



Australian Government
Inspector-General of Taxation

Review into the Australian Taxation Office's administration of class rulings

Report to the Assistant Treasurer

Inspector-General of Taxation

September 2011

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28 September 2011

The Hon Bill Shorten MP
Assistant Treasurer and Minister for Financial Services & Superannuation
Parliament House
Canberra ACT 2600

Dear Minister

Review into the Australian Taxation Office's administration of class rulings

I am pleased to present you with my report of the review into the Australian Taxation Office's (ATO's) administration of class rulings.

Overall, my report observes that the class ruling system is a useful element of the tax system, while also acknowledging that there are areas for improvement. In general, class rulings effectively mitigate operational costs and reduce risk by providing greater administrative certainty to groups of taxpayers.

I have made eight recommendations aimed at improving the administration of the class rulings' processes and related areas, such as case management, reporting, record keeping, external performance standards, communication, transparency, ATO staff awareness of existing procedures and policies and the ATO's Siebel system search functionality.

The ATO has broadly agreed with all my recommendations and has worked internally and with my office to settle on a significant program of work which, when implemented should deliver improvements to the administration of the class rulings system. This reflects the maturing relationship between the two agencies, facilitating agreement on practical and tangible action aimed at improving the tax administration for the benefit for all taxpayers.

I offer my thanks for the support and contribution of taxpayers, professional bodies, industry associations, taxation advisers 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 the relevant ATO officers for their professional cooperation and assistance in this review.

Yours faithfully

Ali Noroozi
Inspector-General of Taxation

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Executive summary

Class rulings are a form of public binding ruling. They are issued in response to an entity's request for advice about the application of the tax laws to several taxpayers in relation to a defined scheme (other than an investment or financial product for which a product ruling can be issued).

Following a number of concerns raised by industry, tax practitioners and the public with respect to class rulings processes, the IGT announced terms of reference for this review on 25 March 2010.

Overall, the IGT observed through this review, that the class ruling system is a useful element of the tax system, while also acknowledging that there are areas for improvement. In general, class rulings effectively mitigate operational costs and reduce risk by providing greater administrative certainty to relevant taxpayers.

There was also strong stakeholder support for the priority class ruling system approach to be adopted more widely. Broadly, this priority process typically draws in more experienced ATO personnel at an earlier point and these personnel have greater authority to make decisions.

It should be noted that representations to the IGT to undertake this review were made at a time when most class rulings arose from capital markets merger and acquisition transactions. The number of these transactions has reduced dramatically in that market.

Notwithstanding the change in market conditions over the period of this review, the IGT observed that class rulings issued under the priority class rulings process were generally of higher quality and issued on a more timely basis than those issued under the routine processes. However, the number of cases falling within the priority rulings process is relatively small.

In addition to the issues above, the IGT also observed that there is room for improvement in the ATO's administration of class rulings in a number of areas, such as case management, reporting, record keeping, external performance standards, communication, transparency, ATO staff awareness of existing procedures and policies and the Siebel system search functionality.

The IGT made eight recommendations aimed at improving the ATO's class rulings administration and related areas.

The ATO has agreed with all recommendations, commenting that the report provides important insights on administration of the system and has committed to tangible practical action in response to that agreement. This action includes:

- Streamlining and differentiating class ruling processes to improve timeliness;
- Consulting with the community to explore appropriate benchmarks on quality and timely delivery;
- Publishing performance standards to improve transparency; and

- Providing ATO officer support and refresher training to improve service delivery and the user experience.

Once implemented the actions taken as a result of this review should improve the administration of the class rulings system for the benefit of all taxpayers.

CHAPTER 1—BACKGROUND

CONDUCT OF REVIEW

1.1 This is a report on the Inspector-General of Taxation's (IGT) review into the Australian Taxation Office's (ATO's) administration of class rulings. The report is produced pursuant to section 10 of the *Inspector-General of Taxation Act 2003* (the *IGT Act 2003*).

1.2 The IGT announced terms of reference for this review on 25 March 2010 following a number of concerns raised by industry, tax practitioners and the public. Appendix 1 reproduces a copy of the terms of reference and submission guidelines for this review.

1.3 The IGT received a number of submissions from taxpayers and their representatives. The IGT review team also met with interested taxpayers and their representatives to understand their experiences and obtain perspectives on the class rulings process.

1.4 The IGT review team visited a number of ATO sites to interview staff from different ATO business lines, who were working with class rulings, to examine the end-to-end class rulings process and to obtain an understanding of the ATO's internal management of these matters.

1.5 In particular, the IGT team looked at information, systems and processes relating to the ATO's administration and publication of class rulings over a five year period between 2006–07 and 2010–11. During this period, the ATO had finalised 1143 class rulings.

1.6 The IGT review team summarised the issues that emerged and worked progressively with ATO senior management to distil the scope for improvement and to agree on specific actions to realise these improvements.

1.7 In accordance with section 25 of the IGT Act 2003, the Commissioner of Taxation (the Commissioner) was provided with an opportunity to give submissions on any implied or actual criticisms contained in this report.

WHAT IS A CLASS RULING?

1.8 Class rulings are a type of public binding ruling published by the Commissioner under Division 358 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) and are:

issued in response to a request from an entity seeking advice about the application of relevant provisions of tax law to several taxpayers in relation to a defined scheme (other than an investment or financial product for which a product ruling can be issued).¹

1.9 For example, such requests for class rulings may be made by:

- an employer seeking advice about the income tax consequences for its employees under a share acquisition plan;
- a company seeking advice about the income tax consequences for its shareholders as a result of a demerger or a proposed distribution by the company; or
- a government agency seeking advice about a proposed industry restructure which has tax consequences for participants in the industry.²

Class rulings history

1.10 Historically, many class rulings have dealt with the tax consequences of transactions and events occurring in the capital markets—for example, the tax consequences of corporate mergers and acquisitions activity, or the tax treatment of company share buy backs in the hands of company shareholders.

1.11 In more recent times, however, the ATO has encouraged certain bodies to apply for class rulings, such as associations with large numbers of their membership facing materially similar tax issues—for example, football umpire associations and the like. This approach avoids the need for the ATO to provide substantially similar private ruling requests and allows the issues to be more efficiently addressed via the issue of a single class ruling. It should be noted that such an approach was advocated by the IGT in the *Review into the ATO's administration of private binding rulings*.³

1.12 The IGT did not review the class ruling processes for this latter type of application because the number of those applications steadily increased after the completion of IGT's fieldwork. However, it is pleasing to see that the ATO has acted on the IGT's advice to improve its administration in this area.

1 Australian Taxation Office, Law Administration Practice Statement, *PSLA 2008/3*, paragraph 50, available at <www.ato.gov.au>.

2 *ibid.*, paragraph 51.

3 May 2010, available at <www.igt.gov.au>.

General benefits and risks

1.13 A class ruling will bind the Commissioner where the ruling applies to the taxpayer and they have acted in accordance with the ruling. That is, broadly speaking, if the ATO's view is such that a class ruling were found to be incorrect, the taxpayer would be protected from having to pay any additional primary tax (the tax shortfall), as well as any interest charges or shortfall penalties. This is essentially the same level of protection that a taxpayer would have if they were the recipient of a private ruling on the matter.

1.14 As a class ruling provides binding advice on the application of the tax laws to several taxpayers in relation to a defined scheme (or arrangement), it typically avoids the need for the individual participants to each seek private rulings. This reduces the compliance costs for the relevant taxpayers overall and reduces the ATO's operational costs in considering multiple private rulings applications.

1.15 An important feature of a rulings regime is that the arrangement outlined in the application is carried out in that manner, such that it is consistent with ATO's view of the law as expressed at that time. A risk inherent in the system is that a given ruling does not meet this requirement.

1.16 There are two general kinds of risks that may arise in this context. The first is factual in that a given taxpayer may mistakenly assume a class ruling accurately reflects the facts of their situation and unwittingly seeks to apply that class ruling incorrectly. The other is that the taxpayer does not agree with the ATO's views expressed in the class ruling in relation to their particular situation.

1.17 There are certain remedies that may, depending on circumstance, be available to address these situations for taxpayers. The situation is slightly different in a class rulings context, as compared to a private ruling, because class rulings are typically obtained by a sponsor applicant on behalf of a group or class of taxpayers.

1.18 In circumstances where the arrangement may differ from that described in the ruling, the costs in remedying such situations, for both taxpayers and the ATO, can be significant.

Important difference between class rulings and product rulings

1.19 Where the subject of the proposed ruling is an investment or financial product, a product ruling can be issued instead of a class ruling. A product ruling is also a type of public binding ruling under Division 358 of Schedule 1 to the TAA 1953, and therefore offers taxpayers the same level of protection as a class ruling.

1.20 The issue that arises is more a case of understanding the difference between a product ruling and a class ruling. There is considerable scope for overlap between the two ruling types. As the processes underlying the ruling applications may be quite different, there is potential for administrative inefficiency. Some stakeholders expressed a view that there should be clearer principled criteria and reasoning for differences in ATO processes. The IGT gives in principle support for such an approach, rather than making specific recommendation, as the product ruling regime was not within the terms of this review.

