, a recipient may request that the Commissioner make an assessment that gives effect to the ruling and then object against that assessment.

Objection requirements

3.24 Part IVC of the TAA sets out the general provisions relating to objections, including how they are to be made and how they are to be dealt with by the Commissioner.

3.25 A person making an objection must:

- make it in the approved form;
- lodge it with the Commissioner within the time set out in the TAA; and
- state in it, fully and in detail, the grounds that the person relies on.

25 SIC also applies to petroleum resource rent tax and excess contributions tax.

Approved form

3.26 There is currently no approved form for objections. However, the Tax Office website provides information on how to lodge objections and objection forms for tax professionals and non-tax professionals. Tax professionals must set out the following:

- the decision the taxpayer is objecting to;
- the reasons for the objection – this requires that taxpayers clearly set out the reasons why they believe that the decision is incorrect. The Tax Office requests that taxpayers set out the facts, arguments and information that would support their case. This includes the results of any legal research that supports their case (for example, references to legislation, public rulings, or case law); and
- all supporting evidence and documents – the Tax Office requests that taxpayers provide relevant evidence or documents that support their objection. Examples of evidence include copies of contracts, agreements, tax invoices, invoices, payment summaries and correspondence between the parties to the transaction. The Tax Office website also sets out the documents and facts that it requires for the most common objection topics and states that the objection process is greatly facilitated by taxpayers submitting these supporting documents. The topics covered include penalties, interest and extensions of time, capital gains, income, deductions, the Medicare levy, tax offsets and the superannuation guarantee.

Time limits for lodging objections

3.27 There are specific time limits for when an objection against a taxation decision must be lodged with the Commissioner. There are 60-day, 2-year or 4-year objection periods, depending upon the type of taxation decision to which the objection relates and, in some situations, the nature of the taxpayer.

3.28 In the case of individuals and certain companies, a person must lodge an objection with the Tax Office within two years after the notice of assessment is given to the person. This period corresponds to the time limits in section 170 of the ITAA 1936 for amending an assessment for the 2004-05 or later income years. This period applies to the following persons:

- a non-business individual;
- a company that is a small business entity (from 2007-08) or a Simplified Tax System (STS) taxpayer; or
- a person in the capacity of a trustee of a trust where the trust is a small business entity.

3.29 If the two-year amendment period does not apply (for example, if the taxpayer is a business taxpayer that is not a small business entity or an STS taxpayer), an objection against an assessment must be lodged within four years after notice of the assessment is given to the taxpayer. In the case of companies and other full self assessment taxpayers, the four-year objection period commences from the date notice of deemed assessment is deemed to be served on the taxpayer. The taxpayer's right to self amend, the Commissioner's right to amend, and the taxpayer's right to object are all in alignment: they must all be undertaken within four years.

3.30 Where taxpayers are out-of-time to lodge a self amendment, their only option is to seek an extension of time to lodge an objection as the Commissioner has no discretion to allow an extension of time for the lodgement of a self amendment.

3.31 Where an assessment has been amended by the Commissioner, the right of taxpayers to object is limited to the particular amendment. The objection period for lodging an objection against an amended assessment is similar to the objection period in relation to the original assessment. If the objection period in relation to the original assessment is two years, then an objection against an amended assessment must be lodged within the later of two years after notice of the original assessment was served on the taxpayer and 60 days after notice of the amended assessment is served on the taxpayer. Where the objection period in relation to the original assessment is four years, an objection against an amended assessment must be lodged within the latest of four years after notice of the original assessment was served on the taxpayer and 60 days after notice of the amended assessment is served on the taxpayer. Importantly, the Commissioner may amend assessments at any time to give effect to decisions on review or appeal or as a result of objections made by taxpayers.²⁶

Requests for an extension of time to lodge objections

3.32 It is clear that Parliament has laid down time limits for the amendment of assessments by taxpayers and the Commissioner, and for the lodgement of objections. However, at the same time Parliament has afforded the Commissioner the discretion to deal with a late objection as if it has been lodged within time.²⁷

3.33 If the period for lodging an objection has passed, then taxpayers may lodge the objection with the Tax Office together with a written application requesting that the Commissioner deal with the objection as having been duly lodged. The request must state in full and in detail the circumstances for the failure to lodge within the required time. The Commissioner is obliged to consider the request and decide whether to agree to or to refuse. The Commissioner must give taxpayers written notice of his decision whether to allow an extension of time. If the Commissioner grants the request for extension of time, then the objection is taken to have been lodged within the required period. If an extension of time is refused, then taxpayers may apply directly to the Administrative Appeals Tribunal for a review of the decision to refuse an extension of time to lodge an objection.

3.34 The leading case concerning the discretion to allow an extension of time to lodge an objection is the Federal Court judgement of Hill J in *Brown v FC of T* 99 ATC 4516, 6 May 1999 which set out a number of factors to consider:

What is required is the balancing of the delay; the explanation for it; the circumstances which gave rise to it and such prejudice if any as may be shown to exist to the Commissioner against the prejudice which may arise to a taxpayer who has by reason of the failure to object in time lost the right to a review of the assessment.

3.35 Importantly, Hill J emphasised that the decision maker should not lose sight of the fact that the discretion is an ameliorating provision designed to avoid injustice.

26 Item 6 of section 170(1) of the ITAA 1936.

27 Section 14ZX of the TAA 1953.

3.36 From a legislative perspective, the period for an amendment reducing taxpayers' liability mirrors those for amendments increasing taxpayers' liability. This approach has been supported in the past on the basis of fairness – if the Tax Office can increase taxpayers' liability within a certain timeframe, then taxpayers should be able to request a reduction within that same timeframe. However, with a reduction in the amendment period for increasing the liability of individuals and very small businesses from four years to two years, the question arose as part of Treasury's RoSA report whether symmetrical periods should be maintained, or whether a set amendment period of four years for all amendments reducing taxpayers' liability was preferable.

3.37 The report considered that a standard four-year period for all types of taxpayers where they had overstated their liability was preferable, because it would allow more time for them to correct their mistakes and would promote certainty through a single rule. However, the report also sought to maintain the formal symmetry of treatment in the law for amended assessments from the point of view of balance and fairness. In the course of that review, the Tax Office advised that both goals could be achieved by exercising its legislative discretion to agree to a request to extend the time for an objection. This would be exercised in circumstances where the new shorter review periods might otherwise deprive taxpayers of a legitimate claim for a credit amendment. In support of this proposition, the Tax Office stated that it already accepted many late objections.

3.38 Recommendation 3.9 of the RoSA report stated that the Tax Office should generally accept a request for an extension of time to lodge an objection from individuals or very small business taxpayers where the request is received within four years of the original assessment and taxpayers have at least an arguable case for the objection to be allowed in whole or in part. However, such extensions would not usually be granted where the Commissioner is out of time to amend an assessment of associated taxpayers to include income which was incorrectly included in the first taxpayer's assessment.

3.39 Law Administration Practice Statement PS LA 2003/7 outlines the Tax Office's present approach to making decisions on requests for an extension of time to lodge an objection. The Practice Statement requires staff to consider the factors set out by Hill J in *Brown's* case and weigh them in the balance to decide either to agree to a request for an extension of time or to refuse it. Paragraph 22 of the Practice Statement sets out the Tax Office's position for objections against income tax assessments lodged by individuals and simplified tax system taxpayers. It states that where taxpayers have a two-year time limit for lodging an objection against an income tax assessment, the Commissioner will generally accept a request for an extension of time to lodge an objection if:

- it is received by the Commissioner within four years after the original notice of assessment was given to the taxpayer; and
- the objection discloses an arguable case for allowing the objection.

3.40 Practice Statement PS LA 2003/7 also sets out four factors that must be considered in determining requests to deal with late taxation objections as if they were lodged within time. They are the taxpayer's explanation for the delay, the circumstances of the delay, whether the taxpayer has an arguable case for the objection, and other relevant matters.

3.41 The net effect of the current administrative framework for the lodgement of amendments and objections is that objections are not confined to cases where there is a

pre-existing dispute between the Tax Office and taxpayers. In fact, the objection process can be and is utilised by taxpayers to seek an amendment to their assessments to reduce their tax liability where they are out of time to do so under the amendment provisions. Table 3.1 provides a summary of the different amendment periods and requirements for extension of time requests.

Table 3.1: Tax Office and taxpayer amendment periods and requests for an extension of time to lodge objections

Taxpayer type	Tax Office amendment period	Taxpayer amendment period	Objection periods	Conditions for an objection Extension of Time request
Individual, small business taxpayers	Two years	Two years	Two years	If within four years — PS LA 2003/07 states that the Commissioner of Taxation will accept extension of time requests where the objection discloses an arguable case. If beyond four years — the taxpayer needs to request an extension of time to lodge an objection addressing the factors set out in PS LA 2003/07.
Business taxpayers other than small business taxpayers	Four years	Four years	Four years	The taxpayer needs to request an extension of time to lodge an objection addressing the factors set out in PS LA 2003/07.

State fully and in detail all grounds of the objection

3.42 Generally, if the objection identifies that a taxation decision is wrong in a particular way and gives reasons, then it will satisfy this requirement. A vague or general statement that a taxation decision is wrong in fact or law is not considered to comply with this requirement. Taxation Ruling TR 96/12 provides further information on the Tax Office's view of what is required.

Commissioner required to make an objection decision

3.43 If a taxpayer has lodged an objection within the required period and the Commissioner has not determined the objection after 60 days from the date of lodgement, the taxpayer may give the Commissioner a written notice requiring an objection decision to be made.²⁸

3.44 If the Commissioner has not made an objection decision by the end of the 60 days after being given the notice, the Commissioner is deemed to have disallowed the taxation objection.²⁹ This then entitles a taxpayer to seek external independent review of the taxation objection either at the Administrative Appeals Tribunal or the Federal Court.

ADMINISTRATIVE

3.45 The objection function sits within the compliance sub-plan and corporately is managed through the Executive Leadership Forum.

3.46 As part of that forum there is a specific senior executive officer who acts as a capability leader responsible for interpretive advice.

28 Subsection 14ZYA(1) of the TAA.

29 Subsection 14ZYA(3) of the TAA.

3.47 Organisationally, the Tax Office is structured into divisions known as business lines. A business line focuses on a type of taxpayer such as small business or large business, a type of tax such as excise or goods and services tax. Each business line is then responsible for managing its objection work flow. The day-to-day handling of objections is the responsibility of each of the business lines with reporting on objections back to the Tax Office executive through the Heartbeat report. Each business line has its own team structure, reporting, checklists, quality assurance procedures, feedback loops and further information practices.

3.48 The Tax Office's management and administration of objections is guided by a number of policy and procedural guidelines.

3.49 Taxation Ruling TR 96/12 explains what constitutes a valid objection against an income tax assessment. In particular, the ruling explains what an assessment is and the requirement that the grounds of objection must be stated 'fully and in detail'. It also addresses the issue of how many objections may be lodged against an assessment and explains the difference between an amendment request and an objection.

3.50 All business lines follow the general business procedures outlined in the Tax Office's Online Resource Centre for Law Administration (ORCLA) with some variations to take in business line needs. ORCLA for objections was launched on 13 November 2006. Practice Statement PS LA 2003/9 mandates that all staff use the policy and procedures detailed in ORCLA when undertaking objection work.

3.51 ORCLA contains the corporate policies and procedures and business lines' supplementary policies and procedures covering objections. It sets out the policies and explains the processes and procedures governing the provision of written binding tax technical advice and objections. In doing so it expands and elaborates on information provided in Law Administration Practice Statement PS LA 2008/3 Provision of Advice and section 14ZU of the TAA, which sets out how taxation objections are to be made.

3.52 Currently, the Tax Office has a computerised corporate case management system, the Technical Decision Making System, for managing all objections regardless of which area of the Tax Office is responsible for them. This system is also used to manage written correspondence, including private binding rulings.

Tax Office's internal review on the management of objections

3.53 In August 2006 the Tax Office set up a Cross-Line Taskforce on Objections Management to identify and implement best practices across various business lines, including Goods and Services Tax (GST), MEI and Superannuation. Part of the purpose of the Taskforce was to examine the work management practices for GST and to learn from the strategies used by MEI and Superannuation in successfully addressing backlogs of objections on hand. The taskforce reviewed processes and work practices and identified a number of issues and strategies. The findings and recommendations were to be shared across all business lines through the Steering Committee.

3.54 In December 2006 the Cross-Line Taskforce provided a report to the Provision of Written Advice (PoWA) Steering Committee. The report outlined a number of findings and recommendations and also identified opportunities to improve cross-business line consistency. However, the origin of the Cross-Line Taskforce was more a response to the GST objections backlog and a consolidation of work practices in ORCLA than an attempt to unify objection practices across all business lines.

3.55 The PoWA Steering Committee accepted the report and asked that the project leader develop a concept brief for implementing the recommendations. In February 2007 the PoWA Steering Committee endorsed a new project team with representatives from all business lines to oversee the assessment, prioritisation and implementation of the report's recommendations. First priority was given to how business lines count objections with a view to any changes being implemented before 1 July 2007.

3.56 In March 2007 the PoWA Steering Committee endorsed the project team recommendation for counting of objections to be managed on a correspondence basis by all business lines. Implementation strategies for changes in counting processes were to be finalised by the affected areas (High Wealth Individuals, Large Business and International (LBI) and GST) and progress reported. The project team proposed that the second project would deal with issues identified in relation to the treatment of invalid objections. The project team also decided to look at a number of other issues, including invalid objections and further information requests. In April 2007 the PoWA Steering Committee endorsed the descriptions of the roles and responsibilities and the proposed project plan and acknowledged that priorities would shift as the project progressed.

Objections Review Project

3.57 The Objections Review Project was initiated in 2008 and is examining the Tax Office's end-to-end dispute processing system. It is seeking to develop strategies and approaches that resolve emerging and active disputes at the earliest opportunity through an integrated approach that:

- maximises the taxpayer experience;
- minimises cost and inefficiencies;
- enhances quality; and
- manages the whole dispute process including upstream (active compliance) processes and downstream (litigation).

3.58 To date, the Tax Office has implemented a number of initiatives as a result of this project, including the establishment of a dispute resolution network and the engagement of litigation experts at the objections stage. Appendix 2 contains a diagrammatic representation of the Tax Office's current approach to improving dispute resolution.

CHAPTER 4: TAX OFFICE PERFORMANCE

4.1 This chapter examines a number of aspects of Tax Office performance regarding objections. Firstly, it sets out the extent and outcomes of objections and the Tax Office's handling of objections from a Taxpayers' Charter perspective. It also examines the Tax Office's performance from an external perspective, by looking at the outcome of objection decisions that proceed to litigation.

EXTENT AND OUTCOMES OF OBJECTIONS

Objections received

4.2 Table 4.1 sets out the number of objections other than to private written binding advice received in the 2004-05, 2005-06, 2006-07 and 2007-08 income years.

Table 4.1: Number of objections received in the 2004-05 — 2007-08 income years

Business lines	2004-05	2005-06	2006-07	2007-08
ATP	4,787	998	253	111
EXC	52	83	111	70
GST	1,875	2,535	2,736	1,450
L&P/OCTC	0	11	15	21
LBI	817	367	236	216
MEI	5,592	5,715	6,645	8,968
SME	1,931	1,778	598	545
SPR	1,949	2,246	3,071	3,357
Total	17,003	13,733	13,665	14,738
Total (excl ATP)	12,216	12,735	13,412	14,627

4.3 Between 2004-05 and 2007-08 there has been a steady increase in the total number of objections (excluding Aggressive Tax Planning (ATP)) received by the Tax Office.

4.4 In this period there was also a dramatic reduction in the number of ATP objections as the outstanding mass-marketed arrangement disputes were settled. There was also a significant increase in the number of GST objections from 2005-06 to 2006-07. The resulting backlog created by this increase was one of the key reasons for the Tax Office's internal review of its objections procedures and work practices. There has been a decrease in the number of SME objections between 2005-06 and 2006-07 and an increase in MEI objection numbers over the same period as a result of the micro business responsibility moving from SME to MEI — however, the total number across the two business lines has remained fairly constant. In 2007-08 there was a significant increase in the number of MEI objections caused by a large increase in extension-of-time objection requests as a consequence of the shorter periods of review introduced by the RoSA legislation.

4.5 The numbers shown as objections in Table 4.1 and subsequent tables are, however, not an accurate reflection of disputation within the tax system, except possibly for GST and Excise. This is because the numbers include cases recorded as objections but which are not necessarily audit-sourced. For instance, within these numbers would be included objections seeking an amendment and out-of-time objection requests. These cases arise where there is no real dispute with a Tax Office decision, but a taxpayer or their agent wishes to amend information included on a self assessed income tax return. Instead of simply asking for the

amendment to be made, the taxpayer or agent uses an objection as the means to achieve it. This category of objections emerged as a significant issue in the course of this review and it is discussed fully in subsequent parts of this report.

4.6 Also, it should be noted that previously each business line adopted a different method to record and report received objections. For example, for MEI – Individuals, MEI – Micro and Superannuation areas reported numbers of taxpayers objecting, regardless of the number of decisions they were objecting against. However, the GST area reported the number of decisions objected against irrespective of the number of taxpayers who were objecting – for example, if a taxpayer objected to both a tax shortfall and penalty assessment, then it would have been recorded as two objections by GST. Following the Cross-Line Taskforce on Objections Management report (the ‘taskforce report’), the Tax Office adopted a common reporting approach across all business lines based on the number of taxpayer correspondence received. So if the Tax Office receives one letter with a taxpayer objecting to three income years, then this will be recorded as one objection. In contrast, if the Tax Office receives three separate letters each objecting to a particular income year, then this will be recorded as three objections.

4.7 The Tax Office advises that the fluctuations in the objections received are due to a variety of factors. These include the drop in ATP objection receipts and a spike in GST objection receipts over two years, inherent in the introduction of a new tax system.

Finalisation of objections

4.8 Table 4.2 sets out the number and outcome of objections other than objections to private written binding advice finalised in the 2004-05, 2005-06, 2006-07 and 2007-08 income years by business line.

Table 4.2: Number and outcome of objections finalised in the 2004-05 — 2007-08 income years by business line

Outcome	EXC	GST	LBI	MEI	SME	SPR	Total	%
2004-05								
Allowed in full	6	322	62	2,681	686	393	4,150	35.35
Allowed in part	3	245	66	523	277	380	1,494	12.72
Disallowed	69	540	136	1,829	811	584	3,969	33.80
Request invalid	0	41	129	0	4	44	218	1.86
Settled	0	60	0	97	0	0	157	1.34
Withdrawn by taxpayer	17	69	391	416	167	693	1,753	14.93
Total	95	1,277	784	5,546	1,945	2,094	11,741	100
2005-06								
Allowed in full	8	414	100	2,636	777	405	4,340	34.79
Allowed in part	7	299	54	520	256	378	1,514	12.14
Disallowed	19	724	177	1,734	977	899	4,529	36.31
Request invalid	0	40	28	0	0	435	503	4.03
Settled	0	11	0	64	0	0	75	0.60
Withdrawn by taxpayer	15	115	128	328	205	722	1,513	12.13
Total	48	1,603	487	5,282	2,215	2,839	12,474	100
2006-07								
Allowed in full	6	738	44	2,819	173	567	4,347	31.10
Allowed in part	18	842	37	712	92	248	1,949	13.94
Disallowed	36	1,322	500	2,653	282	693	5,486	39.25
Request invalid	0	115	18	0	6	726	865	6.19
Settled	0	7	0	63	0	0	70	0.50
Withdrawn by taxpayer	2	197	92	439	67	463	1,260	9.01
Total	62	3,221	691	6,686	620	2,697	13,977	100
2007-08								
Allowed in full	14	405	31	4,412	198	651	5,711	36.71
Allowed in part	12	439	44	1,074	67	381	2,017	12.96
Disallowed	32	547	182	2,996	234	811	4,802	30.87
Request invalid	3	191	15	208	57	778	1,252	8.05
Settled	0	28	1	57	0	0	86	0.55
Withdrawn by taxpayer	0	145	16	602	27	900	1,690	10.86
Total	61	1,755	289	9,349	583	3,521	15,558	100

4.9 Table 4.2 shows that over the four-year period approximately 47 per cent of original assessments were varied to some extent in favour of the taxpayer by the objection being allowed in full or in part. It should be noted that these figures do not include taxation scheme cases or those completed by the ATP business line.

4.10 It also shows that approximately 47 per cent of objections were finalised with no variation in the original assessment, either due to the objection being disallowed or by the taxpayer's withdrawal of their objection.

4.11 In addition, a very low proportion of objections are finalised by way of settlement (less than 1 per cent) and in some business lines there is a relatively high proportion of invalid objections. An examination of the Tax Office's Settlement Register shows that in the 2007-08 income year 56 settlements (approximately 7 per cent of all non-ATP settlements) were initiated at the objection stage.

4.12 The Tax Office advises that the use of the 'settled' code has been interpreted differently across business lines and does not truly reflect the nature of an agreed outcome. Some business lines have closed cases as 'allowed in part' to reflect the outcome of a formal settlement. Additionally, some business lines have used 'settlement' closure codes to reflect an agreed outcome of the dispute. During the 2007-08 year processes have been updated to reflect consistent recording of objection outcomes.

4.13 However, caution must be exercised in using these figures to reach conclusions about the quality of decisions in Tax Office active compliance activities and the outcome of objections. This is because there are a high number of extension-of-time requests and different methods to record and report objections in some business lines. This will be discussed further in Chapter 5.

4.14 The Tax Office's taskforce report looked at objections finalised in the 2004-05 to 2005-06 income years. It found that, for all objections and for all business lines, the proportion of objection decisions allowed in full or in part across some business lines was approaching 60 per cent. The report expressed some concern at this high rate. It suggested that this high rate may be linked to further information being required or not forthcoming from the taxpayer. It posed the question of whether this information was provided at the start of the audit activity and whether this information should have, or could have, been obtained during the audit activity.

4.15 The report noted that the audit areas of each business line operate independently of each other and there appeared to be a need to review the audit work practices at the business line level.

Nature of objections

4.16 As with the source of objections, at the corporate level the Tax Office has also not been able to differentiate and record the subject matter of objections — that is, whether the objection relates to tax shortfall only, penalty only or both. Some insight on this may be gleaned from the Tax Office's taskforce report.

4.17 The taskforce report found that MEI — Individuals (76 per cent), MEI — Micro (56 per cent) and Superannuation (80 per cent) all had a reasonably high percentage of tax shortfall only objections. It concluded that this was, in part, due to a direct correlation with the lower proportion of objections arising from audits for these business lines. Table 5.2 sets out further details for each of the business lines.

Table 4.3: Tax Office taskforce's tax shortfall and penalty analysis — proportion of total cases

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Proportion of total cases (%)
Both tax shortfall and penalty	50	20	34	9	28
Penalty only	28	5	10	11	14
Tax shortfall only	22	76	56	80	58

Source: Tax Office.

4.18 Overall, within the GST business line 78 per cent of all taxpayers' objections included an objection to the penalty component of their GST assessment, significantly higher than the other business lines. The report concluded that the higher rate of such penalty objections in the GST business line was due to the higher rate of audit-sourced objections. The report also states that each audit adjustment requires a penalty decision and given the limited circumstances where a penalty will be remitted, this will invariably mean that a taxpayer will have both a tax shortfall adjustment and a penalty.

Audit-source objection decisions — only tax shortfall

4.19 Table 4.4 lists the proportion of audit-sourced objections where only the tax shortfall was in dispute.

Table 4.4: Outcome of audit-source objections — include only tax shortfall issues

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Proportion of total cases (%)
Allowed in full	33	32	53	6	26
Allowed in part	19	20	20	56	33
Disallowed	33	36	20	19	27
Withdrawn	14	12	7	19	14

Source: Tax Office.

4.20 The taskforce report found that within the GST business line, 52 per cent of objections result in a change in the audit decision; 52 per cent in MEI — Individual, 73 per cent in MEI — Micro and 62 per cent in Superannuation. Overall, 59 per cent of objections relating only to primary tax issues result in a change in the audit decision.

4.21 The report states that for MEI — Micro the high number of objections allowed in full is due to circumstances where audit has raised an assessment based on the taxpayer's inability to substantiate deductions. It suggests that, subsequent to the lodgement of the objection, the taxpayer is able to substantiate the claim at objection.

4.22 In respect of the Superannuation business line, the report indicates that many of its active compliance activities involve the calculation of employee entitlements for superannuation guarantee purposes. As such, there is often a change in the calculations based on information from the superannuation fund and salary and wages records, leading to the objection being allowed in part.

4.23 Overall, the report found that objection decision percentages for allowed in full, allowed in part, disallowed and withdrawn were reasonably consistent across all business lines.

Audit-sourced objection decisions — both tax shortfall and penalty

4.24 Table 4.5 lists the proportion of audit-sourced objections where both the tax shortfall and penalty decisions were in dispute.

Table 4.5: Outcome of audit-source objections — include both tax shortfall and penalty issues

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Totals %
Allowed in full	15	12	12	0	12
Allowed in part	50	53	41	89	51
Disallowed	30	29	32	11	29
Withdrawn	4	6	15	0	8

Source: Tax Office.

4.25 The taskforce report found that in the GST business line, 65 per cent of objections involving both a tax shortfall and penalty issue resulted in a change to the audit decision; 65 per cent in MEI-Individual, 53 per cent in MEI-Micro and 89 per cent in Superannuation — overall, 63 per cent of such objections resulted in a change to the audit decision.

4.26 The higher rate of objections allowed in part in Superannuation is attributed to the nature of superannuation audit activities. These often involve the calculation of employee entitlements for superannuation guarantee purposes, which is based on routine, but lengthy calculations based on contributions made to a superannuation fund and the salary and wages of the employees. Where one of these variables is amended as part of the objection decision, then there is an immediate decision to at least allow the objection in part.

