



Australian Government
Inspector-General of Taxation

ISSUES PAPER NUMBER 3

SELF-ASSESSMENT



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SELF-ASSESSMENT

Overview

1 Self-assessment was introduced in the *Taxation Laws Amendment Act 1986*. The Explanatory Memorandum outlined briefly how self-assessment would operate for all Australian taxpayers:

In order to give effect to the self-assessment system, this Bill will allow the Commissioner of Taxation to make an assessment based on acceptance of information contained in the income tax return of the taxpayer. As the incorrect application of the law by taxpayers will, under the self-assessment system, ordinarily be identified only at post-assessment audit or examination stage, the Bill will authorise the Commissioner to amend assessments to increase or decrease the liability of taxpayers

The Bill will also provide for payment of interest by taxpayers where an assessment has to be amended to correct an error which resulted in underpayment of tax and where no penalty ... would apply. This will compensate the revenue for the full amount of tax not having been paid by the due date. The Commissioner will have a power to remit the interest payable by a taxpayer in appropriate circumstances. ...

2 The self-assessment system still operates in this way, notwithstanding there have been many minor changes to the laws underpinning self-assessment in the intervening years.

3 This paper outlines taxpayer concerns with administrative aspects of the self-assessment system. This includes such things as the ATO's rulings systems, the statutory review periods for amending assessments, and the 'retrospective' application of the General Interest Charge in amended assessment situations.

Self-assessment

4 This paper has acquired heightened significance in view of the recent announcement by the Treasurer to commission a report to the Government on the entire self-assessment system, as discussed below. In effect, this chapter points to the matters that must be addressed in the Treasury review.

Treasurer's review of self-assessment

5 On 24 November 2003, the Treasurer announced a major Review of Self-assessment (ROSA) to be conducted by a Treasury taskforce that includes officers seconded from the ATO.

6 The Treasurer's decision to initiate a major policy review into self-assessment is welcome in view of the fact that taxpayer concerns about self-assessment were amongst the most widely held and serious concerns uncovered in this scoping review.

7 The Terms of Reference for ROSA encompass all the concerns about the self-assessment regime raised by taxpayers and their advisers in consultations for this scoping review. In particular, ROSA will examine rulings systems, statutory review periods for amending assessments, the General Interest Charge and penalties, and the documentation underpinning the self-assessment system (such as the Notice of Assessment).

8 In view of the Treasurer's announcement, the potential reviews in this chapter may be considered 'on hold' pending the outcome of ROSA. There is no point fine-tuning administrative systems that may not continue in their current form.

9 It is important to recognise that the Treasury review does not have investigatory powers and will be canvassing the views of taxpayers, tax advisers and tax officials. There could be a need for issues arising in ROSA to be tested rigorously and this could require examination of information within the ATO. This could be the catalyst for the Inspector-General of Taxation to conduct a specific and focused review into a particular aspect of self-assessment.

10 Consistent with the policy framework outlined in Issues Paper Number 2 of this series – which notes the importance of ‘slotting’ reviews into reform processes already in train – priority would be accorded to reviews of self-assessment systems that could be reported to the Government within the ROSA timeframe and that could provide useful input to the ROSA policy review.

Giving taxpayers certainty through the rulings systems

11 In principle, the ATO’s rulings systems underpin taxpayer self-assessment by allowing taxpayers to seek advice on how the ATO interprets the tax laws and what they must do to avoid having their self-assessments challenged and amended by the ATO.

12 Some aspects of the rulings system – notably Private Binding Rulings – are creatures of the self-assessment regime. Introducing the 1992 amendments to self-assessment (Private Binding Rulings) into the Parliament, the Minister assisting the Treasurer, the Hon Peter Baldwin MP, noted that:

The Government is committed to ensuring that the Australian tax system continues to meet the community’s expectation of fairness, certainty and efficiency at the highest possible level. ... The new system of binding and reviewable rulings will promote certainty for taxpayers, and thereby reduce their risks and opportunity costs.

13 Without an effective rulings system, self-assessing taxpayers bear high levels of uncertainty and risk. Ensuring that the ATO’s rulings systems operate well is thus integral to the successful operation of self-assessment. There are concerns about the equity and efficiency of the ATO’s rulings systems, reflected in the following review topics.

14 The Auditor-General conducted a major review of the ATO’s rulings systems in 2001-02 and is planning to conduct a follow-up review in 2003-04. To avoid overlap, any reviews of rulings systems by the Inspector-General would be confined to examining the immediate impact of ATO rulings systems **on taxpayers**, rather than examining the integrity or procedural efficiency of rulings systems.

Public rulings

15 The ATO has established several public rulings systems by Taxation Rulings.¹ The principal benefit of public rulings for taxpayers is to give certainty where the tax laws are otherwise ambiguous. The Commissioner of Taxation is bound to apply a public ruling where it is favourable to a taxpayer.

16 Public rulings are reviewed by the Public Rulings Panel in the ATO that includes private sector tax law experts.

17 There are relatively few general public rulings issued each year. Class and product rulings (applying only to a limited number of taxpayers in specific circumstances and triggered by a formal application) far outnumber other public rulings.

18 Over 15,000 private, class and product rulings (in aggregate) have been handed down each year over the last two financial years for the benefit of a relatively small number of taxpayers. Tax practitioners advise that private rulings can be financially out of reach of many taxpayers; the cost of engaging a tax adviser to prepare a persuasive application – perhaps with a legal opinion if the ATO is anticipated to hold an alternative view – will generally exceed the amount of tax in question. In this context, public rulings can be more important to small tax paying entities.