Important differences between class rulings and private rulings

1.21 One important difference between private rulings and class rulings is that, unlike private rulings, class rulings are typically applied for by sponsor applicants and not the taxpayers to whom the rulings will apply. This may mean that the degree of influence over the content of a class ruling application is limited, in practice, to the degree of influence a taxpayer has over the sponsor applicant.

1.22 It is important to appreciate that a class ruling provides a level of operational efficiency and risk reduction to the parties involved. There is a tension in this process, in that there are various interests to be considered for an effective and appropriate outcome. Sponsor applicants may be seeking to effect a particular transaction for various corporate entities and related shareholders, or in other situations, to obtain a broad interpretative answer for association members. The overarching stakeholder benefit is that the ATO provides administrative certainty for relevant taxpayers. The ATO in doing so needs to ensure that the interests of the particular class of taxpayer are appropriately considered as amongst other interests in this regard.

1.23 The operational benefits and risk reduction is considerable for the ATO which, by extension, may directly benefit taxpayers too. The ruling process seeks to ensure there is clarity up-front in relation to sponsored arrangements. This provides for smoother end-to-end processing for taxpayers or their agents and avoids costly after-the-event corrections and disputes that might otherwise arise with the ATO.

1.24 The specific risks that may arise for taxpayers in relation to class rulings have been noted above. Taxpayers may be subjected to an ATO view which they may have had no direct opportunity to influence. Under the current system there is an indirect means by which affected taxpayers may object to views expressed in class rulings. It has been suggested that this can be cumbersome requiring the taxpayer to either apply the class ruling in self-assessing their taxation liabilities and object to their assessment, or, obtain a private ruling and subsequently object against it.

1.25 In relation to the other situation, where a taxpayer applies a class ruling mistakenly to their own situation, submissions suggested that this risk may ultimately be best addressed by taxpayers ensuring they obtained independent advice. The underlying theme from submissions suggests that the issue may be one of taxpayer awareness and how that might best be achieved through ATO support or independent advice.

1.26 The underlying issues raised in this section are considered further at Chapter 2 in the sections headed Communicating expectations and Improving transparency.

THE LIFE CYCLE OF A CLASS RULING

1.27 In making a class ruling application, an applicant must provide details of the scheme and the class of entities on behalf of whom the class ruling is sought, as well as the questions on which the ATO is requested to rule. If the information provided by an applicant requires clarification, the ATO will typically request information from the applicant and/or the taxpayers on one or more occasions.

1.28 Generally, it is the ATO's Interpretative Assistance (IA) areas of the relevant business lines that will manage applications through the class rulings process.

1.29 If the ruling is in relation to an ATO precedential issue (that is, an issue for which no ATO view has previously been published), the class ruling must be referred within the ATO to a Centre of Expertise (COE) for authoring and approval. However, where the class ruling does not canvas a precedential issue, it needs only to be referred to a COE for approval.⁴

1.30 Before the ATO issues a class ruling, a copy of the draft is sent to the applicant to obtain a signed statement that the description of the scheme as contained in the document is accurate and covers all relevant features, all parties named in the proposed class ruling have expressly consented to being named and the negotiated date for publication is acceptable. The draft is provided in confidence and cannot be relied upon by the applicant at this stage.

1.31 Following provision of a draft ruling to the applicant for comment and final approval by the overseeing COE officer(s) being given, the class ruling is allocated a designated number, with a 'CR' prefix, issued to the applicant in its final form and published on the ATO website.

1.32 As a class ruling is a type of public ruling under the TAA 1953, the ruling must be published and notice of it included in the *Commonwealth Gazette*. Often class rulings will only apply for a set period. As such, the Gazette notice may also give notice of the future date on which the ruling will be withdrawn. It is only once the class ruling is published by the ATO and the notice appears in the Gazette that the class ruling may be relied upon.⁵

ATO MANAGEMENT OF CLASS RULINGS

1.33 The ATO's Chief Tax Counsel is accountable for the overall operation of the public rulings system which includes class rulings.

1.34 The day-to-day management of a class ruling application rests with the relevant ATO business line, determined either by reference to the subject matter of the application or the market segment to which the taxpayer applicant belongs. Each business line has in place its own case management processes.

1.35 Similar to processes in the public rulings system, input and oversight is also provided on each class ruling by at least one officer from the relevant COE.

1.36 Class rulings have historically been managed through the ATO's Technical Decision-Making System (TDMS) which was purpose-built and tailored to the needs of ATO interpretative assistance work. The TDMS maintained a 'case report' which identified such matters as the questions and issues raised in the class ruling application as well as the ATO view(s) supporting the ruling.

4 id., Law Administration Practice Statement, *PS LA 2004/4*, paragraph 3.

5 id., "What is a class ruling?", available at <www.ato.gov.au>.

1.37 As part of the ATO's Change Program, the TDMS was replaced with an ATO-wide case and work management system, Siebel, in August 2009. The Siebel system is intended to manage the broad spectrum of the ATO's work. It is not specifically tailored for interpretative assistance work.

PRIORITY CLASS RULINGS

1.38 A small proportion of class rulings are produced under the priority rulings process. This process is detailed in the ATO's Law Administration Practice Statement, *PSLA 2009/2*. Its stated intention is to assist corporate boards to manage the taxation risks associated with significant transactions.

1.39 The priority rulings process is characterised by:

- a centralised point of reference in the ATO who is responsible for marshalling resources and taking remedial action to ensure that rulings are not delayed,
- an alignment of priorities between the ATO and the applicant,
- early engagement of all required ATO expertise to avoid sequential processing, and
- the applicant and the ATO working together to clarify the arrangement to be ruled on and the issues to be addressed in the ruling.⁶

1.40 Generally, the priority rulings process requires that:

- the application relates to a transaction that is time sensitive, prospective, of major commercial significance and requiring consideration at corporate board level;
- the tax outcome is a critical element of the transaction and complex law and/or facts need to be analysed;
- the applicant notify the ATO as soon as practicable after the transaction is first seriously contemplated and provide a full brief containing all relevant information, issues, legal arguments and timeframes;
- the applicant nominate a representative who will be responsible for all interactions with the ATO and timely responses to information requests; and
- the applicant arrange and conduct a pre-lodgement meeting with the ATO, including the provision of an overview of the proposed transaction and any high level tax analysis.⁷

1.41 A class ruling produced under this priority process is characterised by the early engagement of many different areas in the ATO such as the Tax Counsel

⁶ id., Law Administration Practice Statement, *PS LA 2009/2*, paragraph 4, available at <www.ato.gov.au>.

⁷ ibid., paragraph 5.

Network (TCN) and the COEs, which would ordinarily only be engaged after a process of escalation had been followed.

1.42 The priority process is run by a unit in the Large Business and International (LBI) business line, which is the central point of contact for the applicant's representative and ATO officers. This LBI unit also determines what matters are accepted into the priority ruling process, has authority to marshal all necessary resources across the ATO's business lines, and has authority to take remedial action if delays occur or are expected to occur.

CLASS RULING STATISTICS

Finalised class rulings

1.43 Over a period of five years from 2006-07 to 2010-11, the ATO finalised 1143 class rulings, including priority class rulings, as outlined below.⁸

Table 1.1: Numbers of class rulings finalised from 2006-07 to 2010-11

ATO business line	2006-07	2007-08	2008-09	2009-10	2010-11
Aggressive Tax Planning	0	0	1	0	2
Indirect Taxes	0	0	0	0	1
Law & Practice	0	0	0	2	2
Large Business & International	90	80	52	41	71
Personal Tax/Micro Enterprises and Individuals	59	77	96	36	44
Small Business/Small & Medium Enterprises	69	83	63	34	50
Superannuation	54	39	41	25	31
TOTAL	272	279	253	138	201

Source: Australian Taxation Office

1.44 The number of class rulings finalised declined in the 2009-10 year with approximately half of what was issued in each of the preceding three years. In the 2010-11 year, this number increased but not to the same amount as in each of the three years preceding the 2009-10 year.

Class Ruling service standard

1.45 The timely delivery of ATO services is critical to maintaining public confidence in the administration of the tax system. In the context of complex commercial transactions, taxpayers rely on ATO rulings to provide certainty of the ATO's administrative treatment of the tax issues that arise in these transactions. Delay on the part of the ATO may result in parties having to hold a transaction in abeyance pending the ATO advice. This will likely add to the compliance costs borne by the taxpayer and missed commercial opportunities.

⁸ The ATO uses the term 'finalised class rulings' to incorporate 'withdrawn', 'declined' and 'published' rulings.

1.46 Whilst there is currently no publicly reported service standard for the completion of class rulings, the ATO has imposed its own nominal internal performance standards. These nominal standards are discussed further below.

1.47 The IGT review team examined 40 class rulings completed for the period from September 2007 to December 2010 and found that, with the exception of the LBI and Superannuation business lines, this service standard was generally not being met.

RELEVANT ATO INTERNAL PROJECTS

1.48 During the review, the ATO advised the IGT that a number of ATO projects are set to have some impact on the ATO's class ruling administration.