Audit-sourced objection decisions — penalty only cases

4.27 Table 4.6 sets out the proportion of audit-sourced objections where the penalty decision was in dispute.

Table 4.6: Outcome of audit-source objections — include only penalty issues

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Totals %
Allowed in full	33	0	0	0	18
Allowed in part	25	0	14	11	18
Disallowed	38	75	86	78	57
Withdrawn	4	25	0	11	7

Source: Tax Office.

4.28 The taskforce report found that there was significant variation amongst business lines in this decision category. For example, the GST business line was the only business line to have any allowed in full decisions in the sample and it also had a significantly higher proportion of objection decisions allowed in part. The report indicated that further analysis of the GST sample showed that the decision rates for penalty only objections were consistent with the decision rates for tax shortfall only objections. The taskforce report suggested that this variation may be a more generic issue rather than one particularly limited to penalty only objections.

TAXPAYERS' CHARTER STANDARDS

4.29 The Taxpayers' Charter sets out a number of service standards in relation to objections. These include:

- the Tax Office performance standard for finalising objections of '56-days available-to-the-Tax Office or as otherwise negotiated' (the 56-day finalisation standard). Under this standard the Tax Office aims to finalise an objection within 56 days of receiving all the necessary information (this means that the clock stops where the Tax Office is awaiting further taxpayer information) or within a timeframe negotiated with the taxpayer. If the objection raises particularly complex matters that will take more than 56 days to resolve after receiving all the required information, then the standard is to contact the taxpayer within 14 days to negotiate an extended reply date; and
- the 14-day standard – if all the information to decide the objection is not available, then the standard is to contact the taxpayer within 14 days to seek any further information.

4.30 The Tax Office has also set itself an aspirational internal target to complete objections within 120 elapsed days, known as the completion standard. The elapsed days include all time spent awaiting further information. From 2007-08, the completion standard was revised from 100 per cent to 99 per cent and excludes cases which are considered complex and are finalised by a negotiated date. Although not one of the Tax Office's Taxpayers' Charter service standards, its performance against the completion standard is included in its corporate Heartbeat report.

4.31 Understanding Tax Office reporting of its performance against the 56-day and 120-day performance standards can be difficult. For example, if the Tax Office negotiates with the taxpayers and agrees to finalise their objection within five months (circa 150 days) and does so, this will be recorded as achieving the 56-day (or otherwise negotiated) standard, but failing the 120-day (elapsed time) standard. Also, if the Tax Office seeks additional information from the taxpayer to resolve an objection, it will 'stop-the-clock' on the 56 days it allows itself until the information is received. If the information from the taxpayer is delayed, the Tax Office may fail the 120-day elapsed time standard but still achieve the 56-day standard. In these ways, the Tax Office can appear to be achieving better performance within its '56-day' standard than it does against the 120-day standard. Additionally, the Tax Office advises that where cases are considered complex and the case is finalised by the negotiated date, the case will be taken to have met the completion standard. However, from the 2007-08 income year, where cases are considered complex and the case is finalised by the negotiated date, the case will meet the completion standard.

4.32 In any event, the Tax Office only publicly reports its achievement against the 56-day standard, having set itself a benchmark of seeking to finalise 70 per cent of objections within that time. It should be noted that this benchmark is one of the lowest of all Taxpayers' Charter service standards. For example, the Tax Office standard for providing a written private binding ruling on the application of the tax laws is 28 days.

4.33 In 2006-07 the Tax Office finalised 82 per cent of objections within the 56-day (unless otherwise negotiated) service standard. In 2007-08 the Tax Office's performance against this service standard dropped, with 74 per cent of objections finalised within the 56-day standard.

Taxpayers' Charter finalisation standard results

4.34 Table 4.7 outlines the Tax Office's performance in meeting the 56-day standard in finalising objections in the 2004-05, 2005-06, 2006-07 and 2007-08 income years by business line. Again, it should be noted that ATP cases are excluded from this part of the discussion. The Inspector-General believes that delays with ATP objection cases raise systemic issues but more in relation to the dispute resolution process for groups of taxpayers rather than the objection process itself.

Table 4.7: Tax Office performance in respect of the Taxpayers' Charter objections finalisation benchmark (56-days unless otherwise negotiated)

2004-05	EXC	GST	LB	MEI	SME	SPR	Total
Failed finalisation standard	14 (7.82)	233 (17.11)	34 (4.31)	750 (13.32)	415 (21.29)	1101 (43.04)	2,547 (20.46)
Passed finalisation standard	165 (92.18)	1116 (82.73)	754 (95.69)	4,877 (86.68)	1534 (78.71)	1455 (56.96)	9,902 (79.54)
2005-06	EXC	GST	LB	MEI	SME	SPR	Total
Failed finalisation standard	6 (7.41)	478 (28.3)	37 (7.60)	1560 (29.09)	354 (15.87)	712 (25.08)	3,147 (24.8)
Passed finalisation standard	75 (92.59)	1211 (71.7)	450 (92.4)	3802 (70.91)	1877 (84.13)	2,127 (74.92)	9,542 (75.2)
2006-07	EXC	GST	LB	MEI	SME	SPR	Total
Failed finalisation standard	14 (14.74)	945 (27.54)	11 (1.59)	937 (13.94)	140 (22.36)	198 (7.25)	2,254 (15.7)
Passed finalisation standard	81 (85.26)	2486 (72.46)	680 (98.41)	5,784 (86.06)	486 (77.64)	2,534 (92.75)	12,055 (84.3)
2007-08	EXC	GST	LB	MEI	SME	SPR	Total
Failed finalisation standard	5 (7.25)	440 (24.18)	11 (3.81)	2,543 (27.03)	96 (16.47)	964 (27.35)	4,059 (25.89)
Passed finalisation standard	64 (92.75)	1380 (75.82)	278 (96.19)	6,847 (72.92)	487 (83.53)	2,561 (72.65)	11,617 (74.11)

Figures in parenthesis represent percentage of cases.

4.35 Overall, approximately 78 per cent of objections are finalised within the 56-day service standard. It should be noted that this performance level is enhanced by the inclusion of simple extension-of-time objection requests and other objections seeking a self amendment as noted above. In instances where objections were not finalised within the 56-day standard, then this must have been due to Tax Office delay, given that the clock stops where the Tax Office is awaiting further taxpayer information. This delay may have been caused by the escalation of the issue to other technical tax officers, seeking legal advice or the objection officer may require the establishment of the Tax Office view before being able to finalise the objection. However, what is unclear in these instances is the Tax Office's GIC remission policy in respect of the Tax Office's delay in finalising the objection. This issue is explored further in Chapter 6.

4.36 In relation to GIC remission, the Tax Office advises that each case is considered on its own circumstances and merit. In considering interest remission, case officers rely on Chapter 93 of the ATO Receivables Policy and PS LA 2006/8 for guidance.

Taxpayers' Charter completion standard results

4.37 Table 4.8 sets out the Tax Office's performance in meeting the 120-elapased day standard in the completion of objections in the 2004-05, 2005-06, 2006-07 and 2007-08 income years by way of business line.

Table 4.8: Tax Office performance in respect of the Taxpayers' Charter objections completion benchmark

2004-05	EXC	GST	LBİ	MEİ	SME	SPR	Total
Failed completion standard	24 (13.41)	356 (26.39)	586 (74.37)	791 (14.05)	497 (25.50)	1,385 (54.19)	3,639 (29.23)
Passed completion standard	155 (86.59)	993 (73.61)	202 (25.47)	4,837 (85.95)	1452 (74.5)	1,171 (45/81)	8,810 (70.77)
2005-06	EXC	GST	LBİ	MEİ	SME	SPR	Total
Failed completion standard	18 (21.43)	771 (45.65)	357 (73.31)	999 (18.63)	682 (30.57)	860 (30.29)	3,687 (29.06)
Passed completion standard	63 (77.78)	918 (54.35)	130 (26.8)	4,363 (81.37)	1,549 (69.43)	1,979 (69.71)	9,002 (70.94)
2006-07	EXC	GST	LBİ	MEİ	SME	SPR	Total
Failed completion standard	12 (12.63)	1,747 (50.92)	572 (82.78)	1,183 (17.6)	261 (41.69)	119 (4.36)	3,894 (27.24)
Passed completion standard	83 (87.37)	1,684 (49.08)	119 (17.22)	5,538 (82.4)	365 (58.31)	2,613 (95.64)	10,402 (72.76)
2007-08	EXC	GST	LBİ	MEİ	SME	SPR	Total
Failed completion standard	2 (2.9)	315 (17.31)	6 (2.08)	831 (8.85)	59 (10.12)	459 (13.02)	1,672 (10.67)
Passed completion standard	67 (97.1)	1,505 (82.69)	283 (97.92)	8,559 (91.15)	524 (89.88)	3,066 (86.98)	14,004 (89.33)

Figures in parenthesis represent percentage of cases.

4.38 Evident is the fairly constant proportion of objections that have met the completion standard over the last three years, at approximately 71 per cent. However, this has jumped to 89 per cent for the 2007-08 income year. For some business lines, there is a significant difference between the proportion of objections that meet the 56-day finalisation standard (for example, GST – 72 per cent, LBİ – 98 per cent, SME – 77 per cent) and those meeting the 120-day completion standard (GST – 49 per cent, LBİ – 17 per cent, SME – 58 per cent). This reflects the previous discussion about understanding Tax Office performance reporting. Clearly, for a substantial number of objections within these three business lines, the Tax Office is not meeting the 120-day elapsed time standard.

4.39 The Tax Office states that it has introduced strategies to deal with increasing workloads over the past few years in various business areas. It believes that it has consistently met externally reported service standards and has seen a 30 per cent reduction in average cycle times in the past year, whilst workloads have increased. Additionally, commencing the 2008-09 year, it has observed its lowest recorded volume of objections on hand, indicating some success in the strategies employed.

4.40 For the 2007-08 year, the results appear to have improved, but this is largely due to a change in how results are calculated. The Tax Office advises that for the 2007-08 year the 120-day completion standard was revised. Irrespective of a case taking more than 120 days to complete in elapsed time, so long as the case is considered 'complex' and the case is finalised by the negotiated date, the case will meet the 120-day completion standard. On this new definition of the completion standard the 2007-08 completion result was 89 per cent. However, using the old definition (that is, 120 days of elapsed time) the result for the 2007-08 year would have been 74 per cent – a slight increase from the previous years.

4.41 The difference between the old measure and the new measure for the completion standard would suggest that at least 15 per cent of cases in 2007-08 were considered complex and had a negotiated date. This proportion of complex cases varies considerably from the information obtained from the Tax Office's information management system, presented in Table 4.9, which suggests that only about 9 per cent of case are considered to be complex and

that approximately 91 per cent of cases have no negotiated due date. However, LBI has a much greater proportion of 'complex' objections as compared to the other business lines.

Table 4.9: Taxpayers' Charter standard — classification of objections into complex or routine (number of cases)

2004-05	EXC	GST	LBI	MEI	SME	SPR	Total
Complex	15	164	590	56	246	3	1,074 (8.65)
Routine	164	1,219	203	5,543	1,693	2,524	11,346 (91.35)
2005-06	EXC	GST	LBI	MEI	SME	SPR	Total
Complex	11	274	381	64	208	12	950 (7.51)
Routine	73	1,428	104	5,271	2,004	2,812	11,692 (92.49)
2006-07	EXC	GST	LBI	MEI	SME	SPR	Total
Complex	21	389	563	396	131	5	1,505 (10.53)
Routine	74	3,042	128	6,325	495	2,727	12,791 (89.47)
2007-08	EXC	GST	LBI	MEI	SME	SPR	Total
Complex	12	326	164	210	128	28	868 (5.54)
Routine	57	1,494	125	9,180	455	3,497	14,808 (94.46)

4.42 An indication of the reasons why the 120-day elapsed time standard was exceeded is provided in the Tax Office's corporate Heartbeat report for June 2008. It shows that 27 per cent of unfinalised cases were awaiting further information from the taxpayer, with a further 26 per cent awaiting a court or tribunal decision. Of the remaining unfinalised cases, 23 per cent had been previously held up due to requests for further information, internal technical advice or pending a court or tribunal decision, but were now being progressed. In addition, 7 per cent of cases were classified as complex and therefore excluded from the Tax Office's completion target performance measure, while 6 per cent of these unfinalised cases were awaiting internal technical advice (either from the Centres of Expertise, the Tax Counsel Network or specific industry teams). Finally, 8 per cent of unfinalised cases had no prior reason for exceeding the 120-day elapsed time standard.

4.43 While the Heartbeat report sheds some light on objection cases exceeding the 120-day elapsed time standard, the Inspector-General believes that more analysis needs to be undertaken, especially in the 'awaiting further information from the taxpayer' category before it could be concluded that the delay was outside the Tax Office's control. In particular, where the objection arises from an audit activity, one consideration should be whether relevant information was requested at that earlier stage and, if not, then why not. In addition, the Tax Office's Heartbeat report does not capture whether delays in the Tax Office requesting further information contributed to the unfinalised case exceeding the 120-day elapsed time standard. This would seem to be a possibility given that in 2007-08 only 8 per cent of cases had a further information request that met the Taxpayers' Charter service standard of being sought within 14 days, with 28 per cent of cases having a request that failed the service standard and 63 per cent of cases having no further information request. This aspect of Tax Office performance is discussed in greater detail below.

4.44 Table 4.10 brings together the Tax Office's performance against both its finalisation and completion benchmarks in an effort to gain a better understanding of the progress of objection cases.

Table 4.10: Number and proportion of objections finalised within 56-elapsed days and 120-elapsed days

2004-05	All objections	Per cent	Excluding-ATP	Per cent
Total number of objections	16,823	100	12,448	100
Number of cases finalised within 56 days	6,497	38.62	5,734	46.06
Number of cases finalised beyond 56 days	10,326	61.38	6,715	53.94
Number of cases beyond 56 days but within 120 days	3,953	23.5	3,076	24.71
Number of cases beyond 120 days	6,373	37.88	3,639	29.23
2005-06	All objections	Per cent	Excluding-ATP	Per cent
Total number of objections	16,287	100	12,689	100
Number of cases finalised within 56 days	5,875	36.07	5,432	42.81
Number of cases finalised beyond 56 days	10,412	63.93	7,257	57.19
Number of cases beyond 56 days but within 120 days	3,798	23.32	3,570	28.13
Number of cases beyond 120 days	6,614	40.61	3,687	29.06
2006-07	All objections	Per cent	Excluding-ATP	Per cent
Total number of objections	14,993	100	14,296	100
Number of cases finalised within 56 days	7,621	50.83	7,484	52.35
Number of cases finalised beyond 56 days	7,372	49.17	6,812	47.65
Number of cases beyond 56 days but within 120 days	3,038	20.26	2,918	20.41
Number of cases beyond 120 days	4,334	28.91	3,894	27.24
2007-08	All objections	Per cent	Excluding-ATP	Per cent
Total number of objections	15,831	100	15,676	100
Number of cases finalised within 56 days	7,434	46.96	7,373	47.03
Number of cases finalised beyond 56 days	8,397	53.04	8,303	52.97
Number of cases beyond 56 days but within 120 days	4,443	28.07	4,420	28.20
Number of cases beyond 120 days	3,954	24.98	3,883	24.77

4.45 Table 4.10 shows that approximately 47 per cent of objections (excluding ATP) are finalised within 56 days of Tax Office-available time, with approximately 53 per cent requiring more than 56 days of Tax Office-available time. Of this later population, just over half require more than 120 days for finalisation. Again, one difficulty faced with drawing any conclusions from this information is the inability to differentiate between the different category of objections (audit-sourced, out-of-time extension requests, within-time amendments lodged as objections). The Inspector-General believes that this level of analysis is important to better understand the drivers of objections and to manage the resolution of disputes.

4.46 Another Taxpayers' Charter service standard is that if an objection raises particularly complex matters that will take more than 56 days to resolve after receiving all the required information, then the Tax Office is to contact the taxpayer within 14 days to negotiate an extended reply date. Information obtained from the Tax Office indicates that in 90 per cent of objections no new due date for the finalisation of the objection was negotiated. This fits with the Tax Office classification of objections as either 'complex' or 'routine' (10 per cent and 90 per cent respectively). Of the remaining 10 per cent of cases where a new due date was negotiated, approximately half failed the 14-day service standard.

Taxpayers' Charter further information requests standard results

4.47 Table 4.11 examines the Tax Office's performance in meeting the further information request standard in the 2004-05, 2005-06, 2006-07 and 2007-08 income years by way of business line. Where a tax officer handling an objection determines that all the information to decide the objection is not available, then the Taxpayers' Charter standard requires them to contact the taxpayer within 14 days to seek any further information.

Table 4.11: Tax Office performance in respect of the Taxpayers' Charter further information request benchmark for objections

2004-05	EXC	GST	LBI	MEI	SME	SPR	Total
Failed further info standard	15 (8.38)	399 (28.58)	356 (44.89)	1,954 (34.9)	542 (27.95)	1,047 (41.43)	4,313 (34.73)
Passed further info standard	19 (10.61)	321 (23.21)	60 (7.57)	331 (5.91)	317 (16.35)	117 (4.63)	1,165 (9.38)
Further info not requested	145 (81.01)	663 (47.94)	377 (47.54)	3,314 (59.19)	1,080 (55.7)	1,363 (53.94)	6,942 (55.89)
2005-06	EXC	GST	LBI	MEI	SME	SPR	Total
Failed further info standard	17 (20.24)	571 (33.55)	143 (29.48)	1,672 (31.34)	744 (33.63)	993 (35.16)	4,140 (32.75)
Passed further info standard	21 (25)	330 (19.39)	24 (4.95)	178 (3.34)	451 (20.39)	141 (4.99)	1,145 (9.06)
Further info not requested	46 (54.76)	801 (47.06)	318 (65.57)	3,485 (65.32)	1,017 (45.98)	1,690 (59.84)	7,357 (58.19)
2006-07	EXC	GST	LBI	MEI	SME	SPR	Total
Failed further info standard	24 (25.26)	1,394 (40.63)	267 (38.64)	1,943 (28.91)	212 (33.87)	337 (12.34)	4,177 (29.22)
Passed further info standard	12 (12.63)	350 (10.12)	227 (32.85)	648 (9.64)	101 (16.13)	269 (9.85)	1,607 (11.24)
Further info not requested	59 (62.11)	1,687 (49.17)	197 (28.51)	4,130 (61.45)	313 (50)	2,126 (77.82)	8,512 (59.54)
2006-07	EXC	GST	LBI	MEI	SME	SPR	Total
Failed further info standard	20 (28.99)	729 (40.05)	101 (34.95)	2,359 (25.12)	204 (34.99)	1,120 (31.77)	4,533 (28.92)
Passed further info standard	14 (20.29)	386 (21.21)	34 (11.76)	556 (5.92)	80 (13.72)	253 (7.18)	1,323 (8.44)
Further info not requested	35 (50.72)	705 (38.74)	154 (53.29)	6,475 (68.96)	299 (51.29)	2,152 (61.05)	9,820 (62.64)

Figures in parenthesis represent percentage of cases.

4.48 Nearly 60 per cent of objections did not require further information prior to finalisation. This suggests that either all the information was available to the tax officer to make a decision or that further information was provided at the time of the lodgement of the objection. However, where further information is requested, then approximately 75 per cent of those cases fail the further information 14-day standard.

4.49 In terms of specific business lines, further information requests appear to be more common in GST, LBI and SME, where in some income years more than 50 per cent of objections required further information. The Tax Office advises that it would be more representative to describe the 14-day further information request standard as a non-reportable service standard.

4.50 The Inspector-General notes that, firstly, the 14-day service standard measures how quickly an objection officer determines what further relevant information is required to determine an objection. If a significant proportion of objections fail the 14-day service standard, then this tends to suggest a potential systemic issue that warrants further investigation. Taxpayer behaviour has no impact on whether the Tax Office is able to meet this service standard.

4.51 Secondly, the Inspector-General believes that the service standard is an important one and is an indicator of the alignment between active compliance work practices and the efficiency and effectiveness of objections. As such, the Tax Office should also publicly report

on its performance against the 14-day further information service standard in its annual report.

4.52 The issue of further information requests was also considered by the taskforce report. Table 4.12 lists the outcome of audit-sourced objections where further information is requested.

Table 4.12: Outcomes of objections where further information requests

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Totals %
Allowed in full	23	36	22	28	27
Allowed in part	37	19	41	54	38
Disallowed	34	28	27	10	25
Withdrawn	6	17	11	8	10

Source: Tax Office.

4.53 The taskforce undertook an examination of objection decisions where further information was requested and where further information was not requested. In the GST and MEI – Individual business lines, where additional information was requested, the objection decision rates were similar to the overall objection decision rates. For MEI – Micro, the proportion of objections allowed in part increased by 9 per cent while the proportion allowed in full decreased by 8 per cent. The taskforce report concluded that this may be due to circumstances where the taxpayer is able to substantiate a part of the deductions disallowed at audit or where the culpability rate is reduced due to the additional information received at the objection stage.

4.54 In the Superannuation business line, the proportion of objections allowed in part increased by 22 per cent while the proportion allowed in full increased by 5 per cent and the disallowed decreased by 21 per cent. The report suggested that this reflects the impact of additional information on decisions and is indicative of the superannuation guarantee objection cases.

Table 4.13: Outcome of objection where no further information requests

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Totals %
Allowed in full	34	33	35	18	30
Allowed in Part	26	26	27	10	22
Disallowed	31	41	30	53	39
Withdrawn	9	0	8	18	9

Source: Tax Office.

4.55 Table 4.13 examines the objection decision outcomes where there were no further information requests. The taskforce report found that the most significant difference in the overall results between those objections where further information was requested and not requested was in the allowed in part and disallowed categories.

4.56 Where further information was not requested, the proportion of objections allowed in part decreased by 16 per cent and the disallowed cases increased by 14 per cent. However, the report states that these results were influenced by the superannuation cases included in the sample. The report concluded that these differences were reflective of work type within each of the business lines.

TECHNICAL QUALITY OF OBJECTION DECISIONS

4.57 Objection decisions are reviewed as part of the Tax Office's Technical Quality Review (TQR) process, which seeks to examine the quality of written technical decisions using the Tax Office Judgment Model.

4.58 The TQR methodology set out in Law Administration Practice Statement PS LA 2001/11 requires each business line to rate each sample case in accordance with the Judgment Model. Cases selected for review are rated 'D' or 'E' if any of the following apply:

- insufficient evidence (for example, lack of documentation) in the case report to arrive at the correct decision;
- failure to accurately identify and/or address all issues;
- insufficient evidence from the taxpayer to support the assumptions made; and
- incorrect treatment of the penalty provisions, incorrect decisions or a failure to understand the taxpayers' questions.

4.59 The Tax Office's TQR Form for dispute decisions focuses on four areas, with each setting out a series of topics for consideration as part of the TQR process:

- The question – examines whether the case officer understood the taxpayer's problem, whether all the facts were identified and whether the relevant facts were gathered.
- The decision – considers whether the decision was clear, correct and the thinking direct and convincing with all issues answered and whether the relevant law, Tax Office view and policy were appropriately considered and applied.
- The explanation – examines whether the reasons were well-explained, in a logical sequence and applied to the taxpayer's situation and whether the relevant legislation, rulings and case law were cited.
- The delivery – looks at whether the reasons for decision were clearly expressed, grammatically correct, well formatted, courteous and reader friendly.

4.60 Table 4.14 presents the results for technical advice decisions arising from the Tax Office's TQR process.

Table 4.14: Tax Office ratings for technical advice

	Corporate standard	Aug 06-Jan 07	Feb 07-Jul 07	Aug 07-Jan 08
All finalised 'A'	85	92.85	92.65	80.55
All finalised 'Pass'	95	96.98	97.24	91.51

Source: Tax Office.

4.61 The Tax Office's TQR bi-annual report does not provide a break-up of the different types of technical decision, which would include objection decisions. To that extent, the current TQR results are of limited value in providing a clear picture of the quality of the objection decision making process.

EXTERNAL REVIEW

4.62 Another measure of the performance of internal review mechanisms is the extent and outcomes of external review. It has been suggested that a high settlement rate of matters before the court and tribunal is an indication that the filtering effect expected at the first tier of review is not working effectively.

4.63 Table 4.15, sourced from the Tax Office's Annual Report 2007-08, sets out outcomes of court and tribunal cases that did not proceed to hearing. Tables 4.16 and 4.17 show the amount of primary tax and penalties disputed, the adjustment and the final tax position upon the resolution of the dispute.

Table 4.15: Outcomes of court and tribunal cases that did not proceed to hearing, by cases, 2007-08

Outcome	Category				Total	
	Scheme		Non-scheme			
	No.	%	No.	%	No.	%
Settled	252	61	259	51	511	56
Conceded or abandoned by taxpayer	118	29	122	24	164	26
Conceded or abandoned by the Tax Office	40	10	124	25	164	18
Total	410	100	505	100	915	100

Source: Tax Office.

Table 4.16: Outcomes of court and tribunal cases that did not proceed to hearing, by primary tax, 2007-08 (\$,000)

Outcome	Primary tax disputed			Primary tax adjustment			Final primary tax position		
	Scheme	Non-scheme	Total	Scheme	Non-scheme	Total	Scheme	Non-scheme	Total
Settled	49,764	77,246	127,010	29,556	22,538	52,095	20,207	54,708	74,915
Conceded or abandoned by taxpayer	13,911	22,208	36,119	0	0	0	13,911	22,208	36,119
Conceded or abandoned by the Tax Office	16,869	137,098	153,968	16,869	137,098	153,968	0	0	0
Total	80,545	236,553	317,099	46,426	159,637	206,063	34,119	76,916	111,035

Source: Tax Office.

Table 4.17: Outcomes of court and tribunal cases that did not proceed to hearing, by penalties, 2007-08 (\$,000)

Outcome	Penalty disputed			Penalty adjustment			Final penalty position		
	Scheme	Non-scheme	Total	Scheme	Non-scheme	Total	Scheme	Non-scheme	Total
Settled	25,912	13,544	39,457	24,250	11,655	35,906	1,661	1,889	3,550
Conceded or abandoned by taxpayer	5,397	8,360	13,757	0	0	0	5,397	8,360	13,757
Conceded or abandoned by the Tax Office	6,668	3,451	10,119	6,668	3,451	10,119	0	0	0
Total	37,977	25,356	63,333	30,918	15,106	46,025	7,058	10,249	17,308

Source: Tax Office.