1.49 First, the ATO advised the IGT that it is conducting a service standards review in order to develop and deliver a service standards strategy that is aimed at both being responsive to organisational and Government strategic directions and which also will take into account contemporary community expectations. This review will impact on the issue of externally reported service standards for class rulings.

1.50 Second, the ATO advised that it was well advanced on a project aiming to build a more sustainable interpretative assistance capability, with a focus on streamlining the Siebel system's processes and procedures. This project has also overseen the provision of the IA areas' needs with respect to an improved search engine function within this system.

1.51 Finally, the ATO advises that a project to improve the tax technical decision making function (the Transforming Tax Technical Decision Making Project or TTTDM project) is aiming to establish and extend early engagement mechanisms (such as those used in the priority rulings process). The current function involves the requirement to escalate class rulings to a COE or TCN officer whether or not there are precedential issues involved, unless it is a priority ruling (in which case these officers are engaged from the beginning of the process). The TTTDM project was undertaken as a result of the recommendations from an ATO internal review called the Law Improvement Project (LIP) review. The LIP focussed on identifying the practical steps that should be implemented to improve the corporate business processes for delivering interpretive advice involving COE and TCN. Since 2005, the IGT has raised concerns with the ATO's technical decision-making function in a number of IGT reviews, most recently in the IGT's review into the ATO's large business risk review and audit policies, procedures and practices.⁹ The IGT is pleased to see that the ATO has heeded those concerns.

⁹ Report into the Australian Taxation Office's large business risk review and audit policies, procedures and practices, September 2011, available at <www.igt.gov.au>.

INFORMATION GATHERING PROCESS

1.52 In submissions, stakeholders took issue with the information gathering process for class rulings and the related delays that were experienced. The nature of the concern was directed at both the lack of clarity around the process itself and the volume of information that was requested.

1.53 The IGT observes that such stakeholder concerns are a recurrent theme in various IGT reviews. In this regard, please refer to Chapter 7 of the IGT's report into the ATO's large business risk review and audit policies, procedures and practices for a more immediate discussion on information gathering. While the issues are broader and relate to audit, review, potential or actual dispute situations, a number of these issues also arise out of requests for ATO rulings or advice.

CHAPTER 2—IGT OBSERVATIONS

2.1 The IGT observed, through this review, that the class ruling system is generally considered to be a useful element of the tax system, while also acknowledging that there are areas for improvement. In general, class rulings effectively mitigate operational costs and reduce risk by providing greater administrative certainty to relevant taxpayers. There was also strong stakeholder support for the priority class ruling system approach to be adopted more broadly.

2.2 It is important to appreciate that the representations to the IGT to undertake this review were made at a time when most class rulings arose from capital markets merger and acquisition transactions. The number of these transactions has reduced dramatically in that market. If demand for class rulings in relation to these types of transactions increases dramatically again in future, the ATO's systems and processes may need to be tested at that time, particularly in relation to information gathering.

2.3 Notwithstanding the change in market conditions over the period of this review, the IGT observed that class rulings issued under the priority class rulings process were generally of higher quality and issued on a more timely basis than those issued under the routine processes. It appears that the priority rulings process contributes positively to ensuring that advice is delivered effectively and efficiently, documentation is maintained by ATO staff and communication between the ATO and external stakeholders is appropriate.

2.4 The priority rulings process typically draws in more experienced technical ATO personnel at earlier points in the process. This personnel also have greater authority to make decisions, thereby contributing to the effectiveness of the process. However, the number of cases falling within the priority rulings process is relatively small. The IGT notes, that the ATO's Transforming Tax Technical Decision Making project (TTTDM project) is considering using the principles of the priority rulings process model, such as early engagement, more broadly.

2.5 Stakeholders have raised difficulties with the existing ATO technical decision making process in a number of IGT reviews and these have also been noted in our 2010 annual report. The IGT has expressed in-principle support for the ATO's TTTDM project. Accordingly, the IGT has now deferred any review action in this area pending the outcome of the project's implementation.

2.6 In addition to the comments above, the IGT also observed that there is room for improvement in the ATO's administration of class rulings. Although the focus of these improvements is on those matters falling outside of the priority class ruling process, there are aspects of these improvements that relate to the priority class ruling processes as well.

2.7 For the purpose of addressing the areas for improvement to the class rulings system identified by the IGT and to provide certain direction on their implementation, the IGT has made 8 recommendations that are set out later in this chapter.

2.8 The ATO has worked with the IGT to settle on a significant program of work aimed at improving its class rulings administration and related areas and these are noted in the recommendations and the ATO's response to those recommendations.

2.9 The overall aim of this work is for the ATO to make improvements in the areas that the IGT has identified for improvement, such as class rulings processes, case management, reporting, record keeping, external performance standards, communication, transparency, ATO staff awareness of procedures and policies and the Siebel system's search functionality.

IMPROVING CLASS RULINGS PROCESSES

Extending the principles of the priority class ruling process

2.10 As stated above, the IGT observed that the priority class ruling process is generally a higher quality process than the routine class ruling processes, albeit that the number of applications falling under this priority process is relatively small.

2.11 As a management philosophy, the ATO has advised that it is moving to adopt the main principles of the priority class ruling process, such as early engagement, to all class ruling applications and other interpretative situations on a risk based approach.

2.12 The ATO's STTDM project is a large undertaking. It is considering the use of these principles developed under the priority class ruling system more broadly for this new interpretative advice model.

Streamlining ATO class ruling management authorisation

2.13 Generally, the ATO's technical issues escalation process only escalates issues to a Centre of Expertise (COE) where the issue requires an ATO precedential view. However, authorisation processes for class rulings require COE sign-off, regardless of whether or not the ruling involves a precedential issue. The requirement to involve COEs is currently driven by the nature of class rulings as a subset of public rulings and is an automatic risk-rating process. However, the IGT's fieldwork revealed that no more than a third of the class rulings reviewed involved precedential issues – that is, two-thirds of class rulings rely on existing precedential views.

2.14 The IGT also observed that the broad nature of the information that may be required from an ATO perspective to enable effective risk assessment for class rulings did not always appear to be effectively communicated or captured as part of the initial class ruling application process. Sometimes the difficulties with information gathering and the assessment process for stakeholders continued all the way through the process.

2.15 The ATO's Superannuation business line has introduced a streamlined process for a straightforward class ruling (for example, class rulings in relation to early retirement schemes) which involves these rulings being processed by the business line only. It is also of note that product rulings – which are also a form of public ruling – only require COE involvement if the case is precedential.

2.16 The ATO advised the IGT that it is currently reviewing the policies and processes around the escalation of issues to COEs and TCN (as part of the TTTDM project) and is actively looking to move towards risk-based escalation which would enable better differentiation for the management and sign-off of class rulings.

Parallel processing

2.17 In some cases, the IGT also observed sequential rather than contemporaneous processing of issues by different COEs in cases involving multiple issues. Over half of the cases reviewed by the IGT involved a minimum of two COEs, as well as one or more business lines. The ATO acknowledged that this approach has been an issue in the past and has contributed to delays.

2.18 The ATO advised that its early engagement model is assisting to achieve parallel processing where appropriate, since a key principle of the model is to identify all likely areas impacted by a ruling request, to engage collectively to identify the likely issues and develop an approach. This model has been used in the priority rulings process and is being applied in a broader interpretative context on a risk based approach. The IGT observed that the approach has been effective in the limited number of cases examined. The ATO advises, however, that in some situations, sequential processing is unavoidable (for example, where the resolution of an issue is conditional on resolution of another issue), in which case early engagement should help to identify the need for sequential processing earlier and keep the taxpayer informed of the approach and likely timeframes.

Productivity benchmarking for class ruling outputs

2.19 In a number of cases reviewed by the IGT, large teams of ATO personnel were involved on what appeared to be very straightforward matters. The IGT believes that the ATO should consider developing productivity benchmarking for class rulings outputs. The allocation of ATO staff engaged in the class ruling decision-making process should be such that it enhances the timely delivery of quality class ruling outputs. To support this outcome there should be appropriate reporting and assurance mechanisms to monitor staff engagement and accountability in optimising performance against benchmarks.

2.20 Similarly, situations will also arise where it may be necessary to have a larger number of ATO officers involved in the development of class rulings where the technical issues or facts are complex.

2.21 While there can be a range of views on what comprises a straightforward or complex matter, the ATO acknowledged that there is scope for improvement in relation to having the right people involved at the right time. The ATO also agreed that there is scope to improve the efficiency of class rulings processes and the external user experience and, to this end, will differentiate and streamline its class rulings processes.

2.22 The IGT recognises that there may need to be some flexibility in the approach taken to design productivity benchmarking in this context. The most effective outcome is expected to be developed through a process of consultation with stakeholders.

RECOMMENDATION 1

Improve class rulings processes, by the ATO:

- 1.1. extending the main principles of the priority ruling process (such as early engagement) to all class ruling applications on an appropriate risk basis;*
- 1.2. ensuring that the right people are involved in cases at the right times and that their roles and responsibilities are clearly defined with respect to the class ruling application;*
- 1.3. in relation to the different ATO staff and areas involved in the class ruling process, requiring those different staff and areas to collectively and contemporaneously identify issues and potential approaches at the application stage and adopt differentiated processes based on up-front risk assessments, such as whether the risks warrant the involvement of precedential decision makers (early engagement and triage);*
- 1.4. consulting with relevant stakeholders to develop appropriate benchmarks regarding quality and timely delivery of key milestone outputs against which to test class ruling performance and developing appropriate reporting and assurance mechanisms to monitor staff and maintain accountability in order to optimise performance against these benchmarks; and*
- 1.5. implementing streamlined processes for straightforward class rulings.*

ATO response

Agreed in part; agree in principle with recommendation 1.4 to develop productivity benchmarking for class rulings.

Recommendations 1.1, 1.2, 1.3 and 1.5 are all being addressed as part of our Transforming Tax Technical Decision Making project (TTTDM). A central feature of this project is the better alignment of technical decision making with the ATO's enterprise risk model, ensuring that senior technical resources are quickly engaged on the resolution of high risk, high priority technical issues.

Recommendation 1.1 – the TTTDM project will extend key features of the priority ruling process (i.e., early risk assessment through a triage process; early engagement; project management methodology) to class ruling applications involving high risk and/or priority.

Recommendation 1.2 – the TTTDM project is clarifying roles and responsibilities – particularly for decision-makers – across our technical workforce, including those involved in class rulings work. It is also implementing case triage, early engagement and prioritisation and escalation processes for technical work, including class rulings, which will ensure that the right people are involved in cases at the right times.

Recommendation 1.3 – as noted above, the TTTDM project will extend key features of the priority ruling process to class ruling applications involving high risk or priority. This will ensure issues and approaches are identified collectively and contemporaneously, including identification of which decision-makers will need to be engaged.

Recommendation 1.5 – the TTTDM project will streamline processes for straightforward class rulings by extending to all business lines the process currently enabling the Superannuation business line to finalise non-precedential class rulings without Centre of Expertise sign-off, and applying the differentiated risk model and processes outlined above in response to recommendations 1.1-1.3 to all other class rulings work.

Recommendation 1.4 – We agree with the Inspector-General that undertaking relevant benchmarking can be useful and we will explore it as part of our general approach to benchmarking. However, we have sought to find benchmarks in the past. We know from experience how challenging it is to find comparable external organisations that are leaders in this area. This is particularly true when attempting benchmarking at a product level, particularly in cases like class rulings where numbers are low (around 200 per year), are split across divergent markets and contain varying degrees of complexity within each market, involve a consent process for publication, and comparable products may not exist elsewhere.

The ATO already has both quality standards and timeliness measures for class rulings, which are regularly monitored, reported on and assured. In the case of our quality standards, the quality assessment process for class rulings includes occasional reviews involving external representatives, and we are happy to test our existing quality criteria and standards with external stakeholders through that process. There may also be scope to more regularly test these with external stakeholders to ensure they appropriately reflect stakeholder expectations. Similarly, our timeliness measure for class rulings will, from this year, be publicly reported through our annual reports, providing another mechanism for external stakeholders to provide feedback on both the appropriateness of the measure as well as on our performance against the measure.

These actions will be implemented by 31 July 2012.

STANDARDISING CASE MANAGEMENT REPORTING AND RECORD KEEPING

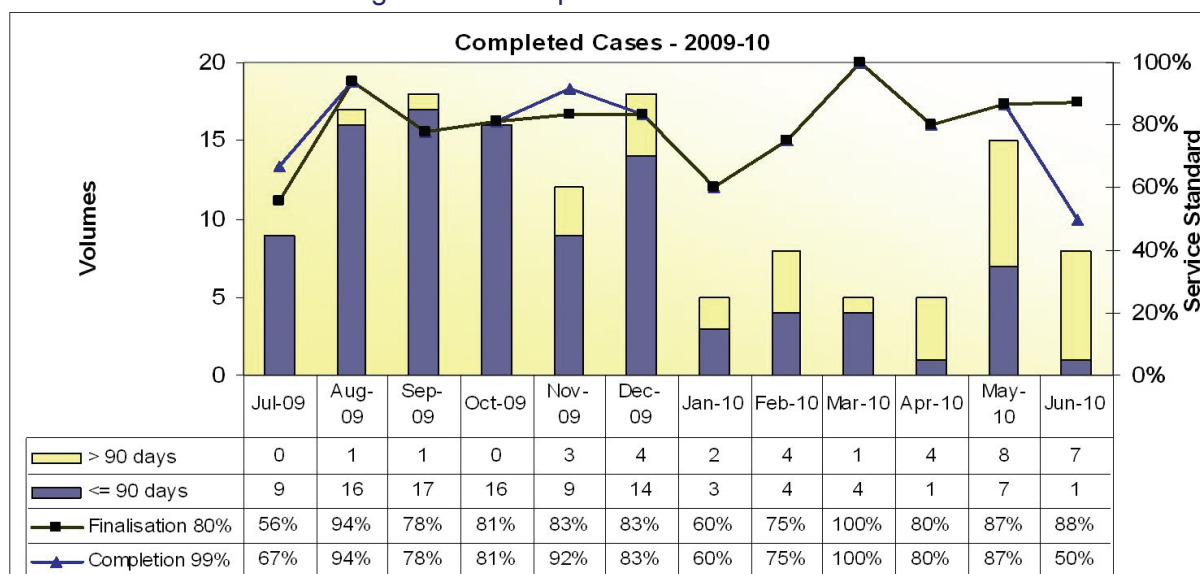
2.23 The ATO has two nominal internal performance standards for class rulings:

- a finalisation standard requiring 80 percent of class ruling cases to be completed within 28 days of receiving all information, or within the negotiated due date; and
- a completion standard requiring 99 percent of class ruling cases to be completed within 90 days of receipt in the office, or within the negotiated due date.

2.24 Extracts from the ATO's internal reports on class rulings completed over the last two years are set out on the next page.¹⁰

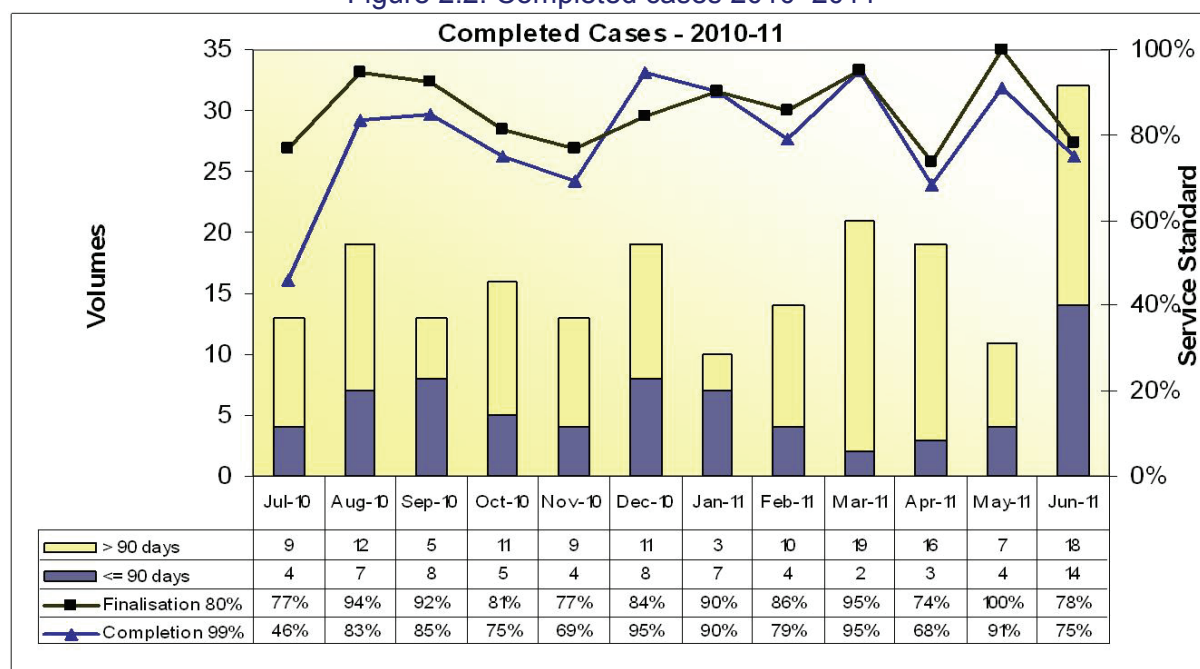
¹⁰ Care needs to be taken in interpreting the tables. The ATO advises that the table is an integrated internal management tool with two separate criteria directed at separate ends. The first two rows in the legend, being, >90 days and <= 90 days, are purely used for aged case analysis. The next two rows are specific measures for timeliness and finalisation to the agreed date or the negotiated due date.

Figure 2.1: Completed cases 2009–2010



Source: Australian Taxation Office.

Figure 2.2: Completed cases 2010–2011



Source: Australian Taxation Office.

2.25 On the ATO's internal reports, the ATO has met the nominal finalisation standard more consistently in the last 12 months. However, it has not met the nominal completion standard over the last 3 years.