4.64 In terms of non-scheme litigation, just over 50 per cent of cases were settled by the Tax Office, which abandoned or conceded a further 25 per cent of cases.

4.65 In respect to primary tax adjustment as a result of settlement, there was a 30 per cent variation between the disputed and final tax positions. The extent of this reduction differs between business lines, ranging from 78 per cent in GST, 66 per cent in MEI, approximately 55 per cent in Superannuation and SME and 11 per cent in LBI.

4.66 The Tax Office reports that 33 of the cases it conceded or abandoned were related and dependent on a court decision. Once the decision was handed down in favour of the taxpayer, then the Tax Office conceded the related matters, with a tax adjustment of \$88,667,044 or approximately 54 per cent of the total amount of tax conceded by the Tax Office. Apart from this amount, a further \$40,726,181 in total tax was conceded by the Tax Office in litigation involving LBI cases. In addition, the GST, MEI and SME business lines each conceded \$2.8 million, \$2 million and \$2.6 million respectively in primary tax.

4.67 With regard to penalties, settlements prior to hearing resulted in an 86 per cent reduction in penalties raised. Again, the extent of this variation differed between business lines, with approximately 99 per cent of penalty being adjusted in the taxpayers' favour for LBI cases (\$4 million adjustment), 85 per cent in GST cases (\$3.7 million adjustment), 77 per cent in SME cases (\$3.5 million adjustment) and 69 per cent in MEI cases (\$367,000 adjustment).

4.68 Of the \$3.4 million in penalties conceded by the Tax Office, approximately \$2.6 million related to GST cases, with a further \$720,000 and \$67,000 referable to SME and LBI cases.

4.69 Information is also available from the AAT itself regarding the progress and outcome of tax litigation. In its annual report the AAT states that it aims to finalise the majority of applications within 12 months of lodgement, and has set percentage targets for the finalisation of applications within this timeframe for various jurisdictions. Performance with these targets in 2007-08 and in the previous two years is set out in Table 4.18.

Table 4.18: Percentage of applications finalised within 12 months

	Target %	2005-06 %	2006-07 %	2007-08 %
All applications	-	65	67	61
Compensation	75	62	62	60
Social security	90	91	91	84
Veterans' affairs	80	66	67	62
Taxation appeals	75	49	42	31

Source: AAT Annual Report.

4.70 The AAT reports that the overall and Taxation Appeals Division results were affected by the finalisation of a large number of older applications relating to taxation decisions and taxation schemes. For 2006-07, when applications relating to taxation schemes are excluded from the figures for the Taxation Appeals Division, then 62 per cent of applications were finalised within 12 months of lodgement and 79 per cent within 18 months.

4.71 In relation to the small taxation matters, the AAT states that it would aim to finalise applications of this type within 12 weeks of lodgement. The AAT notes that the Small Taxation Claims Tribunal was created to provide a cheaper and more informal means for taxpayers to obtain review of decisions where the amount of taxation in dispute is less than \$5,000. The AAT reports that applications dealt with in the Small Taxation Claims Tribunal are not necessarily less complex than applications for review of other types of taxation decisions and that, while the amount of tax in dispute may not be large, the parties may require additional time to gather relevant information. The AAT reports the proportion of applications finalised within the 12-week timeframe declined in 2007-08 to 17 per cent from 36 per cent in 2005-06 and 22 per cent in 2006-07.

CHAPTER 5: MAIN CAUSES OF OBJECTIONS

INTRODUCTION

5.1 An important focus of this review was to examine the main drivers or causes of objections, each displaying different taxpayer behaviour and risk to the Tax Office. This chapter sets out the Inspector-General's findings and discusses stakeholder views on aspects of the Tax Office's compliance activity actions.

5.2 The Inspector-General identified four main causes of objections:

- the objection process being used to effect amendments with no prior Tax Office decision or action;
- the objections process being used to challenge a Tax Office decision arising from an audit, default assessment, private binding ruling or where the Commissioner has refused or failed to make a decision;
- taxpayers' failure to properly respond to Tax Office requests for further information, leading to the Tax Office issuing an amended assessment; and
- the Tax Office's approach during audit.

NO AMENDED ASSESSMENT OR REAL TAXPAYER DISPUTE WITH A TAX OFFICE-INITIATED ACTION OR DECISION

5.3 Taxpayers do not only lodge objections following Tax Office audit activity and the subsequent issuing of an amended or default assessment. Quite often, taxpayers lodge objections with no prior Tax Office-initiated action or decision. The Inspector-General has identified a number of sub-categories here including taxpayers seeking to self amend their own self assessed return because they disagree with the Tax Office view, where taxpayers display a preference to seek an amendment to their assessment through the objection process or where taxpayers are out-of-time to lodge an amendment.

Objection challenging Tax Office view, but not arising from Tax Office active compliance activities

5.4 On some occasions, taxpayers will lodge an objection to a notice of assessment with the purpose of challenging the Tax Office view as expressed in a ruling, determination or other interpretative advice. Initially, a taxpayer lodges a tax return that accords with the Tax Office view and then seeks to challenge that view. By adopting this course of action a taxpayer minimises their exposure to tax shortfall penalties and, in the event that the Tax Office disagrees with their objection, has an immediate right of review to the AAT or appeal to the Federal Court.

5.5 Another option available for taxpayers would be to seek a private binding ruling from the Tax Office. Where taxpayers disagree with the Tax Office's ruling, then they would have to lodge an objection, which is an additional step in the resolution of the dispute, resulting in additional costs and time delay. From a compliance model perspective, this may

demonstrate a desire on the part of taxpayers and their representatives to 'do the right thing' and be upfront with the Tax Office.

5.6 From a Tax Office perspective, such taxpayers could be considered as compliant, as they are voluntarily bringing the issue to the Tax Office's attention without the need for audit. However, the ability of taxpayers and their agents to lodge objections without any prior Tax Office audit activity can have a significant, and possibly detrimental, impact on tax administration. In such instances, the objection will usually be the first time the Tax Office becomes aware of the issue. Unlike taxpayers that have been subject to an audit or risk review, the Tax Office will not have had an opportunity to request relevant information and evidence in order to determine the relevant facts. As was shown in the Tax Office's cross-line taskforce report, such objections often require further information and, in many instances, the objection takes the form of a quasi-audit (requests for further information, meetings with the taxpayer and their representative, requests for information to third persons). This often requires a significant allocation of limited resources, given the smaller number of objection officers than auditors with the potential for time delays. Added to this are the time constraints imposed by the Taxpayers' Charter standards and section 14ZYA of the TAA.

Amendments to taxpayers' assessments lodged as objections

5.7 These objections arise where taxpayers are within time to lodge an amendment to a notice of assessment but nevertheless decide to lodge an objection. The Tax Office has no discretion not to treat them as objections and not to follow the Part IVC process if taxpayers lodge them as an objection. Through discussions with stakeholders and tax practitioners a number of drivers have been identified for this practice.

5.8 First, the Inspector-General also notes that currently requests for amendments can only be lodged through the Tax Office's Electronic Lodgement Service (ELS), while objections can be lodged through the Tax Agent Portal (TAP). Tax agents have said that they use the objections channel where there is no real dispute because they cannot use the TAP for amendments. They also say that using the objections route via the TAP gives them a Tax Office contact point for the issue which is otherwise not available. The Tax Office advises that system changes would be required to allow tax agents to use the TAP to lodge amendment requests. These changes would need to be considered in terms of other priorities designed to improve service to taxpayers.

5.9 The Tax Office's taskforce report found that of the sampled cases only 2 per cent of objections were lodged via the TAP. Overall, nearly 81 per cent of objections were lodged by letter and 15 per cent by facsimile. The Tax Office advises that, although the TAP does not allow tax agents to lodge amendment requests, the ELS allows them a quick and effective medium to effect an amendment.

5.10 Second, tax agents say that using the objection pathway gives them a Tax Office contact point for the issue that is otherwise not available if the tax agent lodges an amendment request. Finally, tax practitioners advise that by lodging an objection, and in the event that the Tax Office disallows the objection, then they have immediate recourse to the AAT or Federal Court.

5.11 From a taxpayer perspective, seeking to amend an assessment through the objection process could result in higher compliance costs through the need to lodge an objection. The Tax Office's taskforce report found that approximately 62 per cent of objections were lodged by tax agents and tax professionals. For GST and MEI – Micro the majority of objections

were lodged by tax agents or tax professionals while for MEI – Individuals and Superannuation there was an equal split between objections lodged by taxpayers and tax agents or professionals.

5.12 There are specific requirements for an objection – it must be in the approved form and it must state fully and in detail the grounds of objection to be relied on by the taxpayer. Also, the lodgement of an objection may entail additional liaison with the Tax Office to determine the objection and any additional time required to finalise the objection (56 days versus 28 days for electronic amendments).

5.13 This practice also imposes a burden on the Tax Office as it is required to deal with the request as an objection. By way of law, the Tax Office must consider taxpayers' objections and must serve taxpayers, by post or otherwise, with written notice of the decision. The Tax Office's work practices require objection officers to prepare reasons for decision for all objections, even where the matter is straightforward and the objection is to be allowed. In addition, such an objection decision would need to be signed off by the objection officer's manager and the case has to be recorded on various management information systems.

Out-of-time amendments

5.14 Currently, where taxpayers are out of time to request an amendment, they can still effect an amendment by lodging a request for an extension of time to lodge an objection together with an objection. This is treated as an objection, but by its nature it is very different from that which arises from Tax Office audit activity. There is no pre-existing dispute between the Tax Office and the taxpayer regarding the facts, evidence or tax laws. Rather, the driver of such objections is taxpayers seeking to correct their own assessment but who are out of time to do so, pursuant to the amendment provisions. In some instances, such objections can transform into audit-like reviews, where there are multiple requests for further information, position papers and discussion between the Tax Office and taxpayers' representatives. Such objections also give rise to the same taxpayer and Tax Office burdens as described for amendments to taxpayers' assessments lodged as objections.

Review findings and observations

5.15 An analysis of information from the Tax Office's corporate case management system, information provided by the Tax Office and an examination of a representative sample of objection cases indicates that out-of-time objections represent a significant proportion of objections lodged by individuals and micro businesses.

5.16 Until fairly recently, neither the law nor the Tax Office has adequately differentiated the varying circumstances that taxpayers may lodge an objection in order to take into account different taxpayer behaviours, expectations and risk to revenue.

5.17 In addition, at the corporate level the Tax Office has not been able to differentiate and record the different source of objections (for example, objections lodged as a result of Tax Office action and those lodged without any previous Tax Office action), which has meant that it has been difficult to determine the true level of disputation in the tax system. This can lead to an inefficient allocation of resources with more experienced objection officers handling a large number of amendment requests that could potentially be resolved by more junior tax officers.

5.18 However, it has been possible for the Inspector-General to obtain some information at the business line level regarding the source of objections. This was because objections

requiring decisions on extending the objection period are one class of cases captured by the MEI business line reports.

5.19 First, there was a 139 per cent increase in the number of extension of time objections being received by the MEI business line in the 2007-08 income year as compared with that of the previous year, rising from 1,354 to 2,891. Extension-of-time objections comprised just under one-third of all objections received by the MEI business line in 2007-08.

5.20 The Tax Office advises that this was due to an increasing number of taxpayers whose period of review had, for the 2004-05 income year, been reduced from four years to two years. In addition, nearly 80 per cent of the 'extension of time objections' were allowed in full with a further 4 per cent allowed in part and 11 per cent disallowed.

5.21 The Tax Office advises that for the 2004-05 income year onwards, the RoSA measures introduced a reduction in periods of review from four years to two years for most taxpayers within the individual's market and some within the micro market. These time limit changes have increased the number of applications for amendments to original self assessments that are out of time. Where a taxpayer is out of time to amend their assessment, their only recourse is to seek review through the formal objection process. These measures also saw, for income tax matters, an alignment of the period in which an amendment may be requested and the period that an objection must be lodged by. Prior to this, amendment and objection periods differed slightly, leading to some out-of-time amendments being treated as objections without a need for a request to extend the time to lodge.

5.22 Second, the Inspector-General found that in some business lines a significant proportion of objections did not arise from an audit or any other compliance activity. Rather, taxpayers' were seeking to use the objection mechanism to amend their return. Nearly all GST objections were audit-sourced. An examination of a sample of LBI cases found that 72 per cent of objections allowed in full were taxpayer requests for amendments lodged as objections where there was no prior active compliance activity. In contrast, approximately 76 per cent of objections disallowed were audit-sourced.

5.23 Table 5.1 shows the proportion of finalised objections that arose as a result of Tax Office audit action and those finalised without any previous Tax Office audit action within the MEI business line.

Table 5.1: Source of finalised MEI objections, 2004-05, 2005-06 and 2006-07

	2004-05	2005-06	2006-07
Individuals — Audit	420	1,048	1,576
Individuals Audit (Information matching)	476	366	248
Individuals Audit — Penalty/Interest only	651	225	397
Schemes	-	3	79
INDIVIDUALS AUDIT	1,547	1,642	2,300
Individuals — Amendment	220	472	366
Individuals — Non-audit	1,771	1,593	1,345
Individuals — Debt release	72	86	44
Individuals — Extension of time	1,792	1,366	1,132
INDIVIDUALS NON-AUDIT	3,855	3,517	2,887
SCHEMES	197	178	114
INDIVIDUALS TOTAL	5,599	5,337	5,301
Micro — Audit	-	-	370
Micro — Non-audit	-	-	886
Micro — Debt release	-	-	106
MICRO TOTAL	-	-	1,302

5.24 Within the Individuals' segment, approximately 63 per cent of objections were from a non-audit source (amendments, release for debt, and extension of time) with only 34 per cent arising from some form of audit activity or risk review. Likewise, in the Micro segment approximately 27 per cent of objections arose from an audit with the remaining 73 per cent being non-audit sourced or release of debt cases.

5.25 This is consistent with the Tax Office's taskforce report which found that, within the Individuals and Micro segments, approximately 47 per cent and 44 per cent of objections respectively were from a non-audit source. The taskforce report also found that for the GST business line approximately 97 per cent of the sampled objections arose from audits.

Review findings and conclusions

5.26 The Inspector-General notes the comments in the Ralph Review and believes that there is a need to re-align the objection framework in a self assessment environment. First, an objection should be limited to a review of a Tax Office decision which adversely affects a taxpayer — namely, cases which arise from an audit or the Tax Office's refusal to amend a notice of assessment.

5.27 Second, the Inspector-General does not believe that the processing of a return and the issuing of a notice of assessment should constitute a decision for the purposes of the objection system. Unlike the previous assessing regime, where the Tax Office was required to technically scrutinise a taxpayer's income tax returns and make an assessment, in a self assessing environment the Tax Office accepts returns at face value, subject to post-assessment risk-based audit and other verification checks. The issuing of assessments is now a processing mechanism and it would be difficult to accept the proposition that this stage represents a Tax Office decision.

5.28 The Inspector-General believes that the common treatment of genuine (audit-sourced) and non-genuine (non-audit sourced) objections has been a constraining factor towards the objection process becoming a more efficient and effective internal review system. The treatment of amendments to assessments arising from taxpayer error as an objection, even where taxpayers are out of time to lodge such amendments, has increased taxpayer compliance costs, the Tax Office's administrative costs and the time taken to effect

amendments. Taxpayers must incur the costs associated with the preparation and lodgement of an objection, together with the provision of any further information that is required by the Tax Office. Likewise, the Tax Office allocates more experienced tax officers to objection work, objections require more time to finalise with the need for written reasons for decision, managerial and technical sign-off and need to be recorded on the Tax Office's technical decision making system.

5.29 The Tax Office advises that while the law provides the Commissioner with a general power of administration, the principles of administrative law and statutory interpretation require the Commissioner to operate within the bounds of the powers conferred on him by Parliament and to use them to give effect to Parliament's intent as discerned by the application of those principles. The powers of general administration cannot be used to extend, confine or undermine Parliament's intentions or to justify a course of action that would otherwise be beyond the Commissioner's powers.

5.30 The law allows any request to change an assessment that is out of time to be dealt with as an objection, provided the Commissioner exercises his discretion to treat the late lodged objection as though lodged on time. The existence of this avenue to change the assessment, and the absence of any power to extend time for amendments, prevents the Commissioner's general administrative powers being used to allow an out-of-time amendment request in any way but where it can be treated as an objection and can be allowed to proceed out of time.

5.31 The Tax Office states that should a request for amendment be lodged out of time, it is Tax Office policy to advise the taxpayer that the request could be considered as an objection. However, as the period to lodge an objection has also expired, the taxpayer must seek the Commissioner's agreement to treat the objection as though lodged in time. Where reasonably arguable grounds for an objection exist and the requirements to be allowed out of time are met, or (within four years of the assessment) even if the requirements are not fully met there is no prejudice to the Commissioner, the agreement is provided and consideration of the objection occurs.

5.32 Section 170 of the ITAA 1936 does not provide the Commissioner with any power to extend the period in which a taxpayer may amend their tax return. The Inspector-General considers that the Commissioner's powers should be broadened to allow such an extension. This will maintain taxpayers' current rights to seek an amendment to correct an error or omission to their tax returns, while at the same time allowing for the objection process to be confined to genuine disputes.

RECOMMENDATION 1

The Government should consider improving the objection system established by Part IVC of the Taxation Administration Act by ensuring that the objections process can only be used for genuine disputes arising from amended assessments, default assessments, private binding rulings or where the Commissioner has failed or refused to make a decision in relation to a matter in dispute. All other requests, regardless of whether the taxpayer labels them as objections, should be treated as self amendment requests.

Taxpayers' rights should be preserved by allowing the Commissioner to extend the period in which a taxpayer may amend their tax return.

Tax Office response

5.33 This is a matter for Government to consider.

GENUINE TAXPAYER DISSATISFACTION WITH A TAX OFFICE-AMENDED ASSESSMENT

5.34 In this instance, the Tax Office and taxpayers are in genuine dispute. There are a range of issues that may cause taxpayers to lodge such an objection, including that:

- taxpayers disagree with the Tax Office's finding of facts or evidence in support of those facts;
- taxpayers disagree with the Tax Office's view as expressed in a ruling, determination or other interpretative advice;
- taxpayers disagree with the Tax Office's application of the law to the given facts; or
- the Tax Office has issued a default notice of assessment.

5.35 Where a dispute arises from an audit or risk review, the Tax Office has already had an opportunity to determine the relevant facts and request further information. The Tax Office has also had the opportunity to avail itself of its formal information-gathering powers to obtain the evidence that it believes is necessary to properly decide whether to issue an amended assessment. Moreover, both the Tax Office and taxpayers have had an opportunity to exchange their views on the law, facts and evidence. As part of the audit finalisation process, the Tax Office is required to provide taxpayers with draft reasons for decision prior to issuing an amended assessment.

5.36 In this instance, the objection should ideally represent an independent review of the auditor's determination of the facts, consideration of the evidence and application of the Tax Office view. However, information from the Tax Office's corporate case management system reveals that it is often necessary for further information to be requested or considered as part of the objection. This may be due to taxpayers providing further information together with the lodgement of the objection or the objection officer requesting further information from the taxpayer in the course of determining the objection. The Inspector-General found that the provision or request for further information at this stage was a significant determinant in the resolution of this class of objections. This was also confirmed by the Tax Office's taskforce report which found that approximately 73 per cent of audit-sourced objections were lodged with new information or evidence across all sampled business lines and that 52 per cent required the Tax Office to request further information after the lodgement of the objection.³⁰

5.37 Where taxpayers disagree with the Tax Office view itself, as expressed in a ruling, determination or other interpretative advice, then the objection officer is not able to unilaterally change the Tax Office view. Rather, the objection officer, where they believe that the Tax Office view gives rise to an incorrect decision or unintended consequences, is required to escalate the issue. Apart from such circumstances, the objection officer is

30 This finding is inconsistent with data from the Tax Office's information management systems that 60 per cent of objections did not require further information prior to finalisation. One reason for this may be that the Tax Office's taskforce report only included four business lines within its sample.

required to apply the Tax Office view as expressed in a ruling, determination or other interpretative advice, even though the basis for the taxpayer's objection is a disagreement with the Tax Office's expressed view.

5.38 From a Tax Office perspective, the fact that an audit has proceeded to objection means that there is a dispute on hand. The taxpayer has not accepted the Tax Office's audit decision and is exercising their right of independent review. Importantly, the dispute is Tax Office-initiated in the sense that the taxpayer was selected for an audit or risk review. The taxpayer could also be liable to tax shortfall penalties, shortfall interest and general interest charges.

TAX OFFICE'S COMPLIANCE ACTIVITY ACTIONS

5.39 Stakeholder submissions suggested a number of factors that put upward pressure on the number of taxpayers objecting to Tax Office decisions, including the Tax Office's approach during compliance activities, its identification of the facts, evidence, issues and the application of the law, and how the Tax Office ultimately communicates the issues and compliance decision to taxpayers.

Approach during compliance activities

5.40 Firstly, the Institute of Chartered Accountants in Australia (ICAA) noted that objections to Tax Office decisions arise where taxpayers disagree with a Tax Office decision and are unable to convince the Tax Office otherwise, prior to it issuing an amended assessment or other decision. It expressed the view that, due to the self assessment process, most objections arise as a result of Tax Office adjustments made following an audit action or negative decisions on private binding ruling applications.

5.41 The Taxation Institute of Australia (TIA) also noted that the issuing of an assessment was a key development in any taxation dispute and that by the time an amended assessment had been issued, the Tax Office had often taken a range of steps to investigate the matter. These steps include any of the following:

- an audit by the Tax Office of taxpayers' affairs generally or into a particular transaction;
- the Tax Office issuing a position paper to taxpayers outlining the Tax Office position and taxpayers providing a written response;
- the Tax Office seeking information and the production of documents by compulsory notices such as section 264 notices, or equivalent informal requests;
- escalation of matters within the Tax Office and consideration of the matter by specialist panels; and
- the Tax Office seeking advice from the Tax Counsel Network or external counsel.

5.42 The TIA submitted that the act of issuing an amended assessment by the Tax Office also has important ramifications:

- The assessment triggers a liability to pay the tax owing, which is often reduced to an immediate payment of 50 per cent of the amount owing, and a deferral of the remaining 50 per cent by agreement between the taxpayer and the Tax Office.

- It could signal that the Tax Office has decided on a course of litigation, subject to the taxpayer making a favourable offer to settle the matter.

5.43 The ICAA believed that the increase in the number of objections could be attributable to the increased audit activity. It indicated that since that time the Tax Office has progressively moved from post-assessment reviews to carrying out a large number of pre-assessment reviews. By doing this, the Tax Office is effectively bringing forward the period of dispute that, traditionally, would have arisen only after the relevant return was lodged.

5.44 In its submission, the Ombudsman's office stated that it received relatively few complaints about objections and audits that would suggest any significant problems 'upstream' of the objection. Notwithstanding this, the Ombudsman's office suggested that there were many taxpayer disputes that precede the assessment and objection process and arise at the audit stage. It submitted that:

... it is the Ombudsman's experience that it is not until the audit is complete that the dispute effectively 'crystallises'. In the absence of a disputed assessment it is sometimes difficult for taxpayers to effectively communicate why they disagree with the direction an audit appears to be taking. To this extent, the objection can be the most useful means for the taxpayer to clearly and effectively express his or her concerns with the Tax Office decision about the taxpayer's liability. Also, not until the dispute has crystallised that some taxpayers are prepared to provide the further information necessary to enable the Tax Office to make a more accurate assessment of the taxpayer's actual tax liability.

5.45 The Ombudsman believes that there is scope for the Tax Office to consider how it might better use audit processes to air issues of concern with affected taxpayers. For example, the Tax Office could sometimes use the audit process to better explain its position and clarify its interpretation, which may lead to resolution at an earlier stage. The Ombudsman concluded that, while there remained some scope for the Tax Office to prevent objections and litigation, that in a large part this depended on the attitude, motives and conduct of the taxpayer concerned, and often also that of their adviser.

5.46 The importance of approaches adopted during audit in minimising potential disputes was also highlighted by the Law Council in its submission to the Inspector-General's review into the Tax Office's management of litigation. The Law Council submitted that the acts or omissions in the audit process and the material compiled for position papers often had a significant bearing upon the identification of the essential nature of any dispute and thus upon the issues that are contested in the AAT and Federal Court. It noted that it was important that the Tax Office be focused in its information-gathering activities, collect information that can readily become admissible in a litigation context, and be obliged to state with clarity and precision the reasons for decisions taken prior to legal proceedings being instituted. Further, taxpayers should be afforded an adequate opportunity to be heard and respond to the Tax Office. The Law Council submitted that the Tax Office should implement rigorous document management and information-gathering procedures so as to bring about a 'cultural change' in the way it pursues audits and litigation, and that this would improve the whole audit-litigation process.

Review findings and conclusions

5.47 The Inspector-General agrees with the stakeholders' sentiments that the Tax Office's approach during compliance activities plays an important role in minimising disputes

through objection and litigation. The Inspector-General agrees with the Law Council's comments that the acts or omissions in the audit process have a significant bearing upon the identification of the essential nature of any dispute and thus upon the issues that are later contested.

5.48 One step in improving the Tax Office's approach during compliance activities is to promote greater integration or alignment in the work practices and processes between the audit, objection and litigation stages of the dispute with continual feedback between each of these stages. By this the Inspector-General means that the audit work practices and processes should ensure that, where a dispute proceeds to objection, it can be handled in a just, timely and efficient manner in line with the Taxpayers' Charter standards. To allow this to happen, it is important that the Tax Office's pre-amended assessment work practices and processes support the role and objectives of internal review. This aligns with the Ralph Report, which noted the need for issues and processes to be considered on an integrated – that is, a 'whole-of-transaction' – basis, in order that the best possible administrative regime can be designed and implemented.