2.26 The ATO advises that the nominal internal performance standards for class rulings are based on measures to the point of case completion and include periods outside the ATO's control, such as periods attributable to the review of drafts by applicants. The IGT also observes that the nominal performance standards may be met by negotiated timeframes in excess of 90 days and received submissions expressing frustration that applicants had little choice but agree to ATO-initiated extensions of deadlines.

2.27 All of the ATO's business lines and COEs have some form of call-over case review process for IA area cases, although these are not always specific to class rulings nor to aged cases. Nevertheless, the ATO acknowledged there could be benefits, such as more effective and timely case management, if standardised reporting and call-over processes across its business lines and COEs are adopted (noting the impact of potential differentiation of class rulings processes, discussed above).

RECOMMENDATION 2

The ATO should standardise case management reporting and record keeping, by:

2.1 *adopting improved aged case reporting along with clear, specific and meaningful definitions that may be understood by relevant ATO staff (such as the 'start date' or 'case creation' for the purposes of calculating elapsed time periods);*

2.2 *improving system capture and accessibility of issues, outcomes and reasoning for all class rulings in the Siebel system.*

ATO response

Agreed and partially implemented.

Recommendation 2.1 – a standardised report for class rulings was designed and delivered during the review, providing standardised ATO-wide down to team-based reports on class rulings by elapsed time and time up to and over due dates (built on standard definitions drawn from the current internal timeliness measures for class rulings).

Recommendation 2.1 has been implemented.

Recommendation 2.2 – use of the Legal Reasoning Template in Siebel has been standardised across other IA products and will be extended to class rulings to standardise the manner in which the questions raised in class ruling applications ("issues"), the answers provided ("outcomes") and the reasons for those answers ("reasoning") are captured and made accessible within Siebel, noting that some differentiation may be necessary based on differential processes being introduced for straightforward and higher risk rulings.

Recommendation 2.2 will be implemented by 30 April 2012.

INTRODUCING EXTERNAL PERFORMANCE STANDARDS

2.28 As outlined above, the ATO has nominal internally reported standards for class rulings, involving both finalisation and completion. However, there are no externally reported performance standards.

2.29 During the review, the ATO agreed that public reporting against external performance measures would promote the ATO's public accountability in its

administration of the class rulings system. To this end, it will take steps to publicly report on class ruling performance measures.

2.30 The ATO also advised the IGT that the ATO has conducted a strategic review of its service standards. This strategic review has recommended the development of a renewed set of service standards. The focus of the new service commitments is broadly the following categories:

- Easy to deal with
- Timely
- Keeping taxpayers informed
- Accurate and relevant
- Professional.

2.31 A project team is being established by the ATO to assess priorities and practicalities for implementation. The IGT expresses in-principle support for this initiative and is keen to see the project activated and fully implemented as soon as possible.

RECOMMENDATION 3

The ATO should publicly report on class rulings performance measures, including its performance against service standards for class rulings, in its annual report.

ATO response

Agreed and implemented.

We will publish performance against our 80% finalisation target for class rulings, commencing in the 2010-11 Annual Report. We also note the measure reported may change in future as a result of differentiated processes for streamlined or higher risk class rulings, and/or as part of the implementation of a new approach to service standards (as outlined at page 12).

COMMUNICATING EXPECTATIONS

2.32 The IGT observed that communication was good in those class ruling applications within the priority rulings process. However, in other cases, only some areas of the ATO regularly communicated with applicants as to the key expectations under the class rulings process and whether it was unlikely that the ATO would meet those key expectations. The IGT also observed that the quality of some class ruling applications made by applicants required substantial additional ATO work, such as further information requests.

2.33 A shared expectation of the class rulings process and specific aspects of that process would help to minimise taxpayers' and the ATO's costs, improve the ATO's efficiency in completing class ruling work and improve the user experience of the class rulings system.

2.34 During the review, the ATO agreed that there was scope to improve the shared understanding of expectations of the class rulings process and will ensure that it communicates to class ruling applicants what they can expect from the ATO, including:

- the expected completion times;
- how the ATO will communicate, and negotiate alterations to, the planned approach to, and timing of, the class ruling;
- further expected engagement on the ruling application;
- the expected and actual internal ATO workflows and interdependencies that impact on those workflows, such as which officers or areas are expected to be involved in the project, their role and specific decisions that they will be required to make; and
- alternatives to a class ruling.

2.35 The ATO has advised that there is also scope to better assist applicants to provide relevant information upfront and so reduce the need for subsequent further ATO information requests. To this end, the ATO has agreed to take steps to improve the information capture in class ruling applications.

RECOMMENDATION 4

The ATO should more clearly communicate expectations, specifically by:

4.1. *making applicants clearly aware of all the application requirements up-front that the ATO will need in order to address its risk assessment requirements in relation to the ruling application (for example including the number and type of known taxpayers within the affected class and providing information about existing ATO views which may apply);*

4.2. *publishing an 'issues for consideration' document for class rulings. The format should be an accessible working document (i.e. akin to a key operational checklist document) that sets out all of the class ruling application requirements, including tips or ATO comment on areas that may require particular attention. It may include ATO comment drawn from experience on particular areas where applicants may be able to improve their engagement and applications. To enhance the usability, currency and relevance of the document it should be reviewed annually for update and reissue if required.*

ATO response

Agreed.

Recommendation 4.1 — we will revise our current application form to better capture information about relevant ATO views that would support the ruling application and an indication of the number and type of known taxpayers within the affected class.

Recommendation 4.2 — we will introduce a checklist to help applicants in framing their applications to minimise the kinds of difficulties that can otherwise arise in responding to requests. We are happy to work with the Inspector-General for any suggested 'issues encountered' he feels warrant consideration.

These actions will be implemented by 30 June 2012.

IMPROVING TRANSPARENCY

2.36 There are a number of cases where the nature of the law and the current state of judicial interpretation can create different outcomes on similar, but not identical, fact situations or where matters turn on finely tuned but reasonable variations of principle and interpretation. It is also not uncommon for such matters to involve extensive internal ATO workings and internal debate.

2.37 Some cases of this type were reviewed. In those cases, the IGT observed that the ATO went to lengths to justify the result in one class ruling which would appear to give an opposite result to that obtained in another class ruling. However, nothing of this additional reasoning was typically made externally available as a result of this process, such as in the form of a generalised statement or amendment to existing ATO guidance material on the relevant topic. In the absence of reasons for the distinctions, or indeed where an ATO view has altered, taxpayers and tax advisers may be otherwise left with an impression that ATO views are taken to achieve revenue objectives without regard to the cogency of reasoning.

2.38 During the review, the ATO acknowledged that it is beneficial to promote transparency about its decision-making processes and related outcomes. The ATO wants to ensure its views on the interpretation and application of the law be stated in ways that are clear and useful for the taxpayers concerned. The ATO is also mindful of its obligations to ensure taxpayer information that is private or confidential or otherwise commercial-in-confidence is not inappropriately disclosed.

2.39 The IGT considers that for these types of class rulings situations, the ATO should disclose the reasoning on the distinction giving rise to the different result. This should be disclosed to the applicant and the applicant should have the opportunity to respond. While appreciating the ATO obligations of confidentiality in these situations, an administrator needs to consider how it can best convey the 'public good' value of any view or interpretation it holds, especially if that view has altered on a timely basis. In cases where such a class ruling is finalised and published, the reasoning should also be made available publicly to foster transparency and understanding.

2.40 In making the following recommendation, it is acknowledged that there is a tension between the obligation to maintain confidentiality and the need to be transparent, so that perceptions of so called 'u-turns' are minimised (as set out in the IGT's report on the *Review into the Implications of any Delayed or Changed ATO Advice on Significant Issues*¹¹).

RECOMMENDATION 5

Improve transparency and general taxpayer understanding, by the ATO publishing, in an appropriate form, reasons for different decisions given on apparently materially similar facts including the relevant factual or legal distinctions, having regard to the ATO's in-confidence information obligations.

ATO response

Agreed.

Current ATO policy is to provide reasons for, and explanations of, our ruling decisions, including discussion of alternative interpretations or points of distinction from other rulings where appropriate. Applicants for class rulings are provided with a draft, including the explanation for the ruling, on which they can comment and about which they can seek further information. At any time after the ruling is published, taxpayers and tax professionals can seek further information about the basis of the decision if they do not otherwise understand or accept the decision and/or the ATO's reasons for the decision.

Following the IGT's Review into delayed or changed Australian Taxation Office views on significant issues (March 2010), ATO policy now also includes specific guidance on situations that might otherwise give rise to perceptions of so-called 'u-turns'. This policy requires the ATO to consider:

- if any ATO publication, product or evidence of ATO conduct could have reasonably conveyed a different view of the law on a particular issue, to taxpayers generally, or to a particular class or industry group; and
- the extent to which the ATO has facilitated or contributed to taxpayers adopting a different view of the law

to determine if it would be appropriate to apply the ATO view of the law only on a prospective basis (PSLA 2011/27: Matters the Commissioner considers when determining whether the Australian Taxation Office (ATO) view of the law should only be applied prospectively). If a decision is made to only apply the ATO view prospectively, or if the issue of potential prospective application has been specifically raised and considered, the basis for the decision must be explained in the relevant document.