5.49 Greater integration of audit-objection-litigation processes is important for a number of reasons. First, as stakeholders noted, the approaches adopted at one stage of the dispute process, say at audit, have flow-on consequences to the other downstream processes, including objections.

5.50 Assessments or amended assessments issued to taxpayers to give effect to the Tax Office's views following an audit can have significant effects on taxpayers. The Ralph Review suggested that listed companies may be obliged to notify the stock exchange of the issue of the assessment requiring payment of a material amount of tax which could have an immediate effect on the company's share price.³¹ In the case of private companies and individuals engaged in business, the issuing of an amended assessment may cause lenders to business to call in securities or otherwise seek to recover amounts owing. The Ralph Review noted that the satisfactory resolution of the subsequent dispute offers little comfort for taxpayers faced with these potential impacts of an amended assessment.

5.51 Secondly, in Chapter 4 the Inspector-General observed that only 71 per cent of objections have met the completion standard over the last three years, which is considerably below the Tax Office's own service standard of 100 per cent.³² Furthermore, where there is a further information request, then over three-quarters of such cases fail the Taxpayers' Charter further information request standard. Both of these outcomes are partly attributable to the approaches adopted at the audit stage. For instance, the failure to obtain relevant and admissible evidence at the audit stage would have a serious impact on the conduct and timeliness of the dispute at objection and litigation.

5.52 Thirdly, the Inspector-General notes the recently revised arrangements for the management of tax cases in the Federal Court, which seek to promote the just and efficient determination of tax disputes in a timely manner. The Inspector-General believes that it is imperative that the Tax Office re-examine its audit-objection-litigation work practices and

31 Ralph Review, *A Strong Foundation*, p 120.

32 The Tax Office advises that for the 2007-08 income year the completion standard was revised from 100 per cent to 99 per cent. Additionally, where cases are considered complex and the case is finalised by the negotiated date, then the case will be taken to have met the completion standard.

processes to ensure that they adequately support the Commissioner adhering to the requirements and timeframes set out in these new arrangements.

5.53 The Tax Office states that, in order to comply with the Federal Court Directions, it has made some immediate changes to work practices, including:

- the development of predictive models that identify taxpayers who are likely to appeal to the Federal Court;
- the establishment of formal contact points between business lines and the Legal Services Branch, when a potential Federal Court litigant is identified; and
- streamlined processes to ensure document delivery to Legal Services Branch within a timely manner after lodgement of an appeal.

5.54 The Inspector-General also notes the recent efforts by the Tax Office to develop a more concerted approach to its end-to-end dispute resolution system as part of its Objections Review Project. At this stage, improvement initiatives targeted at the original decision stage include the establishment of a dispute resolution network and the involvement of Legal Services staff prior to resolution, reinforcing the independence of review from the original decision maker and seeking to build tax officer skills in relationship management and negotiation. The Tax Office advises that it is also seeking to better understand how active compliance processes impact on objections and litigation workload and is working toward developing a dispute risk indicator.

Improvements in the identification of the facts, evidence, issues and the application of the law

5.55 In the course of both the previous management of litigation review and this review, stakeholders have made a number of specific recommendations to improve the end-to-end dispute resolution process. These suggestions came from taxpayer experience and the Inspector-General supports their general thrust and believes they warrant serious consideration by the Tax Office as a means of improving tax administration. While many of these suggestions may already be found in the Tax Office's audit work practices and processes, the Inspector-General believes that stakeholder concerns may arise from the execution and consistency in application of these work practices and processes.

5.56 The ICAA submitted that disputes, and thereby objections, could be prevented if there were improvements in how early the Tax Office properly considered the issues, the relevant facts and the application of the law prior to issuing an assessment or amended assessment. It submitted that in a self assessment environment the Tax Office's role is one of adjudication and the requirement for objectivity is paramount.

5.57 The ICAA said that there were instances where the Tax Office had not properly identified the facts, evidence, issues and application of the law earlier in the dispute and the matter was allowed to continue to the litigation stage.

5.58 In the Inspector-General's review into the Tax Office's management of litigation, the TIA also made a number of comments regarding the Tax Office's upstream processes. In the context of potential disputes and litigation, the TIA pointed out that the outcome of any litigation was dependent on the established facts. This, they said, required the Tax Office to have identified, at the earliest possible opportunity, the relevant facts and the legal principle or principles involved.

5.59 The TIA commented that the process of identifying the facts and issues and the collection of the necessary evidence relevant to a dispute should not start during the review or appeal. Rather, it considered that this should start at the very earliest stage that the Tax Office deals with a taxpayer in relation to the application of the relevant taxation legislation, whether that be through a risk assessment review, considering an application for a ruling or an audit. The TIA considered that, at a practical level, the problem for the Tax Office was to ensure that it clearly identified the issue, together with the relevant factual and other material relevant to that issue, as early as possible in the dispute process. The TIA submitted that this issue, and the resolution of it by the Tax Office, was the principal cause of many of the complaints made by taxpayers during a dispute.

5.60 In another submission during the Inspector-General's review into the management of litigation, the importance of the upstream processes was again noted:

The determination of an objection depends upon, and is framed by, the assessment that has been issued. It is self evident that the Tax Office's response to an objection will depend on the accuracy of and above all the thought that has gone into the factual and legal analysis in the earlier stages of the tax dispute process.

5.61 Another submission arising from that earlier review also expressed the view that there was often a failure on the part of tax officers to understand the material or commercial transactions during an audit. This, it was argued, limited the utility of the information gathering process and forced the Tax Office and the taxpayer to spend more time and money dealing with the broader range of materials than might be necessary. The submission suggested that, if more time was spent actually addressing the relevant issues, then this would limit the cost and the documents that needed to be gathered.

5.62 Numerous stakeholders made the following suggestions:

- Auditors should set out a list of the necessary elements of the dispute as understood by the Tax Office and in relation to each of those elements it should identify:
 - the documents and other evidence which the Tax Office has collected and the source from which it was obtained;
 - the documents and other evidence which the Tax Office wished to obtain through evidence gathering techniques including the exercise of compulsory powers;
 - the other enquiries that the Tax Office would like to make; and
 - the persons responsible for each task and the time by which that task or those tasks are to be completed.
- Auditors should maintain an internal system which includes the following materials:
 - an indexed set of material documents in chronological order accompanied by an index which identifies the source of each document;
 - an indexed folder containing documents of general application;
 - a copy of all correspondence relevant to the matter, in chronological order; and

- a chronology of the steps taken in the audit.
- Auditors should, where appropriate, escalate the issue internally so that all senior officers are aware of the investigation and the issues raised by it, are constantly updated as to the progress of the investigation, and are able to contribute to the making of any relevant decision on an informed basis and in a timely fashion.

5.63 Stakeholders submitted that by placing greater emphasis on the document management and evidence gathering procedures, the Tax Office will be better able to identify:

- the issue or issues between the Tax Office and the taxpayer and the essential legal elements of each;
- the facts that the Tax Office knows which are relevant to that issue or those issues;
- the evidence that supports the finding of those facts;
- the facts the Tax Office would like to know and why; and
- the enquiries the Tax Office has made and whether those enquiries have been successful in whole or in part and why not.

5.64 To that end, the Tax Office has been developing a Facts and Evidence Worksheet for use in audit cases. The Tax Office advises that the purpose of the worksheet is to:

- assist in planning initial and follow-up information requests for audit cases;
- ensure that all the requirements of the statutory provision being applied have been considered, namely, the elements, integers or ingredients of the provision;
- ensure that all the requirements of the statutory provision being applied have been satisfied, namely, that the relevant facts are supported by evidence which supports the application of the particular provision;
- assist the auditor to consider and catalogue what additional facts and evidence are required and the possible sources for obtaining that evidence; and
- allow the auditor to reference the evidence to the specific elements of the provision being applied.

5.65 Importantly, the information contained in the worksheet will form the basis of the arguments in the position paper. The Tax Office states that the use of the worksheet will assist in structuring the position paper and developing the arguments. In particular, the Tax Office notes that the worksheet can be used at various stages in the audit process to assist with developing arguments, identifying problems with arguments, identifying evidentiary gaps, analysing the relevant provisions and ultimately writing the position paper.

5.66 The information in the worksheet is also intended to assist those who become involved at a later stage in the matter (for example, in a peer review capacity, objection or litigation) to see what has been done and what remains to be done. The Tax Office considers that the completion of the worksheet will not result in any additional work being created for

the auditor as it will merely document the process already followed when establishing whether the Tax Office's case has been proven to the requisite degree.

Review findings and conclusions

5.67 The Inspector-General agrees with stakeholder sentiments that the proper identification and consideration of the issues, the relevant facts and the application of the law prior to issuing an assessment or amended assessment is critically important to minimising objections and disputes. The Inspector-General also agrees that the Tax Office must be better focused in its information gathering activities, collect information that can readily become admissible in a litigation context, and be obliged to state with clarity and precision the reasons for decisions taken prior to legal proceedings being instituted. Better practices in this area will have a significant flow-on effect in the handling and management of objections and any subsequent litigation through the crystallization of the issues at an earlier stage of the process.

5.68 The Inspector-General notes the positive steps recently taken by the Tax Office in this area, including the development of a Facts and Evidence Worksheet to be piloted in its active compliance areas, particularly in the SME and Serious Non-Compliance business lines.

5.69 In August 2007 the ARC released five *Decision Making Best Practice Guides* covering all key stages in the administrative decision making process and intended to assist original decision makers. The subject areas covered by these guides are lawfulness, natural justice, accountability, reasons for decision and evidence, facts and findings.

5.70 The ARC stated that the quality of administrative justice experienced by the public depends largely on the original decision makers 'getting it right'.³³ It noted that administrative decisions are based on facts and an important element of decision making is making findings about those facts. The ARC *Decision Making Best Practice Guide 2* set out a number of general requirements to ensure that findings of fact in reasons for decisions did not amount to legal errors, including:³⁴

- determining all material questions of fact — that is, those questions that are necessary for a decision;
- not basing a decision on a fact without evidence for that fact;
- ensuring that every finding of fact is based on evidence that is relevant and logically supports the finding;
- not basing a decision on a finding that is manifestly unreasonable;
- observing natural justice; and
- complying with any statutory duty to give a written statement of reasons for the decision.

33 ARC, *Decision Making Best Practice Guide 1*, p (v).

34 ARC, *Decision Making Best Practice Guide 3*, p 1.

5.71 The ARC *Decision Making Best Practice Guide 3* stressed that accounting for a decision is an important part of a decision maker's function.³⁵ Full and accurate records should be kept, these records should reveal fair, rational and professional administration and should include the findings of material fact, the evidence on which the findings are based and the evaluation of the evidence. The ARC stated that the findings in relation to material facts are:

... the crucial points on which a decision-maker's decision turns. They should make sure that natural justice has been observed in connection with the findings and that the findings are well supported by evidence and reasoning.³⁶

5.72 The ARC *Decision Making Best Practice Guide 3* also discussed a number of important considerations and practices for a decision maker in determining the material and relevant facts to make a decision. It stated that findings in relation to the facts at issue must be based on evidence that is relevant and logically capable of supporting the findings, rather than being based on guesswork, preconceptions, suspicion or questionable assumptions.³⁷

5.73 The Tax Office's audit work practices and processes already require staff to properly ascertain the relevant facts and supporting evidence and determine the correct application of the Tax Office view. However, an examination of sampled case files suggested that, while some audit decisions were of high standard in terms of setting out the relevant evidence, facts and findings, there was generally scope for improvement. In particular, the Inspector-General noted a distinct variation between business lines in the quality and clarity of the audit decisions and the related working documents.

5.74 While the Facts and Evidence Worksheet seeks to address some of the considerations raised in ARC *Decision Making Best Practice Guide 3*, the Inspector-General believes that there is further scope for improvement in the quality of decision making at the pre-amended assessment stages.

Understanding, discussion and communication of issues and decisions

5.75 The Law Council submitted that taxpayers do not always understand the basis on which the Tax Office has issued an assessment so as to enable them to comprehend the issues in dispute. It suggested that the Tax Office does not universally adopt a practice of providing an adjustment sheet identifying the nature of the amendment made with each amended assessment. The Law Council recommended that it was essential that the Tax Office be required to do so. In the course of the Inspector-General's review into the Tax Office's management of litigation, the Law Council also suggested that Tax Office position papers should be required to meet a minimum standard and that as a prerequisite it should require the auditor to set out all relevant facts, law, reasons and conclusions.

5.76 The ICAA noted that in many tax disputes the issue was one of fact or the interpretation of the facts, rather than the application of the law. It suggested that disputes would be best resolved by face-to-face discussions, submissions and further information being provided. The ICAA submitted that the Tax Office did not offer such opportunities, and during an audit only meets with taxpayers to deliver an 'exit interview'. The result of such a practice is that, if taxpayers disagree, then the only recourse available is for them to exercise their objection rights. The ICAA recommended that the Tax Office should be

35 ARC, *Decision Making Best Practice Guide 3*, p 11.

36 ARC, *Decision Making Best Practice Guide 3*, p 11.

37 ARC, *Decision Making Best Practice Guide 3*, p 3.

required to undertake all reasonable efforts to explain or reach agreement, as a precursor to taxpayers having to exercise their rights of objection. It also suggested that the Tax Office's work practices should ensure that the objection process was considered as a 'last resort' rather than the natural course.

5.77 The TIA said that there would be benefits if the Tax Office adopted a consistent practice of exchanging position papers, with the ability for taxpayers to elevate matters to specialist panels and to make submissions to those panels. It suggested that there was an absence of transparency regarding the Tax Office's decision making process and the responsibilities of particular areas within the Tax Office.

5.78 The TIA suggested that greater transparency, particularly at the outset of an audit, in relation to how a matter was likely to develop within the Tax Office, could lead to better and quicker decision making. It said that transparency would enable both parties to track the progress of the audit and remain accountable to each other. The TIA made a number of recommendations to improve the understanding of issues early in the dispute process and thereby address issues of delay in the resolution of disputes.

- Upon the issuing of an amended assessment, the Tax Office should provide a statement of reasons for the amended assessment. The TIA said that experience indicated that the Tax Office provided a statement of reasons for a decision to disallow an objection, and not necessarily the full reasoning that caused the Tax Office to reach the original decision. It would be more desirable for this statement to be provided at the time of the amended assessment, rather than upon the disallowance of the objection.
- Requiring a statement of reasons at the stage of the amended assessment is very important. As well as outlining the Tax Office's arguments and views of the law, the content of such a statement should include statements in relation to the factual basis for the assessment and the evidence supporting that factual basis.

5.79 Likewise, other stakeholders have stressed the importance of position papers and interim reasons for decision in tax administration by providing an opportunity for taxpayers to comment and respond before the issuing of a notice of amended assessment. They suggested that position papers and interim reasons should clearly set out the issues and their essential elements, the legislation relevant to the dispute, the material facts relevant to each issue, the chronology of critical events, the evidence the Tax Office has in its possession, any relevant case law and the Tax Office's position or view and the reasons why it has adopted that view.

5.80 The ARC survey found strong anecdotal evidence in agencies that it surveyed of a problem in relation to original decision makers' lack of personal contact with clients, and their ability and willingness to provide proper explanations of decisions to clients.³⁸ In particular, the ARC found that the vast majority of original decision makers surveyed informed applicants of their decisions by letter, and that these letters contain information on internal review rights. The ARC believed that internal review may occur simply because the

38 ARC, *Internal Review of Agency Decision Making*, paragraph 7.10.

client has not had personal contact with the decision maker and has not had the decision properly explained, leading to cases being unnecessarily referred to internal review.³⁹

5.81 The ARC *Decision Making Best Practice Guide 4* set out principles on preparing a statement of reasons. It noted that the statement of reasons should contain the decision, the findings on material facts, the evidence or other material on which those findings were based and the reasons for decision.⁴⁰ The ARC defined a material fact as ‘a fact that can affect the outcome of a decision. Consequently, the findings on material facts are those that support the decision, based on the consideration of all relevant evidence’.⁴¹

5.82 The ARC noted that a material fact will sometimes be established directly by the evidence or that it might be inferred from other facts, in which case the statement of reasons should set out the primary facts and the process of inference. In relation to how the statement of reasons should set out the evidence on which the findings were based, ARC *Decision Making Best Practice Guide 4* stated that it was not sufficient simply to list all documents that were considered in reaching the decision.⁴² Rather, the statement should ‘identify the evidence that was considered relevant, credible and significant in relation to each material finding of fact’. In addition the statement should ‘demonstrate that each finding of fact is rationally based on evidence [and] if the evidence was conflicting, the statement should say which evidence was preferred and why’.⁴³

5.83 Finally ARC *Decision Making Best Practice Guide 4* set out some basic requirements for the reasons of decision:

Every decision should be amenable to logical explanation. The statement must detail all steps in the reasoning process that led to the decision, linking the facts to the decision. The statement should enable a reader to understand exactly how the decision was reached; they should not have to guess at any gaps.⁴⁴

Review findings and conclusions

5.84 The Inspector-General found that auditors were not always following the Tax Office’s audit work practices and processes. An examination of sampled cases indicated that taxpayers were not always being presented with an interim audit report with proposed adjustments. This was also identified in an internal GST review where it found that case officers were not rigorously following audit procedures in relation to the audit model, specifically in relation to:

- providing interim findings to the taxpayer and seeking additional input from them; and
- formally discussing the audit findings with the taxpayer at an exit interview.

5.85 The Inspector-General found that many taxpayers were receiving finalisation letters without having had the benefit of any specific discussion about the compliance issues and penalties. The consequence of the Tax Office staff not following these procedures would be

39 ARC, *Internal Review of Agency Decision Making*, paragraph 7.10.

40 ARC, *Decision Making Best Practice Guide 4*, p 7.

41 ARC, *Decision Making Best Practice Guide 4*, p 8.

42 ARC, *Decision Making Best Practice Guide 4*, p 8.

43 ARC, *Decision Making Best Practice Guide 4*, p 8.

44 ARC, *Decision Making Best Practice Guide 4*, p 8.

an increase in the lodgement of objections as the finalisation letter would represent the first opportunity for taxpayers to understand and respond to the Tax Office's conclusions on the facts, evidence and the application of the law. Some evidence of this consequence occurring includes the observation in the Tax Office's taskforce report that in the GST business line 92 per cent of objections were lodged with new information or evidence.

5.86 The Inspector-General believes that it is important that the Tax Office ensures that all reasonable efforts are made to explain why a decision is to be made as a precursor to taxpayers having to exercise their rights of objection. Work practices should also ensure that taxpayers are able to effectively communicate why they disagree with the preliminary views of an audit. This could be achieved by a mandatory use of position papers or interim reasons for decisions in audits or other active compliance activities. The Inspector-General also agrees with the Ombudsman that the Tax Office could use the audit process to better explain its position and clarify its interpretation.

5.87 Stakeholders have expressed concern at the Tax Office's approach and conduct in audits, in particular the communication of interim findings and the explanation of decisions. This was also identified as a driver to audit-sourced objections. The Ralph Review found that a revised process following an audit that would provide opportunities for negotiation and settlement should be put into place. This would better allow parties to focus on the issues and amounts in dispute before the amended assessment. The Ralph Review believed that this would also allow for more consideration of the issues and reduce cases of multiple assessments where issues are complex.

5.88 The ARC *Decision Making Best Practice Guide 2* dealt with the implications of natural justice (or procedural fairness) for decision makers. It noted that one of the primary rules of natural justice, the 'hearing rule', required that a person who is to be affected by a proposed decision must be given an opportunity to express their views to the decision maker. It went on to state that:

The hearing rule requires that a person whose interests could be adversely affected by a decision be notified that the decision is to be made. The notice should provide sufficient information to allow the person to make effective use of the right to respond and present arguments. The nature of the decision and its possible consequences should be described. Details of when, where and how a submission can be made should be given. And the time allowed for a response should be reasonable in the circumstances, having regard to the preparation time involved.⁴⁵

5.89 At times natural justice might also require disclosure of additional information to a person, so that they can prepare a case and gather evidence. The ARC *Decision Making Best Practice Guide 2* went on to state that a person or organisation should be afforded an opportunity to respond to any adverse evidence or information — from whatever source — that could influence the decision or is prejudicial to them personally.⁴⁶ The affected person must also be given adequate time to comment on the evidence obtained before findings of fact are made.

45 ARC, *Decision Making Best Practice Guide 2*, p 6.

46 ARC, *Decision Making Best Practice Guide 2*, p 8.

5.90 In line with the Ralph Review, the Inspector-General believes that upstream work practices should encourage open and direct communication between the parties and the timely exchange of information. This should entail the constant opportunity for an exchange of views and the refining of the issues to ensure that the entire process is more efficient and effective, including face-to-face discussion between the parties prior to an amended assessment which may allow for disputes to be settled at the earliest possible stage.

5.91 The Inspector-General considers that taxpayers that are affected by a proposed audit decision should have an opportunity to express their views to auditors, to respond to adverse information, including having sufficient information to understand the case to which they are responding. These requirements should be critical steps toward the finalisation of an audit case. There may be certain exceptional circumstances, such as instances of serious non-compliance, where this requirement may not apply.

5.92 In addition, information requests during audit should clearly articulate the type of information being sought, its purpose and the relevance of the information to the issues under examination. The Inspector-General notes that there may be some exceptional circumstances, such as instances of serious non-compliance, where this is not appropriate. Where information is requested at audit but is not provided, auditors should be assisting objection officers by flagging such cases and outlining why the information was relevant.

5.93 Communication between the parties and clarification of issues may be assisted in some cases by reference to or provision of information and material on specific issues under examination. For instance, there may be supporting documentation and information checklists on the Tax Office website to assist taxpayers on particular issues for private rulings or objections that may also be useful during discussions between the parties at the audit stage.

RECOMMENDATION 11

The Tax Office should review its current audit work practices and training programs in relation to the role of original decision makers to ensure that they align with the Tax Office's philosophy and approach to end-to-end dispute resolution and that they conform appropriately to the Administrative Review Council Best Practice Guides. In particular, the Tax Office should identify critical audit work practices that can have significant implications for dispute resolution at the objection and litigation stages. It should also encourage open and direct communication between the parties and the timely exchange of information and views.

Tax Office response

5.94 Agree.

5.95 The Tax Office's current audit work practices and training programs have been designed in accordance with sound administrative principles. However, we agree to conduct a review of these practices and programs to consider the matters raised in your recommendation.

RECOMMENDATION 12

The Tax Office should continue with its development of the Integrated Quality Framework and ensure that the quality control system:

- adequately measures and provides for the continuous improvement of the overall quality of original decision making;*
- includes identifying whether critical audit work practices and processes are being followed and applied consistently across business lines;*
- assesses how well original decision makers have identified and considered the issues, the relevant facts, the reliability and weight of evidence supporting the findings of facts and the application of the law; and*
- includes a causal analysis of quality in relation to the end-to-end process, so that comparisons between audit and related objection decisions can be undertaken, including an evaluation of the effect of internal review on original decision makers so as to minimise the potential negative effects of internal review.*

Tax Office response

5.96 Agree.

TAXPAYERS' FAILURE TO PROPERLY RESPOND TO TAX OFFICE REQUESTS FOR FURTHER INFORMATION DURING COMPLIANCE ACTIVITIES

5.97 The Ombudsman noted that both taxpayers and the Tax Office can make mistakes, and both taxpayers and the Tax Office can have different interpretations of the law. The Ombudsman suggested that disputes could also become 'positional' – that is, more concerned with defending an established position than with reaching agreement about the correct position. The Ombudsman submitted that:

... in such cases audits tended to be characterised by evasiveness or defensiveness on the part of the taxpayer or his or her adviser. This often takes the form of non-responsiveness to Tax Office requests for more information, or a more general unwillingness to engage with the Tax Office.

5.98 The Ombudsman commented that advisers were reluctant to provide documents, disclose information and engage in bona fide dialogue with the Tax Office. He suggested that this could lead to adverse consequences for the taxpayer concerned including unnecessary litigation and disputation.

5.99 The Ombudsman submitted that from experience it was only once the dispute crystallised, following the assessment or amended assessment and objection, that some taxpayers were prepared to provide further information necessary to enable the Tax Office to make a more accurate assessment of the actual tax liability.

5.100 The Law Council stated that the resolution of taxpayers' objections required a clear identification and understanding by both taxpayers and the Tax Office of the issues in

dispute and the merits of their respective arguments to the facts that were known. The extent to which taxpayers are prepared to incur the costs and effort of ensuring that this occurs at an early stage, may depend very much upon the size of the taxpayer and the nature of the issues. However:

- better-resourced taxpayers should be expected to undertake this analysis at an early stage in the process; and
- the majority of objections are likely to involve smaller, less well-resourced taxpayers. In such cases, a detailed analysis of the facts and issues in dispute may not occur until the issue is passed into the hands of practitioners who are familiar with the presentation of evidence and detailed legal argument.

5.101 The Law Council suggested that, whilst steps could be taken within the existing objection and review process to assist this analysis at an earlier stage, the benefits of doing so must be weighed against the cost involved.

Review findings and conclusions

5.102 The Inspector-General agrees that the attitude, motives and conduct of taxpayers and their representatives have a significant bearing on the resolution of a dispute. An examination of sampled cases indicates that another cause of objections is taxpayers not providing requested information during audits. In some cases, further information that was requested by the Tax Office during the audit was provided with the lodgement of the objection. On other occasions there were multiple Tax Office requests, during both the audit and objection stages, for further information. The Tax Office, taxpayers and their representatives have a shared responsibility to ensure that the administrative dispute resolution system should keep disputes and their associated costs and delays to a minimum. Where taxpayers lodge an objection seeking an internal review of a Tax Office decision, it is incumbent on taxpayers to then comply with all reasonable Tax Office information requests. It is also in taxpayers' interests to comply with Tax Office information requests as failure to provide that information may mean that the decision maker will be unable to make the findings of fact that will support a favourable decision. Likewise, the Tax Office must ensure that it avoids open-ended information requests and clearly articulates, with some level of specificity, the type of information that it is seeking and the purpose and relevancy of that information to the issues under consideration.