More difficult can be situations where a different decision turns on a consistent interpretation applied to fact situations that may be specific to the arrangements in

11 March 2010, available at <www.igt.gov.au>.

question but not necessarily known beyond the applicant, the relevant sponsor and the ATO. In the case of class rulings, when considering how to explain our reasons for decision and what information to include, we must ensure that any explanatory discussion does not inappropriately disclose sensitive taxpayer or commercial-in-confidence information.

Nevertheless, the ATO will explore through our class ruling co-ordinators network and with those staff involved in class rulings work, ways and forms in which we might better reflect our policy in practice and provide explanations better tailored to the circumstances and context of the kinds of class rulings envisaged in the recommendation, especially those involving a changed ATO view, while continuing to ensure that we maintain appropriate protection of sensitive taxpayer or commercial-in-confidence information.

These actions will be implemented by 31 July 2012.

ADDRESSING PERCEPTIONS

2.41 During the review, submissions suggested that the ATO had ‘no go’ topics for class rulings. The IGT made enquiries in this regard but no evidence of topics on which the ATO will refuse to rule was identified.

2.42 In this and other IGT reviews, it has been observed that this same perception may arise because the ATO gives special consideration to certain topics, with the result that there is considerable delay in the formulation of an ATO view. It may also be that a specific ATO technical officer is allocated to a particular specialist issue but has other competing priorities contributing to the significant delay. Issues that are the subject of litigation or considered high risk may also give rise to this perception, especially where Deputy or Chief Tax Counsel approval is required.

2.43 Perceptions are an important driver of behaviours in the tax administration system, particularly those impacting on community confidence. These perceptions can be ameliorated through communication and transparency.

2.44 During the review, the ATO agreed that more could be done to address perceptions that the ATO has topics on which it will refuse to rule. To this end, the ATO has agreed to adopt measures to address those perceptions.

RECOMMENDATION 6

Improve transparency and minimise stakeholder perceptions that the ATO has so called 'no go' topics or unexplained or excessive delays for class rulings by:

6.1. notifying class ruling applicants on the topics for which the ATO may subject the application to special internal processes and the impact that those special processes may have on the class ruling application; and

6.2. notifying the public (where appropriate) of the nature of such processes and what impact these processes may have on the timeliness of rulings on those particular topics.

ATO response

Agreed in principle, insofar as the ATO agrees to take further steps to address misperceptions that there are 'no go' topics for class rulings, noting that the publication of this report, confirming that there was no evidence that the ATO has 'no go' topics on which we refuse to rule, should go a long way to addressing any such perceptions. We will review our website and other published material to ensure this is clearly stated for stakeholders and that we explain clearly reasons why some rulings may be delayed.

Existing ATO policy and process require officers involved in class rulings work to maintain effective communication with applicants about the progress of their applications, including anything that might otherwise impact a timely response. We will, however, remind officers involved in class rulings work of their obligations to maintain effective communication with applicants (by including this in our awareness-raising minute as part of our response to recommendation 2).

In addition to the personal communication mentioned above, there may be instances where it is appropriate to inform the general public of special processes that can impact a class ruling application. This is also reflected in current policy and practice (for example, the special escalation processes that are used with respect to the potential application of s 45B of the Income Tax Assessment Act 1936 to demergers are publicly described and accessible in Law Administration Practice Statement 2005/21).

These actions will be implemented by 31 December 2011.

IMPROVING STAFF AWARENESS

2.45 The ATO has set out its expectations of staff in their conduct of class rulings work through a range of means, including policies, procedures, processes and internal reporting. Fieldwork during the review indicated that staff may not always be aware of some of these expectations. Some examples of such expectations are set out in the recommendation below.

2.46 This internal awareness gap may contribute to some of the adverse impacts that class rulings applicants' experience, such as elapsed timeframes and lack of shared understanding of the need for further information requested.

RECOMMENDATION 7

The ATO should improve staff awareness of relevant ATO policies, processes and procedures, on:

- 7.1. the relevant internal performance standards applicable to class ruling applications;*
- 7.2. the operation of the case call-over system and the role that senior ATO staff play to overcome impasses in the resolution of class ruling applications;*
- 7.3. the numbers of taxpayers who can be covered by a class ruling;*
- 7.4. the circumstances in which the ATO will issue unfavourable class rulings;*
- 7.5. the circumstances in which the subject matter of class ruling applications may be more appropriately dealt with by way of a product ruling;*
- 7.6. the need to clearly explain and justify requests for further information made during the class ruling process and attach appropriate records of those requests to the case file;*
- 7.7. the need to prepare and maintain planning documentation for all class ruling cases;*
- 7.8. the need to attach to the relevant Siebel system case, draft rulings and working documents at key points in the application process so that the ATO may monitor the progress of class ruling applications;*
- 7.9. the need to document issues, outcomes and reasoning for all class rulings in the Siebel system;*
- 7.10. how work conducted in relation to class ruling applications is mapped and tracked in the Siebel system, such as identifying technical officers' involvement, the particular issues those officers will be required to resolve and the date by which that resolution is expected;*
- 7.11. how to locate on the Siebel system potential earlier or multiple ruling requests from the same taxpayers or associated taxpayers;*
- 7.12. the manner in which case chronologies are made visible in the Siebel system; and*
- 7.13. the labelling and identification of key documentation for class ruling cases in the Siebel system.*

ATO response

Agreed.

Each of the points raised above are already covered by existing ATO policy, process and procedure. However, we do accept that the Inspector-General's field work indicated some instances where some ATO staff were unaware of, or uncertain about, some of the policies, processes and procedures that support class rulings work. We will issue a minute to all staff to remind them of relevant policies, processes and procedure, with specific examples and links to source material to address those issues identified in the dot points above.

We will also provide our business line class rulings co-ordinators and other relevant practice support areas with refresher training and re-establish the class ruling co-ordinators network to better assist them in providing timely support and advice on relevant policies, processes and procedures to case officers.

These actions will be implemented by 31 December 2011.

IMPROVING THE SIEBEL SYSTEMS SEARCH FUNCTIONALITY AND ATO OFFICER RECORD-KEEPING

2.47 The IGT observed that for around two-thirds of the cases tested during fieldwork, important records such as case reports (or the recently introduced 'legal reasoning document') were not attached to the case file on the ATO's case management system, Siebel.

2.48 The ATO advised that it is seeking to improve how officers record work on cases as part of its IA capability project (referred to above)—for example, to ensure more ready visibility of the case chronology. The ATO also advises that it is encouraging officers to use the Siebel system's case and activity notes where appropriate, alongside standardised descriptions for documents and other key actions. Recommendation 7 above addresses the issue of officer record-keeping.

2.49 The ATO also acknowledged that there are some inbuilt limitations in the system's search functionality, as well as some ongoing errors in functional operation. The ATO advised that these issues have been raised with the vendor and solutions are being explored in the context of a Siebel system upgrade.

2.50 The ATO agreed that these limitations adversely impact on staff receptiveness and confidence in the completion of class rulings and will consider enhancing the system's search functionality to improve ATO officers' ability to identify materially similar ruling requests. The ATO indicated that given the relatively low volume of class rulings a tailored training approach would more likely improve user experience and usage effectiveness.

RECOMMENDATION 8

Improve the Siebel system's search functionality, with the ATO specifically:

- 8.1. enabling subject-based searches to determine whether other unpublished class rulings, private rulings and other technical work inside the ATO may have been done on similar topics or issues being raised in the class ruling application;*
- 8.2. improving the ease in making searches of multiple class rulings lodged by an applicant;*
- 8.3. reducing the number of lesser relevant documents returned in the Siebel system searches; and*
- 8.4. removing case sensitivity in returned searches.*

ATO response

Agreed and partially implemented.

Recommendations 8.1, 8.2 and 8.4 have been implemented – see details below.

Part of the problem was a lack of awareness by ATO staff of the search functionality available within Siebel, particularly around the advanced search functionality that does enable subject-based searching. Earlier functional errors with Siebel search have been fixed and refresher training for IA staff on how to use Siebel advanced search is being rolled out currently.

Recommendation 8.1, 8.2 and 8.4 – current functionality and the refresher training currently being delivered to Interpretative Assistance officers enables staff to conduct subject-based searches of all work in Siebel (including class rulings, private rulings and other technical work) and readily identify multiple class ruling applications lodged by the same applicant.

Recommendation 8.3 – current functionality and the refresher training currently being delivered will improve our staff's ability to conduct more focussed searches. The Siebel upgrade that is currently being delivered, which includes release of a new search engine, will enable even more refined searching criteria which will continue to enable more targeted searches for more relevant results.

Implementation of recommendation 8.3 will be completed by 30 April 2012.

OTHER ISSUES

2.51 The other issues raised during the review are outlined below.

Desire to address issues not requested in an application

2.52 The IGT observed that some ATO information requests were sometimes driven by an ATO officer's desire to address issues that the applicant did not ask to be ruled upon.