5.103 The Inspector-General found that the Tax Office has on-line checklists with supporting documents and information that taxpayers should lodge with an objection. There would be merit in those checklists also being provided to taxpayers subject to audit.

5.104 The Inspector-General notes that where evidence or information is critical to the decision making, then the Tax Office has the formal statutory powers to require taxpayers, or any other persons, to provide the Tax Office with such information or evidence and to attend and give evidence. The extent to which the Tax Office utilises this formal statutory power for the purposes of obtaining relevant and necessary information where previous informal information requests have failed is unclear.

5.105 The Tax Office is of the view that being required to exhaust its formal statutory powers may greatly add to the cost and timeliness of processing objections. In addition, the Tax Office believes that it would be incongruous to exercise its formal powers where the information it seeks aims to support the taxpayer's case. It states that by seeking the

additional information, it is supporting taxpayers to make the alternative case and any use of formal evidence gathering powers is considered in a risk management perspective. In addition, non-compliance to formal requests leads to prosecution, which can be costly, time consuming and, in most cases, not in the interest of either party.

5.106 The Inspector-General agrees with the Ombudsman's sentiments that the timely and effective resolution of disputes is also dependent on the attitude, motives and conduct of the taxpayer concerned, and often also that of their adviser. Where a taxpayer is not satisfactorily complying with Tax Office information requests or inappropriately resisting Tax Office attempts to obtain further information, then the Tax Office is faced with no choice but to make a decision on the available facts and evidence.

5.107 In the event that such a dispute proceeds to external review and a taxpayer subsequently provides information previously requested by the Tax Office, then the Tax Office cannot be faulted if it settles, concedes or abandons the litigation, so long as it has acted in good faith and made every effort to obtain that information. Unfortunately, the Tax Office's quality assurance mechanisms have not sought to examine this aspect of performance, even though it would be a very useful indicator of the effectiveness of objections in resolving disputes.

5.108 The Inspector-General also considers that the tax system should include provisions or processes that motivate taxpayers, their advisers and the Tax Office to be responsive to the legitimate requirements of good administration, including minimising costs to the community.

CHAPTER 6: MANAGEMENT AND HANDLING OF OBJECTIONS

INTRODUCTION

6.1 This chapter considers in greater detail a number of aspects relating to the Tax Office's management and handling of objections. It draws from both stakeholder concerns raised in the course of the review and also other reviews that have examined internal review systems and the objection framework. This chapter also sets out recommendations that would improve the Tax Office's management and handling of objections and minimise the associated costs for both the Tax Office and taxpayers.

6.2 The objection framework represents an important and necessary function in taxation administration. It provides taxpayers with the opportunity to have an adverse tax assessment or Tax Office view reviewed by the Tax Office without commencing legal proceedings challenging the assessment or view. Furthermore, if the review is not favourable to a taxpayer, it assists in defining the areas of disagreement between a taxpayer and the Commissioner in subsequent legal proceedings. An objection also represents a dispute between the Tax Office and a taxpayer. This dispute arises as a taxpayer disagrees with the Tax Office's view, default notice of assessment or amended assessment. An essential feature of a default notice of assessment or amended assessment is the imposition of a tax liability on a taxpayer and initiated by the Tax Office, which may have serious financial consequences on all types of taxpayers. All these features of objection work make it significantly different from the provision of advice work and amendment requests, with different taxpayer expectations and staff capability requirements.

6.3 The Inspector-General notes the Tax Office's recent efforts to develop a more concerted approach to its end-to-end dispute resolution system as part of its Objections Review Project. The Tax Office has acknowledged a number of indicators which suggest that there is a need to improve its dispute resolution approach, including addressing the cause of different types of objections, the number of objections that are allowed in full or in part, the number of appeals that are settled, conceded or abandoned before being heard in court or the tribunal, the poor objection times and a previous piecemeal approach to improvement. As part of this project, the Tax Office has directed its efforts to improving the dispute system not only at the objection stage, but also at the upstream (audit) and downstream (litigation) stages. The Tax Office states that one significant shift arising from this project has been the desire to move to more differentiated approaches in processing objections, based on risk management principles, rather than a one-size-fits-all approach, and with a greater emphasis on resolving disputes as early as possible.

6.4 The Inspector-General welcomes these initiatives and believes they represent an important change in the Tax Office's philosophy and approach, from one that previously viewed objections as just another process to one that begins to acknowledge the true nature of an objection – namely a dispute between the Tax Office and a taxpayer. However, the Inspector-General believes that the challenge ahead lies in translating these new dispute resolution principles into improvements in the day-to-day management and handling of objections and disputes. The Inspector-General has identified a number of principle areas where he believes that improvements would lead to benefits to taxpayers through a more efficient, effective and timely objection process with flow-on consequences for both the pre-amendment and litigation stages.

- The Tax Office's philosophy and approach to objections and its role in the broader dispute resolution system — alignment with the Tax Office's business intent and the role of internal review and public articulation of this philosophy and approach.
- A greater prominence for the independent role of objections in the dispute resolution process with a clearer articulation of the functions and duties of objection officers and original decision makers.
- An alignment of timeframes for objection decisions in a self assessment environment.
- Improved personal contact with taxpayers at the objection stage.
- A more tailored quality control system to properly evaluate the quality of the Tax Office's end-to-end decision making process.
- Improved reporting and analysis of objections, including the adoption of indicators to evaluate the efficiency and effectiveness of its management and handling of objections.
- Information exchange, including the need to request further information and taxpayers providing new material at objections.
- Promoting robust feedback mechanisms to improve the quality, efficiency and effectiveness of the Tax Office's decision making process.

6.5 The identification of some of these areas as requiring improvement does not necessarily mean an absence of current Tax Office management, systems or processes, although this report has identified a number of shortcomings. Rather, the Inspector-General believes that the successful implementation of an end-to-end dispute resolution system requires a more focused and sophisticated set of management approaches, systems and work practices than currently in place.

6.6 However, the Tax Office's adoption of a greater corporate focus on objections will lead to a number of benefits, including better promoting the importance, role and function of objections in tax administration. It will also serve to reinforce the independent character of objections and help instil a greater sense of value within the community in the objections function. In addition, it can help minimise the level of disputation by acting as a check and gateway to disputes that may go to litigation. This is especially pertinent with the recent Federal Court changes to expedite tax disputes.

THE TAX OFFICE'S PHILOSOPHY AND APPROACH TO OBJECTIONS

Tax Office approach to objections

6.7 The objections statutory framework only sets out how a taxpayer may seek internal review of a tax decision. From a corporate perspective it is important that the Tax Office's philosophy and approach to objections, including how objections are to be managed and handled, be clearly set out. For instance, the 1994 Richardson Review into New Zealand's

objection procedures recommended that the approach to dealing with tax disputes should have the following objectives:⁴⁷

- every practical effort be made to ensure that assessments are correct before they are issued;
- any dispute be identified at the earliest practical time;
- communication between the taxpayer and the revenue be direct and open to ensure that all information relevant to the dispute is available as soon as possible; and
- appropriate independent advice within the revenue authority be provided at the earliest practical time.

6.8 Until recently the objection function was treated as simply another form of advice or technical decision making workload that was processed within the Tax Office; other forms include private rulings and audit decisions. For the Tax Office, all these technical decisions are subject to the overarching philosophy expressed in the Taxpayers' Charter and its commitment to the community to deal with taxpayers fairly and reasonably. While at a very general level it is true that all Tax Office decisions and conduct are subject to this overarching philosophy, the Inspector-General believes that genuine objections cannot be considered as simply another source of technical advice, given that these objections represent a dispute between the Tax Office and the taxpayer.

6.9 However, in the Objections Review Project, the Tax Office has acknowledged the need to take a more 'whole of dispute' approach with an emphasis on managing dispute resolution from a point closer to the original decision. It also recognised that there was a tendency in the past to take a compartmentalised approach with a focus on objections as a discrete work activity (original decision, objection or litigation). Dispute resolution was a more downstream activity, usually considered when a case proceeded to litigation.

6.10 The Tax Office has recently stated that the following principles will now shape its dispute resolution system:

- identification and resolution of disputes as early as possible;
- differentiated approaches to objection processing to improve responsiveness;
- use of alternative approaches to dispute resolution, as appropriate; and
- where tax litigation is inevitable, then the Tax Office is 'litigation ready'.

6.11 The Tax Office's Objections Review Project has identified a number of potential benefits in adopting a 'whole of dispute' approach, including:

- disputes resolved earlier, more efficiently and quickly;
- improved quality of decisions, including responsiveness;

47 *Organisational Review of the Inland Revenue Department, Report to the Minister of Revenue, Organisation Review Committee, April 1994.*

- improved relationships and reputation with the taxpayers and the courts and tribunal;
- reduced rate of dispute (objection and litigation) and reduced rate of cases conceded and abandoned before hearing; and
- improved resource utilisation and reduced cost of litigation with fewer cases and alternative approaches to dispute resolution.

6.12 The Inspector-General supports the Tax Office's newly stated aspirations and dispute resolution principles and considers that they provide a useful foundation for more broad-reaching improvements. However, care should be exercised where tax litigation is inevitable that the Tax Office does not cause the taxpayer delay and increased costs in its attempts to become 'litigation ready'.

6.13 Following on from Recommendation 1, the Inspector-General considers that the Tax Office needs to clearly set out its philosophy and approach on objections in the context of its end-to-end dispute resolution system and the outcomes that it is seeking to achieve through its management and handling of objections. The Inspector-General believes that this philosophy and approach should contain a number of elements.

6.14 First, the objection stage must add value. It should provide opportunities to resolve disputes, to narrow the issues for external review and promote the filter effect of first-tier review, through the use of conferences and the availability of mediation. This means that by the time that the Tax Office has decided to disallow an objection, it is confident that, if a dispute were to proceed to external review, then subject to obtaining further information from the taxpayer, it would have reasonable chances of success.

6.15 The Inspector-General notes that the Commonwealth Legal Services Directions also emphasise the importance of agencies doing all they can to resolve disputes without recourse to litigation. The directions state that the Commonwealth or its agencies are only to start court proceedings if other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations) have been considered. While the Tax Office does not initiate Part IVC litigation, its conduct and approach during the objection stage has an important bearing on whether a dispute proceeds to litigation.

6.16 Second, it should reflect the fundamental aims of administrative practice in providing procedural justice and a review of the merits of a decision in individual cases. In line with the ARC, the Inspector-General believes that the objection system should have three fundamental roles – to enable taxpayers to test the lawfulness and the merits of a decision that affects them; to ensure the timely resolution of a dispute; and to act as a necessary accountability tool by improving the quality, efficiency and effectiveness of the Tax Office's decision making process.⁴⁸

6.17 Third, it should be consistent with a self assessment environment, where the original decision maker has ample opportunity to investigate a matter, request and, where necessary, compel the production of relevant information.

6.18 Fourth, the objection framework should be aligned with the Tax Office's business intent of optimising voluntary compliance, and with the role of internal review. To do that

48 ARC, *Internal Review of Agency Decision Making*, paragraph 1.7.

the Tax Office needs to look at how it handles objections, not only from an efficiency perspective but also the effectiveness of objections in its end-to-end dispute process.

6.19 The Tax Office must also articulate the risks associated with objections and have a differentiated approach to dealing with different classes of risk. This would require an examination of the taxpayer behaviour and compliance risk associated with the objection. In addition, the Tax Office needs to develop strategies and processes for objections that align with its corporate principles and the role of internal review.

Comprehensive public statement

6.20 Currently, Taxation Ruling TR 96/12 and the Tax Office's ORCLA information system are the key corporate documents on how the Tax Office manages objections and give an insight into how objections fit into the broader advice and dispute resolution framework. ORCLA contains links to procedures for the escalation of issues (including priority technical issues), corporate approach to interpretative work, collaborative work practices, settlements, contact and interaction with internal stakeholders and litigation processes. The Tax Office states that all these links set the scene for how objections fit into the overall technical decision making process and also relate to interactions with original decision makers, providing feedback and escalating issues. The Tax Office advises that ORCLA also has links to practice statements that deal with the linkages between the escalation of technical issues, litigation, objections and advice.

6.21 In addition, Corporate Management Practice Statement 2007/01 and the related procedures and instructions set out the overarching Tax Office policy in relation to the Tax Office's handling of taxpayers' rights of review. These documents provide guidance to Tax Office staff on how to fulfil the Taxpayers' Charter commitments related to respecting taxpayers' rights to a review. It requires staff to follow the principles of the good decision making and judgment models to ensure they make quality decisions and provide an explanation of decisions, to the extent they reasonably can under the law, using clear language to help taxpayers understand the reasons for the Tax Office's decisions.

6.22 It should be noted that Corporate Management Practice Statement 2007/01 and the related procedures and instructions are not publicly available documents.

6.23 While these corporate documents provide some guidance to staff, and to a lesser extent the community, on the Tax Office's management and handling of objections, they do not represent a comprehensive public statement on the Tax Office's philosophy and approach to objections.

6.24 The Inspector-General considers that such a statement is important for a number of reasons. It will provide clear public guidance on how the Tax Office will serve to advance its role in the tax system as an independent and impartial administrator. It may also act as a yardstick to measure Tax Office performance and set out clear and appropriate expectations for the community on the Tax Office's handling and management of objections. A formal and consolidated public statement will also help to shape and reinforce an appropriate culture within the Tax Office and provide guidance and direction to Tax Office staff on the Tax Office's philosophy on objections. This is consistent with the emphasis placed by the ARC on the importance of culture in promoting independence in the internal review process.

Recent Tax Office improvement initiatives

6.25 The Tax Office is currently enhancing the information available to the public through its website and publications to ensure it is consistent with the whole of Tax Office approach to dispute resolution. In addition, the Tax Office has been developing a publication that states the rights, roles and expectations of the taxpayer and the Tax Office in the management and handling of objections and other reviews. This statement will supplement and be consistent with the Taxpayers' Charter, Taxation Ruling TR 96/12 and internal instructions to staff.

6.26 The Tax Office has already developed a differentiated and risk-based approach on the handling and management of objections within its end-to-end dispute resolution process. The underlying principles of its approach are to resolve the dispute as early as possible, apply differentiated approaches to its handling of objections and to deploy alternative approaches to dispute resolution, as appropriate. This approach builds upon its established foundation of independent review for the taxpayer.

RECOMMENDATION 2

The Tax Office should finalise and issue a comprehensive public statement that sets out its philosophy on, and value-add approach to, objections including the outcomes it is seeking to achieve through its management and handling of objections. It should ensure that this public statement contains a clear commitment to the following critical elements:

- a differentiated and risk-based approach to objections handling and management;*
- an emphasis on resolving disputes as early as possible and narrowing issues for potential external review; and*
- the Tax Office's business intent of optimising voluntary compliance and the role of an independent internal review.*

Tax Office response

6.27 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.25 and 6.26) that work being undertaken by the Tax Office is addressing the recommendation.

HANDLING OF OBJECTIONS ARISING FROM GENUINE DISPUTES

Work practices and independence

Stakeholder concerns

6.28 In the course of this review, stakeholders raised issues and concerns in relation to the independence between objection officers and original decision makers, usually auditors.

- The TIA submitted that the organisational structure of the Tax Office into business lines and the fact that objections are handled by the business lines impacts directly on the objection process. This is because it is more likely that the original decision maker responsible for the dispute (or tax officers closely related to the original decision maker) may also be involved in the resolution of the objection, particularly in the early stages of

the objection process. The TIA suggested that there was no apparent structural separation within the Tax Office between the assessment process (usually arising from audit action) and the objection process. It was asserted that this gives rise to cases being litigated where the facts have not been properly collected as well as the normal human tendency to defend the position previously taken.

- The Law Council was of the view that decisions on objection were not ordinarily subject to review within the Tax Office by someone entirely independent of the officers responsible for the amended assessment to which the objection relates. It was suggested that the internal review process resulting from the objection should be conducted by a different and independent decision maker and with appropriate legal input.
- Some practitioners even suggested that they see an objection as merely a stepping stone to real independent review, namely external review by the AAT or the Federal Court.

6.29 Submissions also listed instances where Tax Office auditors, during the course of settlement negotiations, have allegedly asserted that if a settlement is not reached then any objection lodged by the taxpayer will be disallowed as a matter of course. The practitioner asserted that this demonstrated a very close liaison between auditors and objection officers.

ARC Internal Review Report and Best Practice Guide

6.30 The ARC made the following important statements about location and independence of internal review officers:⁴⁹

- There is a need for internal review to be as impartial as possible.
- Internal review, by definition, cannot be completely independent of the relevant agency. However, it should be undertaken by internal review officers who are sufficiently independent of the agency original decision makers whose decision they review.
- The concept of independence, and the desired benefits of internal review systems, proceeds upon the basis that the internal review officer is a reasonably senior and competent person who had nothing previously to do with the case, with whom a disgruntled client can talk on the phone, write, or meet in interview. The effect of this is that an independent officer is available to give a quick review, without any vested interest in the original decision.

6.31 In line with this thinking, the Joint Committee of Public Accounts noted that it was difficult to characterise the function of internal review as one of 'independent review', given that objection officers will be subject to the same culture, corporate goals and values as the rest of the Tax Office.⁵⁰

6.32 The ARC emphasised the importance of culture in promoting independence in the internal review process. It said that it was important that a strong message be sent that the role of review officers is different from that of mainstream operational objectives.⁵¹

49 ARC, *Internal Review of Agency Decision Making*, paragraphs 3.16-3.18.

50 JCPA, *An Assessment of Tax*, paragraph 14.9.

51 ARC, *Internal Review of Agency Decision Making*, paragraph 3.31.

6.33 The ARC believed that the promotion of an appropriate culture within internal review sections would be greatly assisted if formal responsibility for internal review lay with a senior agency executive.⁵² That effect would be strengthened if that role was combined with formal responsibility for overseeing the promotion within the agency of the general effects of review tribunal decisions on the quality of the agency's decision making.

6.34 The ARC noted that one key aspect that will affect the actual and perceived independence of the internal review process includes the proximity to original decision makers. It observed that it was important that an agency was structured so that internal review officers are 'organisationally distinct' from original decision makers so as to reflect the nature of the internal review task.⁵³ By 'organisationally distinct' the ARC was referring to a situation where, within the structure of the agency, internal review officers are kept separate from the original decision makers whose decisions they review. Examples of ways in which this could be achieved include having internal review officers in physically separate locations, not having internal review officers as part of the same team as original decision makers or supervised by the same manager, having the salaries of internal review officers funded from a separate part of the organisation, and having appropriate protocols in place with a view to maintaining an arm's length relationship.⁵⁴

6.35 The ARC considered that proximity to original decision makers, either physically or organisationally, posed real risks to the independence of internal review officers. If internal review officers have close links with the original decision makers, then there is a danger that internal review officers will lose the objectivity required for undertaking internal review effectively.⁵⁵ This may include internal review officers finding it more difficult to overturn decisions, or applicants lacking confidence that they will receive an independent review from internal review officers that they perceive to be closely associated with the original decision maker.

6.36 The ARC suggested that one way to achieve physical and organisational separation was through the centralisation of internal review officers in a relatively small number of locations away from the offices in which original decisions are made.⁵⁶ It indicated that this would be more appropriate for agencies where original decision making is not already centralised. However, it also noted that centralisation could have disadvantages, including where the technical expertise to review the primary decisions is only available at the original decision making location.

6.37 The ARC commented that the aim of achieving a separate internal review culture was only realistic and appropriate where internal review officers had that role as their sole or primary task.⁵⁷

Review findings and conclusions

6.38 The Inspector-General found that in most of the relatively simple cases there is an 'independent' review of decisions by objection officers with an understanding of the

52 ARC, *Internal Review of Agency Decision Making*, paragraph 3.32.

53 ARC, *Internal Review of Agency Decision Making*, paragraph 3.21.

54 ARC, *Internal Review of Agency Decision Making*, paragraph 3.22.

55 ARC, *Better Decisions* report, paragraph 6.61.

56 ARC, *Internal Review of Agency Decision Making*, paragraph 3.27.

57 ARC, *Internal Review of Agency Decision Making*, paragraph 3.33.

respective roles of the objection officer and the original decision maker, in particular where a taxpayer is able to substantiate or provide evidence of what they assert happened. In a significant proportion of cases, the taxpayer does not disagree with the Tax Office view but rather the Tax Office's application of that view to the facts as established by the available evidence.

6.39 The Inspector-General also found that most business line work practices emphasise the importance of ensuring independence between the objection officers and the original decision makers.

6.40 However, the Inspector-General found that the division between the respective roles of the objection officer and the original decision maker becomes blurred in more technical and complex matters. Due to the complexity of the facts or the law, there is a tendency for the objection officer to seek greater assistance from the original decision maker, or technical experts involved at the earlier stage, in understanding the facts and evidence and in seeking to make a decision. The Inspector-General believes that in such complex cases there are benefits in the original decision maker or technical expert providing relevant input to the objection officer. In fact, some practitioners note their frustration at having to go over with the objection officer issues and material that they went through with the original decision maker during the audit.

6.41 The Inspector-General also notes the stakeholders' sentiments that there is a greater need for the objection function to be seen as an independent review and separate from the business lines. Clearly, the stakeholder feedback to date does not suggest that the current management and handling of objections is perceived as being 'independent'. This contrasts sharply with the New Zealand and United States experiences, where many accounting and legal firms believe that the adjudication area (the New Zealand equivalent of an objection) and the Appeals (the United States equivalent of an objection) is impartial and independent.

6.42 The Inspector-General believes that the Tax Office has to take further steps, along the lines suggested by the ARC, to reinforce the role of objections in tax administration and to promote its independent character. The Tax Office's current organisational arrangements generally satisfy the ARC framework, with a division between officers handling audit work and those handling objections. However, the Tax Office needs to place greater importance on culture in promoting independence in the objection process. It needs to send out a strong message to its staff and the community that the role of objection officers is different from that of mainstream operational objectives. The Inspector-General considers that the Tax Office needs to reinforce the role and aims of objections and promote an appropriate culture within its objection role. It is also important that the Tax Office clearly sets out the respective roles of original decision makers and objection officers, including the type and level of input of the original decision maker and, where the objection officer has sought such input on material facts, evidence or technical view, how it will communicate that to taxpayers and provide an opportunity to respond or comment.

6.43 The Tax Office also needs to adopt considerations and approaches it is already taking at pre-litigation with the aim of minimising the number of genuine disputes going on to external review to only those cases where all avenues of resolution (including settlement considerations) have been exhausted. This also involves the Tax Office adopting a more differentiated approach with the aim of resolving the dispute in a timely and effective manner.

6.44 For example, there may instances where the objection officer determines that the original audit decision was made without all the necessary information. The objection officer should promptly request this necessary information (if it was not already included with the objection) and then re apply the Tax Office view on the available facts and evidence. The request for necessary information at the objection stage should not be the norm, given that the Tax Office would have had ample opportunity at the audit stage to obtain all relevant information through a comprehensive investigation and to make a well reasoned decision. The need for the objection officer to have to do so should form part of the quality control process and feedback to auditors.

6.45 Alternatively, a taxpayer may have failed to respond properly to Tax Office requests for further information, which has led to the issuing of an amended assessment. The assessment may crystallise the issue for the taxpayer who may then include the requested information with their objection. If not, good administration requires the Tax Office to again seek all necessary information from a taxpayer or other appropriate sources before proceeding to determine the objection. Following the receipt of further information, or if the taxpayer still does not respond within a reasonable period, the objection officer should promptly determine whether the Tax Office view has been correctly applied and is supportable on the available facts and evidence.

6.46 Where the objection officer determines that the Tax Office view is not supportable on the available facts or evidence or has been incorrectly applied, then the Tax Office should proceed to allow the objection.

6.47 Where the objection officer determines that the Tax Office view has been correctly applied and is supportable, then they should consider whether the dispute can be resolved through dialogue, mediation and arbitration. The Inspector General notes that the Commonwealth Legal Services Directions also emphasise the importance of agencies doing all they can to resolve disputes without recourse to litigation. The directions state that the Commonwealth or its agencies are only to start court proceedings if other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations) have been considered. While the Tax Office does not initiate Part IVC litigation, its approach during the objection stage has an important bearing on whether a dispute proceeds to litigation.

6.48 When it is clear that a matter will not be able to be resolved by dialogue or mediation, then provision should exist for the matter to move quickly to resolution through the AAT or the Federal Court. This should mean that, where the Tax Office disallows an objection in full or in part, it is satisfied that it has reasonable prospects for its decision being upheld at litigation.

Reconsideration of Tax Office view at objections

6.49 A tax practitioner association submitted that the objection process does not lead to a reconsideration of the correctness of a Tax Office view or ruling. As such, the objection process seems inherently incapable of resolving a dispute a taxpayer may have with the correctness of the Tax Office's position on a particular matter of law. This is a costly exercise for the taxpayer and may result in further redress through more expensive external review avenues. The submission suggests that the objection process should be able to resolve disputes according to the law, whether complex or simple, and currently there is a risk that the objection process amounts to no more than ensuring that current Tax Office policy has

been applied and enforced, even though this may not always be the correct position at law. The submission recommended that the Tax Office should implement measures that improve the likelihood of achieving the correct legal outcome at the objection stage.

6.50 The Tax Office has established processes for resolving technical issues and establishing the Tax Office view. First, the business lines are responsible for managing the taxpayer relationship, identifying and managing risks and applying established precedent to the facts of the case, including complex factual situations, unless there is some question about the technical correctness of the Tax Office view, or concern that the view produces an anomalous or unintended outcome. Business lines, which would include objection officers, are required to apply the established Tax Office view, even though the taxpayer may disagree with the correctness of this view. This may be the same precedential Tax Office view that was applied by the original decision maker during audit and which the taxpayer subsequently disagrees with in the objection. Importantly, objection officers are not able to re-examine or redetermine the Tax Office view. This responsibility lies with the Tax Counsel Network (in relation to priority technical issues) and the Centres of Expertise (establishing precedential view).