2.53 On the one hand, a class ruling could be limited to addressing those particular issues upon which the applicant has requested a ruling. On the other hand, the IGT recognises that there may be a number of circumstances in which it will be desirable to canvas issues in addition to those contained in the original request. This desire should be balanced against the additional compliance burden under which the applicant is being placed and the potential resulting delay.

2.54 In the IGT's view, pre-lodgement meetings, such as those that occur under the priority rulings process, should go some way to addressing this issue. The IGT notes that the ATO's TTTDM project is aiming to establish early engagement mechanisms more broadly in this respect.

Use of Public Rulings Panels for higher risk class rulings

2.55 The ATO's Public Rulings Panels (PRP) are chaired by a Deputy Chief Tax Counsel and comprise several of the most senior ATO officers, as well as well-respected tax practitioners and/or academics. However, the ATO does not ask the PRP to consider the issues that are raised in class rulings before they are finalised and issued.

2.56 The IGT acknowledges that there are current consultative mechanisms in the class rulings process and that seeking PRP advice to improve the robustness of those class rulings involving greater risk would necessitate a balance between ATO responsiveness to applicants' requests and the competing priorities for the PRP's attention. Nevertheless, seeking PRP advice would be an option in appropriate cases.

Additional guidance to accompany high profile class rulings

2.57 In the case of certain high profile transactions (such as large demutualisations, demergers from public companies or on-market buy backs), the ATO has often undertaken to issue non-binding guidance (eg. in the form of fact sheets) in addition to issuing a class ruling. The IGT received submissions citing that this practice was of great use to taxpayers and tax practitioners. Often the taxpayers affected were individuals using smaller tax agents. This additional guidance was felt to improve clarity and certainty and therefore lower compliance costs for these taxpayers and their agents.

2.58 The IGT recognises that although it may not be feasible to provide additional guidance in all cases, regard should be had to the positive impact such a practice has had in supporting taxpayers to comply and that guidance should be provided contemporaneously, where resources permit.

Obtaining user feedback

2.59 User feedback can provide important information on the areas in most need of improvement. The ATO has obtained end-user feedback on the class rulings process through two tax practitioner surveys in 2008. The IGT has also observed that the ATO uses client feedback questionnaires routinely in other large business segment contexts. While the IGT has raised some potential concerns about the form of certain feedback design, these approaches can be useful if done with care in design and consideration regarding approach.

2.60 The IGT notes that, at present, the ATO does not routinely seek this feedback, however, the program of work arising as a result of this review should effect changes to improve, amongst other things, the end-user's experience.

APPENDIX 1—TERMS OF REFERENCE & SUBMISSION GUIDELINES

BACKGROUND

- 1.1 The ATO has a process under which it will issue advice about the tax consequences of a particular arrangement to a class of taxpayers. This type of advice is known as a class ruling.
- 1.2 The ATO also issues product rulings. However, these differ from class rulings as they deal with particular investment products and have a marketing or promotion element.
- 1.3 Class rulings are public rulings. This means that they are published and are accessible to all taxpayers. Class rulings are also legally binding on the ATO. This means that if members of the class referred to in the class ruling follow the advice contained in the class ruling, the ATO cannot levy tax, penalties or interest if the class ruling proves to be incorrect at law.
- 1.4 The purpose of a class ruling is to provide certainty to participants, provided the arrangement is carried out as described in the class ruling. A class ruling also means that individual participants need not seek private rulings on the relevant arrangement.
- 1.5 Class rulings are issued in a number of different circumstances. These include when:
 - an employer seeks advice for a class of employees about the tax consequences of certain arrangements (such as employee share acquisition plans or bona fide redundancy plans);
 - a company seeks advice for its shareholders about the tax consequences of certain arrangements (such as a restructure of the company or the application of the scrip for scrip rollover provisions); and
 - a Commonwealth, state or territory government or one of their authorities seeks advice about a proposed transaction – for example, an industry restructure that has consequences for participants in that industry.
- 1.6 During consultations on the IGT's work program, which occurred early in 2009, representatives of businesses and the tax profession repeatedly raised concerns that class rulings sometimes take too long to issue and sometimes are not issued at all. They asserted that ATO processes for dealing with class rulings are not well known to potential applicants and can involve poorly targeted requests for information. They also asserted that there can be communication issues between the ATO and applicants during the class rulings process. For example, applicants

asserted that the ATO can be reluctant to communicate early in the class ruling process that it has changed its view on the application of the law to arrangements of the kind being considered in the class ruling. Applicants also pointed to ATO delays in establishing agreed facts or in establishing the correct view of the law that is to be applied to those facts.

- 1.7 These concerns about class rulings were also raised in a number of the submissions that were made to the IGT's current review of the ATO's administration of private rulings. However, the IGT was not able to consider these concerns about class rulings during this other review, as class rulings are not issued as private rulings, but as public rulings.
- 1.8 This review will seek to establish whether taxpayer concerns such as the above are justified. It will examine the management of selected class rulings with a focus on important milestone events and the underlying issues and behaviours. It will consider if ATO behaviours and decision-making processes are leading to extended timeframes. This will provide a basis for conclusions to be drawn and recommendations of best practice in the handling of class rulings.
- 1.9 The Government currently proposes to amend the law to include indirect tax laws (GST, luxury car tax (LCT), wine equalisation tax (WET) and excise laws) in the public and private rulings regimes from 1 July 2010. This inclusion will provide scope for class rulings to be provided on indirect tax matters under the ATO's class rulings framework. However, as these changes are not yet legislated, this review will focus primarily on class rulings issued for income tax and fringe benefits tax matters rather than those which involve GST, LCT, WET and excise matters.

Terms of reference

- 1.10 In accordance with subsection 8(1) of the Inspector-General of Taxation Act 2003 (IGT Act), the IGT on his own initiative will conduct the following review:

The IGT will examine aspects of the ATO's management of class rulings with a focus on:

- *whether the process for obtaining a class ruling is sufficiently clear and transparent to potential applicants and their advisors;*
- *whether class rulings are finalised within appropriate timeframes;*
- *the ATO's information gathering processes during class rulings applications;*
- *the expectations of taxpayers and their advisers around how class rulings should be managed so as to promote their finalisation in a timely and efficient manner; and*
- *whether the design and management of the class rulings process is achieving its intended purpose of providing certainty to taxpayers with respect to the tax treatment of particular arrangements.*

Aim of the review

- 1.11 The IGT will investigate whether there are issues with the administration of class rulings and make any necessary recommendations which, when addressed, will improve the ATO's class rulings framework. This will include the identification of practices that promote the early finalisation of these rulings and minimise the costs of compliance.

Consultation processes

- 1.12 The IGT will:

- publish a copy of the terms of reference for this review on his website;
- take submissions on this review from members of the public generally, or from particular people or organisations, within the time frame set out below; and
- request the Commissioner of Taxation to provide information and/or documents relevant to this review.

Submissions

- 1.13 The IGT invites written submissions to assist with this review. Submissions should address the terms of reference set out above and the issues and questions outlined in the attached submission guidelines. It is not expected that each submission will necessarily address all of the issues and questions raised.

- 1.14 The closing date for submissions is 30 April 2010. Submissions can be sent by:

Post to: Inspector-General of Taxation
 GPO Box 551
 SYDNEY NSW 2001
Fax to: 02 8239 2100
Email to: classrulings@igt.gov.au

Confidentiality

- 1.15 The IGT is seeking detailed accounts of applicants' experiences in dealing with the ATO on class ruling matters. This would greatly assist the IGT in identifying potential systemic issues and allow for the more efficient and effective examination of these issues. If necessary, submissions may be provided to the IGT in confidence, in which case the information contained in such submissions will not be made available to any other persons including the ATO.

Submission guidelines

- 1.16 These guidelines envisage that, broadly, your submissions will be divided into a number of parts.
- 1.17 At the outset of your submission, it is important to provide a detailed account of specific ATO practices and behaviours that, in your view, impact (either

positively or negatively) upon the timely, efficient and effective finalisation of a class ruling application. The IGT is also seeking examples of both positive and negative ATO practices in relation to class ruling applications.

- 1.18 In investigating the ATO's class ruling practices and related behaviours, it may be useful to provide a timeline of events outlining your key interactions with the ATO including information requests, key meetings and the issuing of a draft class ruling (if relevant).
- 1.19 Any adverse or detrimental impacts of the ATO's practices and behaviours on class rulings should be set out and described. These might include increased compliance costs in dealing with the ATO directly during the class ruling application or increased ongoing compliance costs thereafter and potential restructuring of significant commercial arrangements.
- 1.20 The submission should list alternative actions, practices or behaviours which, in your view, could have minimised any adverse effects.
- 1.21 The following is provided to assist you in developing these parts of your submission. It includes a range of questions to assist you in considering issues that have been raised during community consultations.

ATO's processes and behaviours for class rulings

- 1.22 This review will consider the following:
 - whether the process for obtaining a class ruling is sufficiently clear and transparent to potential applicants and their advisors;
 - whether the ATO handles and completes class rulings within the appropriate timeframes;
 - the ATO's information gathering processes during class ruling applications;
 - the expectations of taxpayers and their advisers around how class rulings should be managed so as to promote their finalisation in a timely and efficient manner; and
 - whether the design and management of the class rulings process is achieving its intended purpose of providing certainty to taxpayers with respect to the tax treatment of particular arrangements.

Transparency of the class rulings process

- 1.23 Concerns were raised that the class rulings process is not sufficiently transparent and clear to potential applicants and their advisors.
- 1.24 One of the aims of the review will be to examine these concerns. The methodology may include examining the material that is made available to applicants for class rulings.

Questions for consideration in your submission

- During a class ruling application, what material was made available to you to help you to understand the process? How was this information provided?
- Did this information help you understand the class rulings process?
- Did this information help you to assess whether your application should be for a class ruling, as opposed to another type of ruling (such as a product ruling or a private ruling)?
- How could this information be improved?

ATO's timeframe for completing class rulings

- 1.25 Concerns were raised that the ATO spends a great deal of time gathering facts and developing its view before issuing a draft class ruling to the applicant. Applicants and their advisors only become aware of the facts relied upon when the proposed draft class ruling is issued and it can rely on incorrect or irrelevant facts or omit important facts altogether. It was also alleged that the ATO does not carry out its processes for developing a class ruling with the same sense of urgency as applicants for class rulings in cases where the development of a class ruling is time-sensitive.
- 1.26 Some have suggested that the ATO, during the initial stages of an application for a class ruling, should determine which facts are relevant to the issues in question and ensure that the facts are tested before applying the law to the facts and developing its technical view with the applicant.
- 1.27 It has also been suggested that the ATO does not seek to narrow any issues in contention early in the class ruling process. Applicants and their advisors believe that such practices and behaviours do not contribute to the timely finalisation of class rulings.
- 1.28 One of the aims of this review is to investigate the above allegations and to determine whether the ATO is satisfactorily completing class rulings within appropriate time frames.
- 1.29 The methodology for this review may include:
- selecting a sample of representative class rulings cases (including those that resulted in the issue of a class ruling and those that did not);
 - examining the timeframes for critical milestone events (dialogue, the issuing of a draft class ruling and the time allowed for applicant response); and
 - seeing whether these variables influenced the likelihood of early finalisation.
- 1.30 The review will consider whether there is any pattern in the type of class ruling applications that lead to a dispute. This will then provide a basis for conclusions

to be drawn and recommendations of best practice in the handling of class rulings.

Questions for consideration in your submission

General

- What aspects of the current class rulings process work well? Why do those processes work well and how have they contributed to the timely resolution of a class ruling application?
- What aspects of the current class rulings processes do not work well? Why and how could these be improved?

The quality and timeliness of ATO draft class rulings

- Do you believe that ATO draft class rulings accurately and succinctly set out the facts and evidence and issues involved in the class ruling?
- Does the ATO adequately test the facts and evidence set out in its draft class ruling with applicants?
- At what stage in the class rulings application process has the ATO issued you with a draft ruling?
- What is the usual period of time that the ATO has allowed for you to respond to any draft class ruling? Do you believe that the ATO provides you with sufficient time to respond?
- Do you believe that the ATO adequately considers your responses to its draft class ruling? Has the ATO changed its view or approach after considering your responses to its draft class ruling?
- How could draft class rulings be improved?

Level of engagement and interaction

- Did you feel that there was an appropriate level of engagement during the class rulings process?
- Did you encounter delays caused by a change in ATO personnel dealing with the class ruling?
- Did the ATO provide you with updates at key stages of the class ruling process?
- If problems arose in the course of the class ruling, did you have clear information on the escalation processes? Did you ever have to escalate concerns with the progress of a class ruling?

- Could the level of engagement and interaction be improved to promote the more timely finalisation of class rulings? If so, how?
- It has been suggested by some tax practitioners that the top 50 companies receive disproportionately better ATO service and access to decision-makers than other applicants for class rulings. Have you found that the ATO's practices, behaviours and level of engagement differ dependent upon the size of the applicant or taxpayer? If so, do you believe that this difference was justified in the particular circumstances?

ATO's information gathering processes during class ruling applications

- 1.31 During the consultation process, and in submissions to the IGT's review of private rulings that referred to class rulings, it was asserted that the ATO's information requests during the class rulings process are often not well targeted, with a prevailing culture of asking questions about everything, even on issues which are not relevant to the class ruling. Some stakeholders commented that the associated applicant costs of compliance and stress with information requests can be enormous, resulting in a reconsideration of whether to proceed with the class ruling application. Calls have been made for greater accountability around how the ATO undertakes its information gathering activities during the class rulings process.
- 1.32 The review will include an examination of whether the ATO undertakes its information-gathering activities in the context of class ruling applications in a manner that does not result in the application process becoming unduly lengthy. It will also examine the subsequent use of that information and how the ATO assesses the effectiveness of its information requests in finalising class rulings.

Questions for consideration in your submission

- During a class ruling application, has the ATO requested you to provide information or documents that were in addition to those provided in your original application for a class ruling? If so, was the information-gathering process explained to you?
- Was it made clear how the requested information or documents related to the risks and issues in the class ruling?
- Did you believe that the ATO's information requests were well targeted and relevant to the issues under consideration? Please explain your situation.
- Did the ATO properly explain how information and documents requested would be or were used in forming its final view?
- Where a class ruling issue went to further dispute, did the ATO make further requests for information or documents?
- Did the ATO seek to minimise compliance costs associated with information requests? What discussions did you have?

- In relation to information requests, what were the associated compliance costs? What impact did it have on your business? What is the size of your business and what was the scale of the arrangement involved?
- What steps could the ATO take to minimise applicants' compliance costs associated with information requests yet still obtain the necessary information and documents it requires for its class rulings?

APPENDIX 2—ATO RESPONSE

The letter of response from the ATO is reproduced on the following pages.

To minimise space, the appendix to the ATO's response has not been reproduced in this appendix, but has been inserted into the text of this report underneath each of the recommendations to which that text relates.



Mr Ali Noroozi
Inspector-General of Taxation
Level 19, 50 Bridge Street
Sydney NSW 2001

23 September 2011

Dear Mr Noroozi

Thank you for the opportunity to comment on your draft report on the *Review into the Australian Taxation Office's administration of class rulings*. The Australian Taxation Office's (ATO) responses to your specific recommendations are at Attachment 1. I understand that you will include our responses under the relevant recommendation in the final version of your report.

We welcome your comments about the effective role that class rulings play in our tax system by providing greater administrative certainty to relevant taxpayers through mitigating operational costs and reducing risk. The report provides some important insights into the system as well as noting some of the tensions inherent within the class rulings regime and the administrator's role in balancing the interests and needs of applicants, taxpayers and the community.

I also note your support for the ATO's priority rulings system, with its focus on early engagement, is providing timely and high quality outcomes for applicants and taxpayers by involving the right people in cases at the right times. These are principles that we are considering applying more broadly across all of our higher risk and priority technical work, and so your observations and related recommendation has been timely.

We welcome your finding that there was no evidence of 'no go' topics for class rulings, but acknowledge that we can do more by way of communication to address such mis-perceptions. Similarly, some of the issues you have raised in other recent reviews about our practices around further information requests can also be relevant in the class rulings context; although it did not warrant any specific recommendations in this review.

Consistent with your earlier review of our administration of the private rulings system, this most recent review identified some continuing issues associated with the introduction of the Siebel case management system and the Siebel search functionality and usage. However, we have been able to demonstrate progress on these issues, including fixing the earlier functional defects and rolling out tailored training for staff to better use Siebel search. We have also introduced further functional refinements and improvements to Siebel search as part of the current Siebel upgrade.

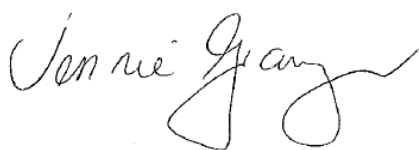
Your review has also provided us with other useful insights into areas of our class rulings administration that could benefit from improvement. With the benefits of streamlined processes for more straightforward class rulings being confirmed, we are considering expanding these wider. You have identified opportunities for us to standardise some of our internal case management, record keeping and reporting for class rulings. These opportunities will better assist our case officers and managers to focus on progressing aged cases to resolution and to provide greater transparency. To also support improved transparency, we have acted on your recommendation and will publish our performance against timeliness measures for class rulings in our 2010-11 Annual Report and into the future.

In response to your concerns about our communication with applicants and taxpayers, we will improve our up-front support to applicants to help streamline the application process and minimise further information requests. The report gives us an opportunity to remind our staff of the importance of ongoing communication throughout the class rulings process to avoid unexplained delays and the potential mis-perceptions that can arise. Finally, we have agreed to explore how we can better explain and contextualise some class ruling decisions, particularly where a change of ATO view may be involved. However we will remain mindful of the need to maintain appropriate taxpayer and commercial confidentiality.

In summary, we agree either fully or in principle with all eight of your recommendations and have committed to tangible practical action in response.

I am also pleased to note the collaborative and open spirit in which this review has been conducted, with a focus on practicable and sensible improvements. As a result, the implementation of some of the recommendations is already significantly advanced.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jennie Granger', with a stylized, flowing script.

Jennie Granger
Second Commissioner of Taxation