6.51 The Inspector-General considers that it is important that where taxpayers are challenging the correctness of a Tax Office view at objection, there is due reconsideration of that view by a person of sufficient technical authority. This will not only promote the independence of the objection stage but will also ensure that the technical view adopted by the Tax Office would be defensible at litigation.

6.52 The Tax Office has a duty to administer tax legislation and policy responsibly and reasonably, and to provide accurate, appropriate and unambiguous advice. Where the Tax Office has acted unreasonably, or provided wrong or ambiguous information, which leads to a financial (and sometimes non-financial) loss, then it may provide compensation for the loss under the scheme for Compensation for Detriment caused by Defective Administration.

6.53 If the correctness of its technical view proceeds to litigation, and there is no additional information either provided by the taxpayer or requested by the Tax Office, then compensation could be warranted where taxpayers have incurred unnecessary litigation costs where the Tax Office concedes or abandons the case and a taxpayer has acted in good faith. Other circumstances that may warrant relief could include instances where the Tax Office concedes or abandons a case at litigation due to a change in the Tax Office view, or it comes to the conclusion that there was insufficient admissible evidence to support the Tax Office's decision. Each case would need to be considered on its own merits and in accordance with Finance Circular 2006/5.

6.54 The Inspector-General believes that it is important that the Tax Office acts as a good and fair administrator. Wherever possible the Tax Office should, in the context of resolving disputes, take steps to mitigate the financial burden on taxpayers arising from defective administration where there are no other established avenues for that burden to be addressed. An example of other established avenues is the ability to obtain an award of costs from the Court at the conclusion of proceedings. Of course, a taxpayer's success in accessing such relief will in part be influenced by the extent to which the taxpayer has acted in good faith. Where a taxpayer has unreasonably delayed, obstructed or obfuscated the progress and resolution of a dispute, then this would significantly diminish the basis for a successful claim for compensation. The Inspector-General considers that the Tax Office should seek to take into account such considerations as part of its new dispute resolution system. One possibility

could be identifying, as part of its quality review processes, systemic issues that may at times lead to instances of possible defective administration.

Recent Tax Office improvement initiatives

6.55 In 2008, the Online Resource Centre for Law Administration (ORCLA) enhanced its policy on independence (*Independence in the review process*) by providing additional guidance on what are independent reviews, as well as conduct and roles of officers involved. The Tax Office has also provided linkages to relevant online learning resource packages as well as embedding the whole of dispute resolution approach (identification and resolution of disputes as early as possible, differentiated approaches to objection processing, deployment of alternative approaches to dispute resolution and ensuring all relevant information and evidence have been captured) within the documentation.

6.56 In early 2009, the Tax Office amended Law Administration Practice Statement PS LA 2004/04 *Referral of interpretative issues to Centres of Expertise for the creation of the precedential Tax Office view, and early engagement of internal technical specialists in active compliance cases* to include a paragraph on reviewing the existing precedential Tax Office view. This amendment states that the officer undertaking the review is to be independent from the original decision maker and to have the skills and authority to carry out the review.

6.57 In terms of the fast-tracking of cases, the Tax Office advises that it already applies differentiated approaches to the handling of objection cases based on risk assessment, particularly in the MEI and Superannuation business lines. The Tax Office is expanding the application of differentiated approaches into other business lines involved in processing objections.

6.58 Law Administration Practice Statement PS LA 2007/23 *Alternative Dispute Resolution in Tax Office disputes and litigation* instructs tax officers on what policies and guidelines must be followed when attempting to resolve or limit disputes by means of alternative approaches to dispute resolution. The Tax Office has also established the Dispute Resolution Network, a group of experienced officers who can assist case officers in determining the various avenues of dispute resolution that might be used at any stage in a dispute.

6.59 The Tax Office has developed a risk-based indicator tool together with supporting documentation that requires case officers and their manager to assess whether alternative approaches to dispute resolution (such as case conferencing, mediation, conciliation, settlement, access to expert technical skills etc) would be beneficial. This tool will be deployed into the Tax Office's case management system soon.

6.60 The Inspector-General considers that the following recommendation, which sets out a number of work practices and considerations, will promote the independent character of objections and allow for a timely reconsideration of a disputed Tax Office decision. The Inspector-General notes that the Tax Office has already moved to address some of the points in the following recommendation and welcomes the Tax Office's commitment to improving its work practices and procedures.

RECOMMENDATION 3

The Tax Office should continue to develop work practices and procedures that recognise and respect the role of objections within an end-to-end dispute environment and promote a culture consistent with the function of internal review. The Tax Office should ensure that its work practices and procedures incorporate the following measures to implement these arrangements.

- The respective roles of the original decision maker and objection officer are set out to ensure that they are understood and adhered to.*
- Objection officers promptly consider whether the Tax Office view is correct and supportable on the available facts and evidence.*
- Objection officers consider whether alternative approaches to dispute resolution, such as settlement or mediation, may be appropriate, how the dispute could be resolved without recourse to litigation, when escalation should occur and when case-conferencing could be appropriate. This should also involve providing expertise to assist objection officers in determining what approaches to use with specific cases.*
- A fast-tracked process to external review be made available that would allow an objection decision to be expedited where resolution of the dispute at the objection stage is unlikely as it deals with the Tax Office view of the law (as expressed in a ruling, determination or other interpretative advice) and the facts are agreed.*
- Where an objection officer has sought input from the original decision maker on material facts, evidence or technical view, and the objection officer is likely to disallow the objection, the taxpayer is given an opportunity to respond on these material facts, evidence or technical view.*
- Objection officers have the skills and authority to decide the objection, or the ability to access appropriate skills and escalate the case to a person of sufficient authority where required. Where the Tax Office's technical view is challenged, this should result in its reconsideration by a person of sufficient technical authority.*
- Appropriate training is developed for objection officers in line with its philosophy and approach on objections in the context of its end-to-end dispute resolution system.*

Tax Office response

6.61 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.55 to 6.60 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

ALIGNMENT OF TIME FRAMES WITH A SELF ASSESSMENT ENVIRONMENT

Performance standards

Stakeholder concerns

6.62 The Ombudsman indicated that one of the more common areas of complaint with respect to the objection process is delay. The Ombudsman's submission pointed to

investigations which showed that there was ongoing scope for the Tax Office to improve its administration in particular instances to minimise the potential for unnecessary delay and poor communication with the taxpayer and their representatives. The Ombudsman suggested that there may be some scope for the Tax Office to consider and implement an improved early detection and intervention strategy whereby it advises taxpayers in appropriate cases that it is not likely to be able to decide the objection within the relevant timeframes, and draws to their attention section 14ZYA of the TAA.

6.63 One tax practitioner believed that the Tax Office sees an objection as just part of the pre-litigation process and not to be taken seriously in itself. The tax practitioner suggested that the Tax Office seems unconcerned as to the cost that taxpayers have to bear in preparing detailed objections and in preparing matters for litigation. The submission goes on to mention examples where disputes have been very close to being listed for a hearing and the Tax Office has for the first time paid serious attention to the objection and subsequently allowed the objection in full. The submission suggested that this is evidence that the objections were not properly considered at the time that the objections were determined.

6.64 Another tax practitioner submitted that the Tax Office was unconcerned at the costs which it caused taxpayers to bear as a consequence of raising amended assessments, causing taxpayers to object against the amended assessments and then to appeal against objection decisions. The submission suggested that a regime should be introduced to cause the Tax Office to act more responsibly in the issuing of amended assessments and in disallowing objections. One possibility put forward was the Tax Office bearing taxpayers' costs where it issues amended assessments or disallows objections where objectively it was not reasonable for the Tax Office to have done so.

ARC Internal Review Report and Best Practice Guide

6.65 The ARC stressed the importance of agencies taking active steps to ensure that reviews are conducted in as timely a fashion as possible. In its *Better Decisions* report, the ARC noted that:

This criticism is particularly relevant in cases where the internal review affirms the agency's decision: the applicant may view the internal review as being nothing more than an impediment (because of the additional delay and cost) to reaching the external review stage, and this can contribute to 'appeal fatigue'.⁵⁸

6.66 The ARC also commented that the problem of internal review being seen as an impediment to external review is heightened where internal review is a compulsory step prior to external review – where delay occurs, it will certainly cause frustration to those applicants who would have preferred to omit the internal review step.⁵⁹

Review findings and conclusions

6.67 The Tax Office has a number of performance standards for objections. The Taxpayers' Charter sets a '56-days available-to-the-Tax Office or as otherwise negotiated' (the 56-day finalisation standard) for the finalisation of objections not arising from a private binding ruling request and a 14-day standard for further information requests. A

58 ARC, *Better Decisions* report, paragraph 6.55.

59 ARC, *Internal Review of Agency Decision Making*, paragraph 5.22.

'stop-the-clock' mechanism applies for the 56-day standard where the Tax Office is awaiting further information from a taxpayer or where the Tax Office has requested further information.

6.68 The Tax Office also measures its performance against a 120-day standard for the completion of objections (the 120-day completion standard) although this is not a Taxpayers' Charter standard. The 120-day completion standard measures the total time (elapsed days) taken to finalise an objection irrespective of Tax Office or taxpayer delays.

6.69 The Tax Office's information management systems show that over a three-year period approximately 22 per cent of objections were not finalised within the 56-day finalisation standard. It also shows that approximately 28 per cent of objections were not completed within the 120-day completion standard. It should be emphasised that the above proportions represent instances where the delay in the finalisation or completion of the objections can be attributed solely to Tax Office action or inaction. This is because for the 56-day finalisation standard there is a 'stop-the-clock' mechanism if the Tax Office is awaiting information from a taxpayer or there is taxpayer delay. Likewise, the Tax Office has set itself a benchmark of completing 99 per cent of objections within the 120-day elapsed timeframe irrespective of further information requests.

6.70 The Inspector-General believes that, in confining objections to genuine disputes (which would reduce current numbers), the administrative performance standards need to be revised to bring them into line with a self assessment environment and with the recent changes introduced as a result of the RoSA report.

6.71 After discussions with the Tax Office, the Inspector-General took into account the following dependencies in arriving at the recommendation:

- the need for a two-year timeframe to allow the Tax Office time to review its performance standard, allow for the continued roll-out of its Siebel case management system and the successful implementation of recommendation 1; and
- the need for the performance standard to properly distinguish between routine and complex cases, by making an allowance for complex cases (assuming that up to 15 per cent of all objections will be complex).

6.72 The Inspector-General considers that there are strong grounds for the Tax Office working toward the revised performance standard.

- Objections to private rulings, after the changes introduced by RoSA, involve similar considerations and approaches to objections arising from audit. That is why the Inspector-General has included both types of objections under the definition of genuine dispute. Taxpayers may now introduce new material and the Tax Office may request further information if there is a dispute regarding the application of the law to the facts. For objections to private rulings, the performance standard is currently 85 per cent in 28 days, and the Tax Office met this standard in 2007-08. The Inspector-General sees no reason why this cannot also be the target that the Tax Office works towards achieving in two years.
- The Tax Office already uses this performance standard for other objections and the ARC has indicated that a 28-day standard would generally be appropriate.

- The report acknowledges the ARC comments on timeliness standards and the need to balance them with realism. The Inspector-General considers that it is important that the Tax Office needs to commit to working towards a particular performance standard, which is already used for other genuine dispute objections, so as to bring it into line with community expectations and best practice.

RECOMMENDATION 4

Over the next two years, the Tax Office should work towards revising its performance standard for the finalisation of objections from the current 70 per cent in 56 days to 85 per cent in 28 days in line with other relevant Taxpayers' Charter and Tax Office standards.

Tax Office response

6.73 Agree in part.

6.74 The Tax Office is committed to reviewing our performance standards to improve services to the community. However, we are not in a position to commit to the standards specified in this recommendation. We plan to have made appreciable progress over the next two years; however, the rate and extent of change is dependent on a variety of matters, including those mentioned at paragraph 6.71 of the Inspector-General's report.

Tax Office delay

6.75 The Inspector-General considers that it is not fair and reasonable that GIC be imposed where there has been Tax Office delay in finalising an objection. A delay in the finalisation of an objection beyond 60 days available to the Tax Office and which is not caused by the taxpayer should lead to a full remission of the GIC for periods beyond 60 days. For example, this should include instances where the Tax Office has not finalised an objection within 60 days and there is no further information that is to be provided by the taxpayer or that has been requested by the Tax Office. It is appropriate for a stop-the-clock mechanism to apply where the Tax Office is awaiting further material information from a taxpayer or where the Tax Office has requested further information within the 14-day service standard period.

6.76 The Inspector-General believes there are strong grounds from a fairness perspective for the adoption of such a position.

6.77 First, section 8AAG of the TAA provides the Tax Office with the broad power to remit GIC in certain circumstances. This includes where the delay in payment was not caused by the taxpayer and the taxpayer has taken reasonable action to mitigate the delay. In addition, the Commissioner may remit all or a part of the GIC if he is satisfied that there are special circumstances that make it fair and reasonable to remit all or a part of the charge, or it is otherwise appropriate to do so.

6.78 Second, and consistent with the approach adopted by RoSA in relation to the SIC, remission should generally occur where circumstances justify the revenue bearing part of the cost of delayed receipt of taxes. Such circumstances would include delay, contributory cause or fault on the part of the Tax Office in finalising an objection and where the taxpayer has acted in good faith.

6.79 One example of when remission would generally be appropriate is where the Tax Office has taken longer to finalise an objection than could reasonably have been expected, having regard to all the facts and circumstances of the case.

6.80 The Inspector-General is of the view that a reasonable, maximum period of time to finalise an objection would be 60 days 'available to the Tax Office' after the objection was lodged, consistent with the rights of taxpayers to give the Commissioner written notice requiring an objection decision to be made. Remission of the GIC would then apply for time taken by the Tax Office to finalise the objection beyond this 60 days 'available to the Tax Office' period.

6.81 In line with the Tax Office's position in Practice Statement PS LA 2006/8, where the taxpayer unreasonably delays, obstructs or obfuscates the progress of an objection, and the objection is finalised beyond the 60 days 'available to the Tax Office' period, then remission will not generally be warranted. Examples of such conduct include:

- repeated failure by the taxpayer to keep appointments or supply information; or
- repeated failure by the taxpayer to respond adequately to reasonable requests for information. This will include excessive or repeated delays in responding, not replying to the request for information, giving information that is not relevant or does not address all the issues in the request or supplying inadequate information. This would include circumstances where the taxpayer has failed to reply to further information requests during audit and subsequently provides that additional information during the objection stage.

6.82 A stop-the-clock mechanism should apply where the Tax Office is awaiting further information from a taxpayer or where the Tax Office has requested further information within the 14-day service standard period. If information is not requested within 14 days, the full period up to the time the request is made should count towards the 60-day maximum interest period.

6.83 As part of the objections acknowledgment letter, taxpayers should be informed of their right to compel the making of an objection decision within 60 days, pursuant to section 14ZYA of the TAA.

6.84 Where the Tax Office first requests further relevant information at the objection stage, and it would be expected that this information should have been requested during audit, then the Tax Office should consider whether the remission of the GIC to the SIC rate is appropriate. Again, in circumstances involving blatant obstruction, delays or obfuscation this remission should not apply.

RECOMMENDATION 5

The Commissioner should remit the general interest charge for the time taken by the Tax Office to finalise an objection beyond a 60-day 'available to the Tax Office' period where the taxpayer has acted in good faith.

Tax Office response

6.85 Disagree.

6.86 The Tax Office's *ATO Receivables Policy* currently provides a broad and well balanced approach to the recovery of disputed debt and the remission of GIC, and appropriately addresses any instances of Tax Office delay in resolving objections. Remission decisions will be based on all the facts and circumstances of the case and will not follow any pre-determined formula.

PERSONAL CONTACT WITH TAXPAYERS

Stakeholder concerns

6.87 The Law Council submitted that communication between taxpayers, their representatives and objection officers is limited, making it more difficult for the parties to engage in discussion which might assist in the early resolution of a dispute.

6.88 The Law Council went on to state that, where the Tax Office is not undertaking a detailed factual enquiry of its own volition (as the Tax Office does not have the resources to chase taxpayers for detailed information prior to determining every objection), then it is suggested that the Tax Office be required to write to taxpayers asking them to provide any information which they believe may be relevant in determining their objection. This may provide an informal process for the provision of additional information to the Tax Office before objections are determined.

6.89 The ICAA submitted that, in some taxpayers' experience, the Tax Office decides objections on technical grounds without giving the taxpayer an opportunity to fully present the relevant facts and provide any necessary explanations. In this situation, to avoid incurring unnecessary costs in escalating the matter to the litigation stage, the preference is for an opportunity to discuss and settle issues with the Tax Office at the objection stage. This raises the issue of the extent to which the Tax Office is prepared to embrace mediation as a means of settling disputes – tax practitioners believe that the Tax Office could utilise such procedures to a far greater extent.

ARC Internal Review Report and Best Practice Guide

6.90 The ARC commented that a common criticism of internal review procedures is that they are undertaken by the internal review officer without any personal contact with the applicant, with reliance being placed on slow, written and bureaucratic correspondence.⁶⁰ In an earlier report, the ARC noted that often it is not until the external review stage that an applicant will have an opportunity to put her or his case personally.⁶¹ The ARC also indicated that, without an appropriate level of contact with applicants, an agency's internal review system may be prevented from satisfying the need for natural justice. However, this must be appropriately balanced with other aspects of best practice, including ensuring efficiency in the internal review system.⁶²

6.91 The ARC stated that most commentators and agencies recognise the desirability of having more personal contact with applicants at an earlier stage of the review process. Even in seemingly straightforward cases where the internal review officer is satisfied they have all

60 ARC, *Internal Review of Agency Decision Making*, paragraph 5.2.

61 ARC, *Decision Making Best Practice Guide 3*, paragraph 6.64.

62 ARC, *Internal Review of Agency Decision Making*, paragraph 5.5.

the relevant information, there is still value in contacting the applicant as it is consistent with the principles of natural justice to give a person an opportunity to have their say (if desired). Similarly, it is good administrative practice to update an applicant on the progress of their application.⁶³

6.92 The ARC *Internal Review Best Practice Guide* recommended that agencies should encourage internal review officers to attempt to contact all applicants as a matter of course and those internal review officers should be allocated enough time per review for this to be possible.⁶⁴

Review findings and conclusions

6.93 The Tax Office requires both auditors and objection officers to provide explanations for their decisions in writing. It states that the level and type of interaction between decision makers and taxpayers will vary considerably with the type of taxpayer and the nature and complexity of an issue. For instance, personal contact with taxpayers or their representatives is integral to work practices in the large market, while for taxpayers in higher volume market segments with generally less complex issues, communication channels will depend on the circumstances. The Tax Office believes that decision makers need to be given a degree of discretion and personal judgment to determine the most appropriate form of communication – being too prescriptive with procedures for communication can be counter-productive.

6.94 While the Tax Office acknowledges that there may be evidence that communication practices in individual cases could sometimes be improved, it does not believe that there is any evidence that there is a systemic problem with contacting taxpayers and explaining decisions, pointing to its technical quality review results. The Tax Office states that strategies, such as skilling and mentoring, are currently in place to encourage improvements in communication, both in the form of ongoing reviews of letters as well as providing feedback where issues are identified at the objection stage.

6.95 The Tax Office has published a practice statement on alternative dispute resolution in dispute and litigation cases. Case conferencing is part of the suite of alternative methods available to staff in order to resolve the dispute as early as possible. The use of such alternative methods is emphasised in the procedures and documentation associated with the risk-based indicator that has been developed and is soon to be deployed in its IT system.

6.96 The Inspector-General believes that the Tax Office's current communication strategies at the objection stage fall short of the ARC standards, and clearly the stakeholder submissions seem to confirm this view. The objection stage should represent an opportunity for communication, discussion or personal contact between the taxpayers, their representatives and the Tax Office. This would have many benefits, not only as a means of potentially resolving the dispute, but also to reinforce the role and independence of the objection officer.

6.97 The Inspector-General considers that this could be achieved by the Tax Office adopting the practice of case conferencing at objections. Along the lines of what is undertaken by the AAT when a dispute proceeds to external review, this would require

63 ARC, *Internal Review of Agency Decision Making*, paragraph 5.6.

64 ARC, *Internal Review of Agency Decision Making*, Recommendation 21, p 69.

objection officers and taxpayers (or their representatives) to discuss the issues in dispute, identify any further relevant information that may assist the resolution of the dispute, and explore whether the matter can be settled. Case conferences would also provide an opportunity to discuss the future conduct of the objection and, in particular, whether another form of alternative dispute resolution may assist in resolving the dispute.

6.98 Objection officers should also take this opportunity to explain the role of objections and its independence from the audit process. The Inspector-General believes that this should occur in the early stages of the objection decision making process.

Recent Tax Office improvement initiatives

6.99 The Tax Office has documented procedures to accompany the recently developed and soon to be deployed risk-based indicator that require officers to discuss appropriate cases with taxpayers to ensure that a common understanding of the issues and respective positions are reached. (Such arrangements may not be appropriate in low-risk objections where the matter will be resolved in the taxpayer's favour.)

6.100 Further, the risk-based indicator tools and supporting documentation 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.

6.101 The Inspector-General considers that in deploying this risk-based indicator care should be exercised that contact and discussion with taxpayers with the view to resolving a dispute is not discouraged simply because an issue is considered low-risk. As emphasised by the ARC, it is desirable to have more personal contact with applicants at an earlier stage of the review process even in seemingly straightforward cases.

RECOMMENDATION 6

In the early stages of the objection process:

- *the Tax Office should continue to encourage objection officers to contact taxpayers with the view of exploring opportunities for early resolution of the dispute; and*
- *where it could be of some benefit in resolving a dispute, the Tax Office should continue to adopt the practice of case conferencing, in which the objection officer, the taxpayer and Tax Office technical experts discuss the issues in dispute.*

Tax Office response

6.102 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.95, 6.99 and 6.100) that work being undertaken by the Tax Office is addressing the recommendation.

QUALITY CONTROL SYSTEMS

ARC Internal Review Report and Best Practice Guide

6.103 The ARC considered that agencies should have in place quality control systems for internal review to ensure that the internal review system was meeting its defined aims and objectives.⁶⁵ It listed some common methods, including:

- quality assurance processes;
- maintaining statistics of the numbers of reviews, timeliness standards, and the success and failure rates of appeals;
- general scrutiny by management; and
- internal review officers giving feedback to primary decision makers and management.

6.104 The ARC also listed a number of benefits in undertaking such analysis, including being able to identify why previous reasons for decision were set aside, the ability to explain variations in the set aside rates, identifying problems in policy or legislation and being able to provide feedback and training to primary decision makers.⁶⁶

6.105 The ARC also noted the importance of monitoring external review rates as part of an agency's overall quality control systems.⁶⁷ The *ARC Internal Review Best Practice Guide* recommended that quality control systems for internal review should include mechanisms for giving internal review officers regular feedback about their decision making process.⁶⁸

Current Tax Office quality control systems

6.106 Quality control systems for objections include prescribed quality assurance processes, monitoring and analysing of objection workflows, outcomes and drivers at a business line level.

6.107 The Tax Office's work processes require that a completed objection must be sent to an authorising officer for quality assurance (QA) before a final letter is sent to a taxpayer. Controls over who can authorise an objection are maintained by the level of access granted to an officer. Authorising officers are always independent of the original decision maker and are generally more experienced senior officers who have the necessary skills to review and authorise the particular objection.

6.108 When an objection officer wishes to send a case for QA, their choice is limited by the system to a defined list of officers whose access profile matches the authorisation level appropriate for the classification of that case. Once the case is QA passed, the objection will be locked and the objection officer will not be able to edit any fields or letter but can then send the authorised version of the finalisation letter.

65 ARC, *Internal Review of Agency Decision Making*, paragraph 6.36.

66 ARC, *Internal Review of Agency Decision Making*, paragraph 6.39.

67 ARC, *Internal Review of Agency Decision Making*, paragraph 6.40.

68 ARC, *Internal Review of Agency Decision Making*, Recommendation 29, p 70.

6.109 The Tax Office also states that quality control is evident in the management of objections with high-level strategic direction and process improvements being driven through the law sub-plan while delivery and day-to-day management rests within the compliance sub-plan. Within most business lines, the management of objections is centralised into specific teams or areas with overall responsibility resting with a senior executive leader in each line who often also has responsibilities for advice. The Tax Office advises that, through the Executive Leadership Forum, these senior executive leaders collaborate in the ongoing monitoring of objection matters (including performance measures) and set strategic directions for management and improvements in the processing of objections. The Tax Office points to the two cross-business line objections taskforces as cases in point.

6.110 Currently, the Tax Office's key quality assurance process for objections is its bi-annual Technical Quality Review (TQR). This requires each business line to report on the quality of their technical decisions based on the review of a representative sample. The Tax Office states that its aim is to ensure that taxpayers receive written advice that is accurate, consistent, relevant and clearly explained. The TQR process is one method that the Tax Office adopts to assess its performance in these areas. The Tax Office states that the TQR process also assists in the identification of systemic issues that may need to be addressed to continue to improve the quality of decisions and to assess the level of compliance with mandatory work practices and procedures.

6.111 Along with considering the quality of the decision, the TQR process also examines whether the case officer has conformed to various practice statements and work practices.⁶⁹ The TQR results are then required to be distributed widely in each business line, with strategies to rectify any deficiencies identified. This is to incorporate individual feedback to officers involved in the case, including the case officer and approving officer, especially where improvement is necessary.

6.112 The Tax Office recognised that TQR does not review all aspects of the end-to-end decision making process and work was initiated as early as mid-2004 to develop and implement an improved quality review process. Some of the shortcomings identified in the TQR process included the need to identify root causes of quality gaps, providing better feedback to case and approving officers and identifying technical and procedural 'hot spots'.

6.113 As a result, an Integrated Quality Framework (IQF) has been designed. The IQF has been implemented for in-scope interpretative assistance products including objections.

6.114 The principles and features of the IQF include:

- a systemic focus, including end-to-end processes and business process improvement, in addition to product and transactional quality;
- systemic quality improvement based upon bona-fide best practice, including the Business Excellence Framework and the relevant international standard for managing quality;
- real-time or close to real-time assessment of quality and integrated quality reporting;

69 Further information on topics for consideration as part of the TQR process is available in Chapter 4 of this report.

- processes to link management of quality, people capability, continuous improvement activity and culture;
- a widened, inclusive definition of quality including but not limited to factors such as: effectiveness, efficiency, integrity and timeliness, with a higher degree of specificity for quality elements; and
- improved infrastructure for managing and improving quality.

6.115 The IQF will incrementally replace the current TQR process. The Tax Office points to other ongoing improvements in quality control processes including office-wide consistency of approaches and a focus on developing mandatory quality control points in all case work.

Review findings and conclusions

6.116 The Tax Office agrees there is a need for improvements in the current TQR process so as to better measure the quality of the end-to-end dispute resolution process, of which the pre-amendment and objection stages are critical stages. In its current form the TQR process only provides a snapshot view of the quality of a decision and does not measure the quality of the end-to-end decision making process.

6.117 The Inspector-General believes that the Tax Office's implementation of the IQF is a step in the right direction. A more tailored quality assurance process, taking into account the nature of objection work, will allow the Tax Office to better measure the quality of the objection decisions and decision making process. The Inspector-General considers that a greater emphasis on root cause analysis and real-time evaluation will also greatly assist the Tax Office in developing a more proactive culture in relation to decision making generally and to all work processes.

6.118 However, there is a pressing need for more specific quality assurance processes that can adequately measure the efficiency and effectiveness of objections in the context of its end-to-end dispute resolution system. This is necessary given the important role of objections in tax administration and the consequences for taxpayers where a dispute remains unresolved. As was stressed by the ARC, quality assurance processes should be one input into an examination of the Tax Office's management and handling of objections. It should also include the analysis of statistics of the numbers of reviews, timeliness standards, and the success and failure rates of appeals, general scrutiny by management and team leaders and objection officers providing and receiving feedback.

RECOMMENDATION 7

The Tax Office should continue with its development of the Integrated Quality Framework and ensure that the quality control system:

- includes features to properly evaluate the quality of the Tax Office's end-to-end decision making process;*
- is applicable to key objection work practices;*
- includes mechanisms for objection officers to provide and receive feedback as a means to improving the decision making processes;*
- identifies whether critical objection work practices that assist in the resolution of disputes are being followed and applied consistently across the business lines; and*
- includes examination and analysis of further information requests to ensure that relevant information is sought at the earliest opportunity.*

Tax Office response

6.119 Agree.

INFORMATION EXCHANGE AND INTERACTION WITH TAXPAYERS

6.120 The ARC considered that if internal review is to add value to the decision making process, the review officer needs to do more than reconsider the same papers already perused by the original decision maker.⁷⁰ In order to fulfil the aims of internal review, the review officer should take additional steps to obtain relevant information and to analyse and evaluate the information supplied.

Current Tax Office approaches and results relating to further information requests

6.121 The Tax Office's taskforce report found that for audit-sourced objections approximately 73 per cent were lodged with new information or evidence across the sampled business lines. For GST, the report stated that 92 per cent of objections were lodged with new information or evidence.

6.122 The taskforce report found that of the sampled objection cases, 52 per cent required the Tax Office to request further information after the lodgement of the objection. In the GST business line, approximately 65 per cent of objections required further information to be requested, which is significantly higher than the other business lines, which ranged between 37 per cent and 55 per cent.

6.123 The report suggested that the high number of objection cases that required further information indicates that there is a need to educate taxpayers regarding the need to detail circumstances in full and provide supporting documentation when lodging an objection.

⁷⁰ ARC, *Internal Review of Agency Decision Making*, paragraph 5.14.

6.124 The taskforce report also found that in 57 per cent of audit-sourced objections and 49 per cent of taxpayer-amendment sourced objections further information was requested after the objection was lodged.

Table 6.1: Objections — further information required at objection

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Totals %
Audit-sourced					
Yes	65	50	45	61	57
No	35	50	55	39	43
Taxpayer amendment					
Yes	N/A	88	28	60	49
No	N/A	12	72	40	51

Source: Tax Office.

6.125 The taskforce report found that in 65 per cent of GST audit-sourced objections further information was requested after the objection was lodged. It found that this was higher than the average across the sampled business lines and was significantly higher than the lowest business line rate (MEI — Micro at 45 per cent). The taskforce report concluded that these rates were high, especially given the high proportion of audit-sourced GST objections being lodged with new information or evidence.

6.126 The taskforce report suggested that the high proportion of objections in some business lines that required the Tax Office to request further information may be explained by some taxpayers having less experience interacting with the Tax Office and less awareness of the requirement to provide supporting documentation and factual information when lodging an objection.

Reasons for requesting further information

6.127 The taskforce report found that substantiating facts and obtaining further information were the two primary reasons for requesting further information for objections. A request to substantiate facts was defined as a request to obtain proof or evidence in relation to the objection, whilst a request for obtaining factual information was to establish the circumstances of the case.

6.128 The taskforce report concluded that a more detailed examination of the similarities between the subject matter of the objection and the exact details of the further information was needed to understand the reasons for seeking further information.

6.129 However, the taskforce report found that with 55 per cent of the cases requiring further information requests to substantiate the facts of the case it was clear that more work was needed to educate taxpayers regarding the requirement to provide supporting documentation when lodging an objection. Table 6.2 outlines the taskforce's break-up by way of business line.

Table 6.2: Objections — reason for further information request

	GST %	MEI-Individual %	MEI-Micro %	SPR %	Totals %
Factual	48	53	43	34	45
Substantiation	52	47	57	66	55

Source: Tax Office.

Methods for requesting further information

6.130 The taskforce report found most of the business lines utilise requests by way of letter to obtain further information.

6.131 The taskforce also reported that the paper response times were similar across all business lines; however, the GST business line had the greatest proportion of responses received after 43 days. The report stated that this may have been due to clearer work practices surrounding further information requests in the other business lines and the actioning of objections prior to reaching a similar response period.

6.132 In respect to phone response times for further information, the taskforce report found there was some variation between business lines. Between 39 and 44 per cent of phone requests made in the MEI – Individual, MEI – Micro and Superannuation business lines were responded to within seven days of making the request. In contrast, only 17 per cent of responses to GST further information requests were received within seven days.

6.133 The report also found that the number of instances where taxpayers failed to respond to further information requests varied greatly between the business lines, with 52 per cent of GST phone requests for further information generating no response. In contrast, only 10 per cent of MEI – Individual phone requests for further information generated no response.

6.134 The taskforce also observed that 40 per cent of requests for further information made after the original request for further information were for new information. The report suggested that the reasons for subsequent requests for new information might be due to that information not having been correctly identified as relevant in the early stages of the objection. Alternatively, the report suggested that the additional information being provided by the taxpayer might lead to further information being required by the Tax Office before it can finalise the objection.

6.135 The taskforce report concluded that the significant variation between business lines in relation to response times and instances of non-response for further information could be explained, in part, due to the inconsistent work practices across business lines when making multiple requests for the same information. MEI – Individual and MEI – Micro have implemented work practices for managing a taxpayer's failure to respond to a further information request. For example, in the MEI – Individual business line a taxpayer is given 28 days to respond to a further information request. If the taxpayer has not provided the information within 28 days, or the taxpayer has not requested further time to provide the information, then the taxpayer is given a reminder (by way of telephone or letter) with a further seven days to provide the requested information. If the taxpayer does not respond within the further seven days, then the Tax Office proceeds to determine the objection on the available information.

6.136 Previously, within the GST business line, a taxpayer would be given 28 days to respond to a further information request. If a taxpayer did not provide the requested information then they were given 28 days to respond and if there was still no response, a further 14 days. The taskforce report noted that often there were numerous Tax Office requests for the same information over many months and also telephone requests for further information appeared to be made on an ad hoc basis. The taskforce reported that this was a

significant contributor to the ongoing aged case volumes in the GST business line's objection and litigation workload.

6.137 The report noted that GST had since changed this work practice as part of a strategy to reduce aged objection cases. This now allows a taxpayer 28 days to respond to a further information request. If the taxpayer does not respond to this request, then the tax officer will proceed to determine the objection on the available information.

6.138 The Tax Office's taskforce report also considered that a consistent approach to requesting further information and work practices for when taxpayers fail to respond to such requests should be developed for objections.

6.139 The Tax Office advises that it has enhanced its guidance on making requests for further information in ORCLA. These instructions advise that case officers must attempt to identify all additional information required and make one contact with the taxpayer rather than multiple requests. Case officers must ensure that information is not requested that has already been provided or is irrelevant to making the decision. Case officers are directed to consider the most appropriate channel of communication with taxpayers.

6.140 This guidance also includes reasonable timeframes for taxpayers to reply to a request for additional information. The timeframes are differentiated, based on the source and complexity of the objection.

6.141 The taskforce report also made a number of recommendations regarding ways that the Tax Office could better understand and interact with taxpayers at objection. Some of these included:

- reviewing the finalisation letters provided by compliance areas to ensure that the requirement to provide all supporting document when lodging an objection is clearly communicated;
- influencing the culture to encourage objection officers to take a risk-based approach to limit requests for further information;
- changing the culture to encourage objection officers to make phone requests for further information more frequently in order to reduce cycle times;
- conducting a detailed end-to-end analysis (for example, from audit commencement to finalisation of the objection or litigation) of cases from all business lines to identify opportunities to improve existing processes;
- identifying methods to effectively educate taxpayers regarding the need to provide supporting documentation and detail circumstances in full at the time of lodging an objection; and
- documenting and implementing a consistent method for requesting further information and managing non-responses by taxpayers across all business lines for objection work.

6.142 The Tax Office states that these recommendations have been addressed in a number of ways.

- Changes to active compliance letters to advise taxpayers to provide supporting documentation have been piloted in one business line. When this pilot is evaluated, expansion across all compliance lines will be implemented.
- Guidance on when it is appropriate to request further information is published on ORCLA. This also provides that phone contact is the preferred channel where further information is required during objection. In addition, ORCLA sets out a consistent approach to requesting further information and managing non-responses.
- The Objections Review Project has conducted an end-to-end review of the dispute process, has designed improvements based on those findings and will continue to identify and design improvements in conjunction with the business lines.
- The Tax Office has recognised that anyone lodging an objection may need assistance. The Tax Office has provided broad-based assistance through the provision of objection forms (in both tax professional and non-tax professional styles), and publishing on the website information on how to lodge an objection and supporting documents that should be included with an objection. Based on feedback gathered through the Tax Office Provision of Written Advice survey in 2007, respondents indicated that when they used the Tax Office forms and associated documents, they were more satisfied with the outcome of their objection and the timeliness of the decision.

Review findings and conclusions

6.143 In contrast to the taskforce report findings, the Tax Office's case management system shows that approximately 60 per cent of objections did not require further information prior to finalisation. Where there is a further information request, then over three-quarters of such cases fail the Taxpayers' Charter further information request standard.

6.144 An examination of sample cases indicates that in a large number of cases the receipt of new information is an important factor in the outcome of the objection. New information becomes available either through the taxpayer providing further material with the lodgement of the objection or the Tax Office requesting further information in the course of determining the objection.

6.145 These findings raise two questions – firstly, why do so many further information requests fail the Taxpayers' Charter service standard and secondly, why is relevant information not provided or obtained earlier in the dispute?

6.146 Audit work processes and the quality of decision making at the primary decision maker level, particularly with regard to evidence collection and the giving of reasons, have an important bearing on the management and handling of objections. Where an audit decision does not clearly set out the relevant issues or facts or the evidence that is being relied upon to support those facts, then it will be difficult for the objection officer to quickly determine what further information is both relevant and required.

6.147 In respect of the second issue, the Inspector General found that either there was no request for that relevant information at the audit stage or, if it was requested, then it was not provided by the taxpayer.

6.148 Where the Tax Office has requested further information from a taxpayer and provided a reasonable period of time to provide that information, then it should not be

making multiple information requests. The Inspector General does not believe there is any benefit to have a large number of cases awaiting further information for long periods of time. Taxpayers, when they lodge an objection, have an obligation to provide all necessary and relevant information.

6.149 In circumstances where taxpayers have not provided the requested information, then the Tax Office should be seeking to review the case based on the best available facts and evidence and to make a timely decision so as to determine the objection. In such instances, simply determining the objection on the best available facts and evidence and allowing taxpayers to explore their external review rights if they are still dissatisfied would be an appropriate course of action. Where this happens the Tax Office should be able to flag these cases as potential litigation.

6.150 The Tax Office also needs to include a more thorough examination and analysis of further information requests as part of its quality assurance processes for objections. It needs to better understand why relevant information is either requested by the Tax Office, or provided by taxpayers, at later stages in the dispute. It must also be confident that it has requested relevant information at the earliest stage possible. Where a dispute is resolved because of further or new material at later stages in the dispute (objection or litigation), then the Tax Office should be able to attribute that to a failure by the taxpayer to provide information rather than the Tax Office not asking for it. Such an assurance should be included as part of its broader quality control system.

6.151 The Inspector General considers that it is incumbent on the Tax Office to make clear in its further information requests why the information is relevant and how it relates to the issue in dispute. This would benefit both the Tax Office and taxpayers and encourage a more timely resolution of disputes.

6.152 Further information requests examined in the course of this review tended to set out the class or name of the document or information being requested with little or no explanation of the purpose or importance of that information in resolving the dispute. It is also important that the Tax Office provide assistance to taxpayers, especially those that are self represented, to strengthen their applications for internal review. Such assistance could take the form of pointing out obvious gaps or omitted detail in applications for review, explanations of the review process and explanations of how the objection could be successful.

Recent Tax Office improvement initiatives

6.153 The Tax Office has recently taken steps to review and improve the way case officers request further information and encourage all reasonable avenues to facilitate early resolution. This includes introducing differentiated approaches based on risk, for example, simple information requests for low-risk taxpayers and telephone calls to request further information are now acknowledged practice. Similarly for high-risk, complex taxpayers with a history of delaying proceedings, formal access and evidence gathering powers can also be utilised.

6.154 In addition, the objections 'request for further information' letter now includes an explanation of why the information is needed. This ensures that information that is not required is not requested.

6.155 The Tax Office is also enhancing the information available to the public through its website and publications to ensure it is consistent with its approach to resolve the dispute as early as possible. The Tax Office website is being restructured and rewritten to provide clear information to taxpayers intending to object. This includes guidelines on documents that should be provided to support an objection.

6.156 The supporting documentation for the risk-based indicator, about to be deployed, encourages discussion with the taxpayer to ensure all information required is obtained and to clarify issues in dispute.

6.157 Finally, the Tax Office has commenced work on developing a dispute risk indicator, similar to the risk-based indicator. It is intended to reduce the number of objections as the aim of this tool is to resolve the dispute at its source.

RECOMMENDATION 8

The Tax Office should continue to implement work practices and procedures that address the following:

- when asking for information during objections, the Tax Office should ensure that information requests are tailored to the dispute on hand by clearly articulating the type of information it is seeking and the purpose and relevance of the information to the issues under examination;*
- self represented taxpayers in particular should be provided with plain language advice on making objection applications and assistance in ensuring that all relevant information and evidence is before the objection officer for reconsideration of the earlier Tax Office decision; and*
- communications between the objection officer and the taxpayer should also be aimed at improving understanding of the reason for the objection to facilitate early resolution of the dispute.*

Tax Office response

6.158 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.153 to 6.157 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

REPORTING AND ANALYSIS OF OBJECTIONS

ARC Internal Review Report and Best Practice Guide

6.159 The ARC noted that an analysis of statistics of internal review can be used, among other purposes, to monitor trends, identify problems in policy and legislation, and identify training needs. It stated that such statistics, if collected and analysed in a sufficiently detailed

fashion, are a useful tool that can be used by agencies to maximise the normative impact of internal review.⁷¹

6.160 The ARC also listed some of the problems identified through internal review mechanisms, including:⁷²

- lack of evidence, investigation and fact finding by original decision makers to support their decision;
- lack of understanding among original decision makers of the legal requirements or policy applying to decisions;
- bias on the part of original decision makers;
- carelessness or not listening properly; and
- poor documentation, systems errors and inexperience.

6.161 The ARC set out a number of recommendations on how reporting and analysis of internal review can encourage an overall improvement in decision making. It recommended that agencies should gather detailed internal review data that can be analysed to monitor trends and identify problems. Also, internal review officers should be encouraged to communicate with managers of original decision makers about problems they may have detected with administration and decision making. As far as possible, such problems should be acknowledged and acted upon.⁷³

Current Tax Office reporting and analysis practices

6.162 The Tax Office employs two levels of reporting – the first is at the business line level which then feeds into the sub-plan report and its corporate reporting processes. Two reports are prepared for the objections work category, with one detailing the ‘on hand’ position while the other sets out the finalised case outcomes for the month. Analysis of workflows occurs at a number of levels from the whole sub-plan level at Compliance Executive Meeting and Executive Leadership Forum through to individual business line executive teams, management teams or segments.

6.163 Business line level reports contain detailed business line-specific management information, mostly on efficiency and cycle times, and analysis. The Tax Office states that many business lines create their own line-specific reports to meet the needs of their management or executive teams. The Tax Office notes that business line reports and analysis are driven by business needs and vary between business lines and also over time as risks and issues change.

6.164 Business lines monitor statistics on numbers of cases received, finalised and on hand as well as age profiles of cases, sources of disputes, outcomes, cycle times and certain service standards. The Tax Office states that analysis of reports and causes of anomalies, such as that undertaken by the MEI business line to determine the cause of a ‘spike’ of objection receipts in July and August 2007, are investigated in order to ensure that adequate strategies and

71 ARC, *Internal Review of Agency Decision Making*, paragraph 7.34.

72 ARC, *Internal Review of Agency Decision Making*, paragraphs 7.37-7.39.

73 ARC, *Internal Review of Agency Decision Making*, Recommendations 35 and 36, p 71.

resources are in place to manage the additional work and, if possible, to address the cause of the unexpected increase.

6.165 The Tax Office also states that the focus and frequency of monitoring and analysis depend on the nature of the work and the level of case turnover in a particular business line. For example, the ATP business line does very little analysis on the source of objections as compared to other business lines as objections emanate almost exclusively from audit. Likewise, as LBI has a well-established taxpayer relationship focus and a relatively small taxpayer base, which means that its knowledge of trends and causes relies much less on frequent statistical analysis. LBI reporting and analysis focuses more strongly on active case management aspects to ensure that issues are resolved in as timely and effective a manner as possible.

6.166 Feedback may be sought from the business lines on the reasons for unusual increases in case receipts or for increasing work backlogs and strategies in place to deal with them, reasons for increases or decreases in performance against the Taxpayers' Charter service standards or completion targets, or perhaps advance notice of anticipated workflow impacts from such things as increased audit activity or new legislation.

6.167 Responses to these business line-based reports are then collated and a final report is submitted for inclusion in the compliance sub-plan Heartbeat report that covers all work done in the sub-plan and is not limited to objections. In respect of objections, the information contained in this report is confined to performance against the Taxpayers' Charter finalisation standard, the Tax Office's completion standard, case cycle times, the case status of unfinalised objections and the trends of received and finalised objections.⁷⁴

6.168 The Tax Office advises that specific issues or strategies relevant across business lines will be identified through this reporting process and discussed at its monthly Executive Leadership Forum. Additional analysis and reporting will occur whenever anomalies in reported figures (at either the sub-plan or the business line level) indicate that closer scrutiny is required. The Tax Office states that this approach is driven by the fact that it can obtain better intelligence by analysis at the business line level where there is a deeper awareness of the specific business needs and levels of risk involved.

6.169 In relation to the use of internal review to detect problems in administration and policy, the Tax Office states that business line analysis of objection statistics and trends is used to improve management and work practices overall. The Tax Office pointed to examples of this, including its GST penalty decision making workshops and its work on additional training on alternative dispute resolution, evidence and audit techniques in anticipation of additional micro and serious non-compliance objections.

6.170 The Tax Office, under the Change Program initiative, has been progressively moving the whole of the Tax Office on to one case management system. From July 2009 it is expected that all work types in the end-to-end dispute process will be recording data in the same system and using consistent templates to gather consistent data. As well as being able

74 Case status events indicate whether the objection is in progress, awaiting quality assurance or pending taxpayer or Tax Office action and the clock has stopped for Taxpayers' Charter standard purposes.

to perform similar analysis across the different business lines, there will be a single window on interactions between taxpayers and the Tax Office.

6.171 The Tax Office has been developing an improved quality improvement and assurance framework (the IQF) since mid-2004. The purpose of the IQF is to ensure that the Tax Office produces work of a consistent and sustainable high standard, and that its people, products and processes continuously improve. The IQF has been piloted with a range of products and business lines and is scheduled to replace the TQR process during 2009. The IQF entails processes for managing quality, people capability relative to quality, quality assessment, integrated quality reporting, continuous improvement; and quality-related aspects of organisational culture. Its features include a risk-based approach to assurance. Integrated quality reporting allows for different case types to be compared.

6.172 The Tax Office has developed a series of indicators which will improve data capture and quality, and will enable the analysis of the source, type and trigger of the objection. These indicators will be deployed into its IT system soon.

6.173 The Tax Office is developing effectiveness indicators for the whole end-to-end dispute resolution process.

6.174 The Tax Office has reviewed the Early Resolution Report process and is currently improving the work practices and procedures that support the process, in particular, enhanced data capture, analysis and feedback to audit teams on identified systemic issues.

Review findings and conclusions

Indicators

6.175 The Tax Office must have in place indicators to be able to evaluate the efficiency and effectiveness of its management and handling of objections. These indicators should evaluate the extent to which the Tax Office's objectives and desired outcomes have been achieved. The performance of the Tax Office in meeting these indicators should be the catalyst for improvements in upstream processes that have an impact on objections. For example, an efficient and effective merits review system requires that the first tier of review, in this case objections, must act as an appropriate filter of cases proceeding to external review.

Reporting

6.176 An examination of some examples of existing management reports and business line practices shows some variation in their purpose and content. For example, the Excise report lists subject description, whether a penalty was imposed and whether it was remitted, the outcome of the objection and the reason for that outcome. The Excise business line states that it is currently improving its reporting for objections to examine trends, including those across issues, time, and industry groups and is also looking at recording amounts in dispute into future reports. In the LBI business line, monthly Heartbeat reports are prepared for the LBI Executive that contain a range of objection data, including stocks and flows, aged cases, cycle and elapsed times and a case event summary. It also provides a short commentary on any trends, reasons for delays and emerging key issues. The MEI business line also prepares reports in relation to provision of advice work, including private rulings, advice and objections. It contains data on the number of objections received and finalised, outcomes, trends and topics.

6.177 The Inspector-General is not entirely convinced by this level of reporting and analysis. In looking at various business lines' reports, the Inspector-General has found that each business line captures its own set of information. There is no standard report that examines and brings together at a corporate level a range of performance and quality markers, both from an efficiency and effectiveness perspective, which relate to objections. The two corporate reports only include some analysis and commentary on objections, but predominantly monitor the age of both work on hand and work that has been finalised.

6.178 The Inspector-General also believes that there should be greater emphasis on the analysis of trends and outcomes at a corporate level for the purposes of maximising the normative effect of internal review. While there is a large quantity of information being reported at different levels of the Tax Office (aged case status reports, certain performance standards reports and technical quality review reports), there is no overall and ongoing analysis that brings all this information together to identify trends and problems in the objection process and the broader dispute resolution framework. There is also some variation within business lines in the collection and analysis of statistics relating to objections, in particular when more detailed reports and analysis are undertaken.

6.179 Quite often, more detailed reporting and analysis is reactive, that is, trying to determine the cause of some already identified anomaly such as a backlog of objections, rather than proactive in the sense of trying to determine the cause of disputes and emerging trends regarding both the efficiency and effectiveness indicators. For instance, why is the Tax Office consistently not meeting its performance against the completion standard and the Taxpayers' Charter further information request standard? Is this due to the provision of taxpayer information, the resolution of technical issues or the quality of the audit? The very fact that the Tax Office cannot adequately articulate why it cannot, and has not, met its own performance standard indicates a shortcoming in its current approach to identifying and analysing trends and problems.

6.180 Reporting and analysis of objections should encourage an overall improvement in decision making. To do this effectively, the Tax Office should move to a position where it has greater confidence in its corporate case management system so that it can begin to use such data for the purposes of examining any trends in what type of issues are being objected to and the outcomes. Such analysis is an important part of properly understanding the drivers of objections and putting in place pre-emptive strategies to minimise disputes. There also needs to be a more corporate focus in using objection data, including court and tribunal settlement rates, as a means to detect problems in administration and policy.

6.181 The Tax Office's public reporting of its performance regarding objections is very limited and confined to its performance against its 56-day service standard. The Inspector-General considers that the Tax Office should include in its annual report its performance against all of its Taxpayers' Charter service standards relating to objections. Other measures and indicators relating to objections should also be reported externally, where appropriate.

RECOMMENDATION 9

Aligned with the Tax Office's philosophy, approach and agreed outcomes on objections, the Tax Office should continue to design, monitor and report against a broad range of indicators and measures that allow it to evaluate the quality, efficiency and effectiveness of the objections function within its end-to-end dispute process. Some of these measures and indicators should be reported externally, where appropriate, with consideration being given to:

- the level of disputation in the tax system including the source, cause and nature of objections;*
- all its service standards (completion and further information requests) included in the Tax Office's annual report;*
- outcomes; and*
- age profiles.*

Tax Office response

6.182 Agree in principle.

6.183 The Tax Office already reports against a broad range of indicators and measures including some of those suggested in the recommendation. In our ongoing work to improve reporting measures, we will give careful consideration to the Inspector-General's suggestions and we note the Inspector-General's acknowledgment (paragraphs 6.170 to 6.174 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

RECOMMENDATION 10

The Tax Office should adopt a more corporate emphasis and better analyse the trends and outcomes of objections and litigation as a source of improvement of its end-to-end dispute resolution process and feedback to both objection officers and primary decision makers. This analysis should include the identification of potential systemic issues in the end-to-end dispute resolution process and the effecting of improvements.

Tax Office response

6.184 Agree, noting the Inspector-General's acknowledgment (paragraphs 6.170 to 6.174 inclusive) that work being undertaken by the Tax Office is addressing the recommendation.

FEEDBACK MECHANISMS

Contact between internal review officers and primary decision makers about specific decisions

ARC Internal Review Report and Best Practice Guide

6.185 The ARC considered that it is important to foster a culture where overturning a decision does not necessarily mean that the original decision was 'wrong' or that it is

intended as a criticism of the standard of original decision making.⁷⁵ The ARC pointed to examples of where original decision makers' suspicion of internal review officers was overcome by internal review officers explaining to them why the appeal was conceded. The ARC believed that contact between internal review officers and original decision makers is important in fostering cultural acceptance of internal review decisions and facilitating the improvement of decision making. The ARC identified a range of reasons for contact between internal review officers and original decision makers before an internal review decision, including to discuss the facts, the reasons for decision and the application of the law. Contact could also be made to clarify an aspect of the decision or to discuss matters of procedure, such as the way the original decision maker included evidence.⁷⁶ The ARC also found that contact with the original decision maker after internal review was less frequent. Most often the reason for this contact was to explain the reasons for decision, to explain why the decision has been changed and to give feedback to the original decision maker.⁷⁷

6.186 The ARC *Internal Review Best Practice Guide* recommended that agencies should encourage internal review officers to contact the original decision makers in every case under review, whether to raise issues prior to internal review being completed, or to discuss the review officer's decision and the reasons for it.⁷⁸

6.187 The ARC noted as internal review officers are required to use the same policy guidelines as those used by original decision makers, the overturning of decisions was likely to represent differences in decision making such as taking into account new evidence, or the weighing of different factors, rather than a new and different interpretation of the law.⁷⁹

6.188 The ARC emphasised the importance of promoting contact, discussion and the exchange of ideas between internal review officers and original decision makers.⁸⁰ The methods for doing so may vary from agency to agency, but one suggestion was regular meetings between internal review officers and original decision makers, both at a formal and informal level. The ARC also recommended that both internal review officers and managers should place a priority on giving feedback to original decision makers.⁸¹

Review findings and conclusions

6.189 The Tax Office states that it promotes contact between objection officers and original decision makers, as evidenced by the existence of feedback loops from objection officers to other decision making areas.

6.190 It states that these processes are necessarily crafted differently in each business line in order to suit its organisational structure and general nature of its case work. Feedback most often goes back to the original decision maker but it may also include the relevant risk owner in the compliance area.

75 ARC, *Internal Review of Agency Decision Making*, paragraph 7.15.

76 ARC, *Internal Review of Agency Decision Making*, paragraphs 7.18-7.19.

77 ARC, *Internal Review of Agency Decision Making*, paragraph 7.21.

78 ARC, *Internal Review of Agency Decision Making*, Recommendation 32, p 71.

79 ARC, *Internal Review of Agency Decision Making*, paragraph 7.26.

80 ARC, *Internal Review of Agency Decision Making*, paragraph 7.29.

81 ARC, *Internal Review of Agency Decision Making*, Recommendation 34, p 71.

6.191 The Tax Office advises that liaison is also encouraged throughout its end-to-end disputes process through the various litigation networks between Legal Services and all business lines. For instance, the Strategic Internal Litigation Committee processes in litigation matters support feedback to all stakeholders in the decision making process by encouraging the active involvement of original decision making areas as well as objection officers. The Tax Office also points to other efforts to improve networks and build technical capability across all industry segments.

6.192 The Tax Office's objections checklist requires objection officers to provide feedback to the original decision maker in line with business line rules, where they are applicable.

6.193 The Inspector-General notes that there is significant variation in the nature and level of contact between original decision makers and objection officers in each of the business lines. For instance, the Tax Office's work processes currently contain very limited information on the type and level of such contact required, apart from stating that before sending a case to be quality assured an objection officer will need to have the final decision affirmed by the original decision maker. Where the original decision maker (generally this is an auditor) does not agree with the proposed decision, then the issue must be escalated. This in itself raises issues regarding the independence of objection officers, although the Tax Office acknowledges that the wording referring to affirming the decision needs revision as it reflects neither Tax Office policy nor actual business practices.

Influence of internal review on decision making process

ARC Internal Review Report and Best Practice Guide

6.194 The ARC observed that the prospect of internal review can have varying effects on original decision making. On the positive side, internal review can provide an incentive to make the right decision, taking a beneficial view of the facts if the case was close and making primary decision makers more thorough in their work.⁸² However, the ARC found that internal review can sometimes have a negative impact on decision making, with the availability of an appeal sometimes being used as an excuse for less than thorough work or failure to deal properly with a dissatisfied client.⁸³

6.195 The ARC noted that it was unrealistic to place too heavy a responsibility for improving original decision making on an internal review system in situations where poor decision making is due to systemic factors, such as lack of training for original decision makers, and complexity of policy and legislation making correct decisions more difficult.⁸⁴

6.196 The ARC *Internal Review Best Practice Guide* recommended that agencies should recognise the importance of training for primary decision makers. One area of potential need identified is training in the skills required for client contact and the explaining of decisions to clients. In agencies where the legislation and policy administered by primary decision makers is progressively becoming more complex, training strategies should attempt to recognise and address this.⁸⁵

82 ARC, *Internal Review of Agency Decision Making*, paragraphs 7.7-7.8.

83 ARC, *Internal Review of Agency Decision Making*, paragraph 7.9.

84 ARC, *Internal Review of Agency Decision Making*, paragraph 7.11.

85 ARC, *Internal Review of Agency Decision Making*, Recommendation 31, p 71.

Review findings and conclusions

6.197 Although the Inspector-General has not conducted a survey of Tax Office original decision makers and objection officers, it nevertheless believes that the risks identified by the ARC are equally relevant to the Tax Office. In particular, the possibility that the availability of an objection right may lead to less than thorough work during audit or a failure to try and resolve a dispute at an earlier stage has been specifically raised as a stakeholder concern.

THE EFFECT OF EXTERNAL REVIEW TRIBUNAL DECISIONS ON INTERNAL REVIEW

ARC Internal Review Report and Best Practice Guide

6.198 The ARC considered that the greater the levels of acceptance by an agency of the role of merits review, then the easier it is for the agency to benefit from its positive effects.⁸⁶

6.199 The ARC found that more than half of its surveyed population believed that the prospect of external review had no effect on the way they internally reviewed their agency's decisions.⁸⁷ Of those who did think there was an effect, the most commonly cited was that the decisions would be written on the basis that they might go to external review. Other effects included not pursuing a dispute which would be lost on appeal, looking at previously decided cases, providing further information, that pressure on internal review officers was relieved by knowledge of the availability of external review and taking a beneficial view of the facts when the case was close. The ARC mentioned that some additional effects of external review include the uncovering of problems in the decision making process or interpretation of policy and the encouragement of some cases toward external review as test cases.⁸⁸

6.200 The ARC *Internal Review Best Practice Guide* recommended that where an agency does not have mechanisms for feeding back the results of external review into its decision making process, then consideration should be given to introducing these.⁸⁹ The ARC found that for maximum effect, the existence of mechanisms for the distribution of information must be coupled with work practices that allow officers the time to read and digest information on a regular basis, and ideally provide the opportunity to discuss the information with other officers.⁹⁰

Review findings and conclusions

6.201 The Tax Office states that the effect of external review decisions on objections is managed partly through the litigation networks mentioned previously and such initiatives as the recent Decision Impact Statements. The Strategic Internal Litigation Committee and Early Resolution Report (ERR) processes are further mechanisms by which feedback and discussion are encouraged both for cases decided by the courts and those settled prior to hearing.

86 ARC, *Internal Review of Agency Decision Making*, paragraph 7.40.

87 ARC, *Internal Review of Agency Decision Making*, paragraph 7.49.

88 ARC, *Internal Review of Agency Decision Making*, paragraph 7.50.

89 ARC, *Internal Review of Agency Decision Making*, Recommendation 38, p 72.

90 ARC, *Internal Review of Agency Decision Making*, paragraph 7.54.

6.202 Following the Inspector-General's Review of Tax Office Management of Part IVC litigation, the Tax Office introduced Decision Impact Statements, which set out the Tax Office's position in relation to a tribunal or court decision and how the law will be administered as a consequence of the decision. Decision Impact Statements have positively influenced the Tax Office's processes for feeding back to original decision makers and the community the impact of a court or tribunal decision on the Tax Office view.

6.203 The Inspector-General observes that the Tax Office has also introduced ERRs, which seek to gather information on why a case that proceeded to litigation was subsequently settled without going to a hearing. The ERR is intended to capture whether any errors occurred during the assessment and objection stages, whether any systemic problems underlie the assessment and objection process, whether the Tax Office can learn anything from the outcome or whether the outcome was unavoidable. The ERR requires the litigation officer to select the main reason the case was settled, to advise how the litigation phase of the case could have been avoided, and to suggest the possible implications for the business lines audit or objection processes. The report lists the management of follow-up actions arising from the case, including the responsible areas, the contact officer and the target completion date. The ERR is submitted to the Strategic Litigation area within the Legal Services Branch, which forwards the final ERR to both the Law Practice Improvement Project team and the Business Line Coordinator. The project team collates and reviews all ERRs so as to identify any systemic problems in the pre-litigation process. The business line coordinator provides feedback to objection and active compliance officers on the outcomes and any learnings.

6.204 While both these mechanisms are important for feeding back the results of the decision making process, there is some uncertainty around how the findings from the Tax Office's ERR will translate into improvements, especially where shortcomings have been identified at the upstream processes. For instance, the Inspector-General has found that, to date, there has been little analysis or follow-up action of the information contained in these reports, in determining which issues require attention, and in successfully implementing any changes to the Tax Office's decision making process.

CHAPTER 7: IMPROVEMENTS TO THE OBJECTION AND RELATED REVIEW AND APPEAL FRAMEWORK

7.1 Most submissions agreed that the current legislative provisions operate satisfactorily as a basis for resolving disputes. They believe that it provides the basis for a taxpayer dissatisfied with an assessment to have the assessment administratively reviewed by the Tax Office and serve as the basis for the commencement of a process of review or appeal.

7.2 A majority of stakeholders submitted that structurally and procedurally the current system is fair and reasonable, providing for an internal reconsideration, external merits review and judicial review of primary assessments. Stakeholders suggest that it is difficult to see what additional remedial options could be added to the current system without replicating presently available reconsideration, review and complaints processes. In addition, stakeholders believe that the dispute resolution system should emphasise settlement through informal processes. By this they mean that it is appropriate that the process remains one which requires an increasing degree of effort (and therefore cost) by each of the parties as a matter proceeds through the objection and review/appeal process. However, many stakeholders believe there is scope for further improvement in the day-to-day handling and resolution of objections, especially in relation to delay and communication of decisions earlier in the dispute process.

7.3 A common theme in nearly all of the submissions received in the course of this review was the need for greater flexibility in seeking external review and the need for the dispute resolution process to be directed towards ensuring an early settlement or resolution of a dispute.

GREATER FLEXIBILITY IN SEEKING EXTERNAL REVIEW TO RESOLVE DISPUTES

7.4 A number of stakeholders believe that there may be merit in a legislative framework that enables taxpayers to bypass the objection process and proceed directly to external review where a taxpayer and the Tax Office have formed a conclusive view on the law. It is submitted that in such instances there may be little benefit in the objection stage, especially where senior Tax Office decision makers have been involved prior to the issue of the amended assessment and where taxpayers have already had the opportunity of receiving and responding to a position paper by the Tax Office. For example, this would be in instances where the Tax Office and taxpayer have fully considered the facts, evidence, issues and application of the law early in the dispute and there is a difference in position on the tax implications between the Tax Office and the taxpayer. Stakeholders believe that in these instances, once an amended assessment is issued, the outcome of the objection is effectively known as the Tax Office decision makers are involved prior to the issue of the amended assessment.

7.5 Stakeholders believe that in these instances there is limited value to taxpayers in the objection process. Some assert that if taxpayers had the option of immediately appealing to the AAT or Federal Court following an assessment, then this would avoid the delay which is forced upon taxpayers by the objection and disallowance process. They consider that from experience the exchange of position papers prior to assessment is, in most cases, more useful

to resolving disputes than the preparation of an objection after an assessment. However, it is submitted that the objection framework should preserve the option for taxpayers who seek to make further submissions to the Tax Office – for example, those taxpayers who have not had the advantage of a large amount of interaction with the Tax Office prior to the issue of the assessment.

Review findings and conclusions

7.6 The Tax Office's approach to ensuring consistent decision making, namely, tax officers needing to apply the Tax Office view as set out in a ruling, determination or interpretative decision, may be making the objection process, in some cases, redundant. It may also be contributing to perceptions of an absence of independence in the objection process as all that taxpayers see is the same application of the Tax Office view with which they disagree.

7.7 However, the objection stage is an important part of the dispute resolution process, even where the Tax Office and the taxpayer have formed a conclusive view on the law. Properly framed, a re-examination of facts, issues, evidence and law by an independent officer may provide scope for the resolution of the dispute without the need to proceed to litigation, for instance, through mediation or settlement negotiations. The Inspector-General believes that to date objections have been handled more as a process than as a means to engage with the taxpayer with the view of resolving the dispute. In addition, the Inspector-General considers that, where it is evident to an objections officer that the dispute cannot be resolved (that is, the officer is of the view that mediation or settlement are not appropriate in the circumstances), then there should be a fast-tracked mechanism to have the dispute proceed to litigation, which may be the most appropriate approach for the timely resolution of the dispute.

GREATER EMPHASIS ON EARLY RESOLUTION IN THE DISPUTE RESOLUTION PROCESS

Stakeholder concerns

7.8 Some stakeholders state that there is nothing in the legislative framework specifically directed towards ensuring an early settlement or resolution of a dispute. They assert that for a dispute resolution system to work effectively, the opportunity for informal and negotiated settlements before and after the lodgement of an objection should be encouraged. There is a view amongst practitioners that early resolution will be assisted by ensuring that:

- taxpayers are given sufficient information with the assessment to understand the basis upon which adjustments have been made;
- objection is subject to a genuine independent review; and
- within the constraints of excessive costs for taxpayers, the issues in dispute between the taxpayer and the Commissioner are identified as clearly as possible. This should be capable of being done administratively through better communication between the Commissioner and taxpayers or their representatives.

7.9 Stakeholders point to the widespread use of mediation in resolving commercial disputes. They submit that mediation may be similarly useful in resolving tax disputes, or at least in identifying and narrowing the contested issues, to save time and cost. They point to the fact that mediation is encouraged by the AAT and there have been many cases where tax disputes in the Tribunal have been resolved by mediation conducted by a registrar or a member of the Tribunal in a more informal setting. Practitioners also believe that greater emphasis on alternative dispute resolution processes in tax disputes provides both the Tax Office and the taxpayer with the opportunity to discuss non-legal issues that are unable to be raised in a formal litigation setting, but which may impede the effective communication of each party's respective positions.

7.10 Under the model litigant rules which applied from 1 March 2006, the Tax Office is obliged to endeavour avoiding, preventing and limiting the scope of legal proceedings wherever possible, including by the use of alternative dispute resolution processes.

7.11 Some practitioners are of the view that mediation, particularly where facts are in dispute, is an alternative approach to resolving disputes that is not used often in tax disputes, especially at the audit and objection stages. It is submitted that mediation or other alternative dispute resolution processes should take place at the earliest possible opportunity and that consideration should be given to the possibility of the Federal Court and the AAT ordering compulsory mediation of taxation matters if no reasonable and bona fide attempt has been made to settle a dispute.

7.12 In addition, practitioners submit that, were there to be a greater use of the alternative dispute resolution/mediation processes and where alternative dispute resolution processes/mediation are to be used, it is essential that the Tax Office representatives be vested with the requisite authority to settle or concede the matter.

Review findings and conclusions

7.13 The Inspector-General believes that taxpayers (and their advisers) and the Tax Office should be encouraged to take an interactive approach to resolving disputes. The objection stage provides an ideal point in the dispute resolution process to ensure that all avenues for alternative dispute resolution (mediation, settlement) have been explored and exhausted. There is significant scope for a shift in the administration of objections away from adversarial structures to arrangements that employ dialogue and mediation/arbitration.⁹¹

7.14 There may also be benefits to both the Tax Office and taxpayers in the implementation of a case conferencing process. Such a process – where the tax authority and the taxpayer meet to discuss controversial or disputed aspects of the taxpayers' affairs – has been implemented in New Zealand and is considered to have reduced the volume of litigation.

91 Review of Business Taxation, *A Tax System Redesigned*, July 1999, Recommendations 3.7 and 3.8.

APPENDIX 1: TERMS OF REFERENCE AND CONDUCT OF THE REVIEW

TERMS OF REFERENCE

A.1.1 On 18 January 2007 the Inspector-General announced the terms of reference for his review of the underlying causes and the management of objections to Tax Office decisions. The terms of reference for this review were as follows:

This review will focus on what causes objections to Tax Office decisions and the management of objections. The Inspector-General's staff will work with the Tax Office to gain a sound understanding of the range and categories of objections with a view to determining underlying causes.

The Inspector-General will seek input and submissions from the community to understand the taxpayers' experience and perspective in relation to lodging objections.

The timeliness and quality of Tax Office approaches upstream of objections will be explored including audit, communication, and technical decision making insofar as they may be contributing to potentially unnecessary disputes and litigation.

The review will also examine objection resolution procedures and the administrative framework, including the laws that govern these areas.

This review will examine the extent and reasons for the Tax Office conceding cases after the objection process, focusing on the quality of decision making and processes employed in determining taxpayers' objections.

In the context of potentially unnecessary litigation, it would determine whether disputes (and their associated costs) could have been prevented and whether the broad system and sequence of amended assessment, objection, and dispute resolution could be improved. The review will also examine whether the current system minimises any disproportionate effects on taxpayers, in particular corporations and encourages alternative dispute resolution processes.

The review focus is not only on the Tax Office conduct and approaches to dispute resolution but also on the administrative systems established by the tax laws for resolving disputes between taxpayers and the Tax Office.

CONDUCT OF REVIEW

A.1.2 The Inspector-General advertised the review on his website, www.igt.gov.au, from 18 January 2007. The review was also reported in specialist accounting and legal publications.

A.1.3 Written submissions to the review were taken from members of the public and a number of organisations.

A.1.4 Members of the review team also met with taxpayers, members of the accounting and legal professions, and representatives of various professional bodies representing lawyers and accountants.

A.1.5 The Commissioner of Taxation was asked to provide information and documents relevant to the review. Visits were made to a number of branches of the Tax Office to examine relevant files, interview relevant Tax Office staff and conduct discussions.

A.1.6 The review also took into account a number of other inquiries relevant to this review, including the Joint Committee of Public Accounts *An Assessment of Tax* report, the Review of Business Taxation *A Tax System Redesigned* report and the Administrative Review Council *Internal Review of Agency Decision Making* report.

APPENDIX 2: A WHOLE OF TAX OFFICE APPROACH TO DISPUTE RESOLUTION

A.2.1 This appendix contains a diagrammatic representation of the Tax Office's current 'whole of Tax Office approach' to improving dispute resolution.

A WHOLE OF TAX OFFICE APPROACH TO DISPUTE RESOLUTION

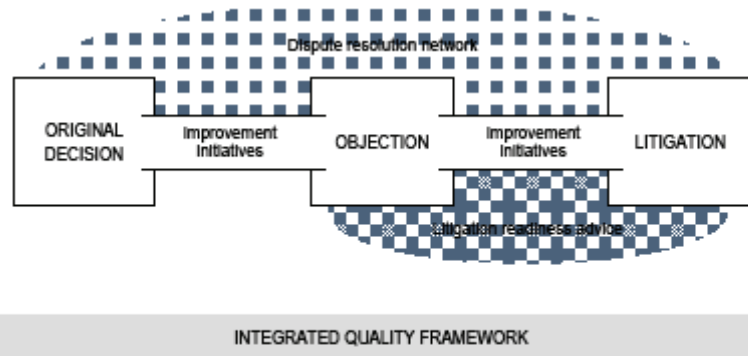
DISPUTE RESOLUTION PRINCIPLES

- Identification and resolution of disputes as early as possible
- Differentiated approaches to objection processing to improve responsiveness
- Deployment of alternative approaches to dispute resolution, as appropriate, and
- Where litigation is inevitable, all relevant information and evidence has been captured

1. DESIRED – MOVING DISPUTE RESOLUTION CLOSER TO POINT OF ORIGINAL DECISION



2. CURRENT – TRANSITION TO DESIRED STATE



IMPROVEMENT INITIATIVES INCLUDE

- Improving communication with taxpayers and agents
- Embedding collaborative work processes and practices
- Expanding differentiated approaches
- Enhancing data capture, analysis and feedback mechanisms
- Improving quality management
- Expanding diagnostic tools to measure the health of the dispute system

Objections Review Project

APPENDIX 3: TAX OFFICE RESPONSE TO THE REVIEW

A.3.1 The Tax Office's full response to each recommendation, contained in Attachment 1 to this letter, has been incorporated into both the overview chapter and body of the report after each of the Inspector-General's recommendations.



Mr. Ali Noroozi,
Inspector-General of Taxation
Level 19, 50 Bridge Street
Sydney NSW 2001

Dear Ali,

Review into the Underlying Causes and the Management of Objections to Tax Office Decisions

Thank you for your emails of 13 March 2009 and 1 April 2009 and the opportunities for discussion on this review.

We welcome the majority of the findings of the report and your positive acknowledgement of the direction and the progress made by the Tax Office in re-shaping our end-to-end dispute resolution process.

When the approximately 15,000 objections received during 2007-08 are viewed in context of the more than 3 million active compliance activities carried out in the same period, it is clear that there is currently a low level of disputation. Having said that, we also acknowledged that there are areas where we can improve.

It was pleasing that the Inspector-General's review recognised the degree of independence in our current objection process and that in complex cases there are benefits in the original decision maker or technical expert providing relevant input to the objection officer.

The Tax Office places a very high value on consistency in our decision making and, for that reason, objection review officers are not able to re-examine or re-determine a settled ATO view. However, in cases where the review officer considers that there is a genuine and well supported challenge to the correctness of a settled Tax Office view, these issues are promptly escalated to either the Tax Counsel Network or the Centres of Expertise for timely reconsideration.

The review concludes that an ideal dispute resolution system contains many facets already in place or under development within the Tax Office, such as the work underway with the integrated quality framework and with early dispute resolution.

We also appreciated the opportunity to discuss your concepts of 'genuine' and 'non-genuine' objections and we acknowledge the reasoning behind your concerns. However, we must administer the tax system as currently legislated and treat taxpayers' review and objection rights as they currently exist within that legislative framework which requires taxpayers to pursue out-of-time amendment requests by way of objections, even though there is no real dispute.

We could not comment on the first recommendation as it is a matter for Government to consider, but we have agreed to eight of the eleven recommendations directed at the Tax Office and have agreed in part or in principle to two other recommendations. We have provided a detailed response to each of the recommendations in the attachment to this letter.

Performance standards

We have noted in discussions and in our response to recommendation four that we are not in a position to commit to the specific performance standards proposed in this recommendation. We agree however to review our performance standards on implementation of our new case management system and quality framework. In addition, in implementing recommendations nine and ten we aim to identify and measure our performance against the most appropriate measures and standards that reflect reasonable community expectations in relation to the resolution of disputes, particularly objections.

We agree that a two year time frame is a reasonable period to expect progress on this matter and we welcome the Inspector-General's understanding of the variables and dependencies in this era of change and development.

General interest charge (GIC)

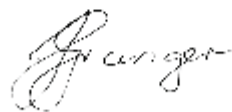
The Tax Office disagrees with the observations in relation to the application of the GIC. We believe that current policy appropriately addresses any instances of Tax Office delay in resolving objections and request that you alter the Tax Office response to your recommendation 5 in your final draft report to include this statement. Please see our full response to recommendation 5 in Attachment 1.

General comment on the review

We appreciate the degree of collaboration and open discussion in conducting this review and we also welcome your understanding of both the challenges and opportunities facing us during this time of change in our workload profiles, our case management systems and our quality framework.

Thank you again for the opportunity to respond to this final draft report.

Yours sincerely,



Jennie Granger
Second Commissioner Compliance
6 April 2009

APPENDIX 4: ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ARC	Administrative Review Council
ATP	Aggressive Tax Planning
Commissioner	Commissioner of Taxation
ELS	Electronic Lodgement Service
ERR	Early Resolution Report
EXC	Excise
FBTAA	<i>Fringe Benefits Tax Assessment Act 1986</i>
GIC	General Interest Charge
GST	Goods and Services Tax
ICAA	Institute of Chartered Accountants in Australia
IGT Act	<i>Inspector-General of Taxation Act 2003</i>
Inspector-General	Inspector-General of Taxation
IQF	Integrated Quality Framework
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
LBI	Large Business and International
MEI	Micro Enterprises and Individuals
ORCLA	Online Resource Centre for Law Administration
PoWA	Provision of Written Advice
QA	Quality Assurance
Ralph Review	Review of Business Taxation
RoSA	Review of Aspects of Self Assessment
SIC	Shortfall Interest Charge
SME	Small to Medium Enterprises

SPR	Superannuation
STS	Simplified Tax System
TAA	<i>Taxation Administration Act 1953</i>
TAP	Tax Agents Portal
Tax Office	Australian Taxation Office
TIA	Taxation Institute of Australia
TQR	Technical Quality Review