1 The ATO system for income/fringe benefits tax rulings is outlined in Taxation Ruling (TR) 92/1. The ATO's public rulings system for GST and luxury car tax is set out in GSTR1999/01. The ATO's public rulings system for wine equalisation tax is set out in WETR2002/01. The ATO's product (public) rulings system is set out in Product Ruling (PR) 1999/95. The ATO's class rulings system is set out in Class Ruling (CR) 2001/01.

The number of public rulings issued over the last four financial years is shown in Table 3.1 below. The ATO also issues Taxation Determinations, clarifying rulings.²

Table 3.1 Final taxation rulings and GST rulings

Financial year	Final Taxation Rulings	Final GST Rulings
2002-2003	13	14
2001-2002	24	6
2000-2001	10	10
1999-2000	16	14

Source: Commissioner of Taxation, 27 October 2003.

19 There is a backlog of draft public rulings awaiting finalisation, some of which have been on the books since 1999.

20 It was submitted that there have been significant delays in the ATO issuing final versions of public rulings, an example being the public ruling for the retirement village industry — first issued as TR94/24 after a delay of several years, then withdrawn after six years and, after a further two year period, replaced by TR2002/14.

21 A review by the Inspector-General of Taxation into the public rulings system, would initially focus on the cause of delays in finalising public rulings and the possibility of getting more public rulings released.

Product rulings

22 There was significant praise for the Product Rulings Division in the ATO, regarded as a highly professional unit, meeting realistic timeframes, communicating effectively and helpfully with clients and demonstrating a strong knowledge base.

2 Parts of Taxation Determinations (TDs) can form a 'public ruling' for the purposes of Part IVAAA of the TAA 1953 and are thus legally binding on the Commissioner. The remainder of a Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Taxation Determination is legally or administratively binding. In 2003-03, there were 33 TDs finalised and a further 21 issued as drafts. (Source: Commissioner's letter of 27 October 2003)

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23 However, concern was expressed by the financial sector about financial product rulings. It was noted that financial product rulings have become an important feature in the marketing of widely offered financial products, with the result that delays in the issue of rulings can distort competition amongst providers.

24 There is specific concern that it is not possible to obtain rulings for financial products where a capital/income distinction must be made, creating a bias against those products merely because they do not have a tax ruling.

25 The ATO advised that it is issuing product rulings in relation to capital protected products which have a full or limited recourse loan and a separately identifiable put option, where the cost of this put option is based on the methodology announced by the Government on 30 May 2003.³ The ATO also advised that the Government has flagged legislative changes in this area.

26 Any review by the Inspector-General of Taxation into the product rulings system would initially examine the strategies and processes that the ATO has in place to minimise market distortions arising from financial product rulings.

ATO Interpretative Decisions

27 There is concern amongst tax practitioners that ATO Interpretative Decisions (ATOIDs) are being substituted for public rulings. Although ATOIDs are binding within the ATO in the sense that staff are expected to apply these decisions in day to day administration, ATOIDs are not binding on the Commissioner in his dealings with taxpayers and taxpayers cannot rely on ATOIDs in managing their tax affairs.

28 ATOIDs are not subject to scrutiny by the Public Rulings Panel and do not require public consultation.

29 This review will examine the ATO's rationale and practice for issuing ATOIDs. The review will examine whether it would be more efficient to catalogue the register of sanitised private rulings rather than duplicating private rulings in ATOIDs.

3 Commissioner of Taxation, letter to the Inspector-General of 27 October 2003. The Government's announcement on capital protected products is available at:
<http://assistant.treasurer.gov.au/atr/content/pressreleases/2003/046.asp>.

30 The Inspector-General of Taxation could examine if the use of non-binding ATOIDs has adverse consequences for taxpayers and tax practitioners in terms of denying them certainty about the meaning of the tax laws.

Register of private binding rulings

31 Private binding rulings (PBRs) issued by the ATO are published on the ATO website. The principal purpose of this database is to underpin the integrity of the PBR system, by allowing for matching of electronic and printed advice to disclose any forgery of rulings. Published PBRs are edited to remove any information that would enable identification of the applicant.

32 PBRs do not have precedential value and do not extend to anyone other than the applicant; tax lawyers note that some taxpayers struggle to understand why a ruling issued to another taxpayer in similar circumstances does not apply to them.

33 For this reason, the ATO does not encourage the use of the PBR register as a research tool and PBRs are only indexed by their identifying number. The register can be 'browsed'; PBRs appear in numerical order with a topic description for each number. There are nearly 33,000 PBRs on the register to be browsed and no search facility.

34 PBRs provide an insight into the ATO's thinking on certain issues and may help other taxpayers and advisers frame PBR requests. In this sense, the easy accessibility of PBRs has significant equity implications. At the same time, there is a need to ensure that taxpayers are not misled into reliance on PBRs that do not apply to them.

35 The Inspector-General of Taxation could examine if it would be appropriate to equip the Private Binding Rulings Register with enhanced search and indexing facilities to make it more accessible and useful to taxpayers and their advisers.

Private GST rulings

36 The GST rulings system is based on the old sales tax rulings system under section 37 of the *Taxation Administration Act 1953* (TAA 1953) and is legislatively different from the rulings systems for income tax and most other taxes. In particular:

- Taxpayers cannot apply for a ruling on a GST reviewable decision;
- GST private rulings are not binding unless they alter a previous ruling that applied to a taxpayer (such as, for example, a public ruling); and
- Taxpayers cannot apply for a review of a GST ruling in relation to prospective transactions (even if the ruling is a 'deal-breaker').

37 The ATO has advised that it adopts a broader administrative approach to GST rulings than set out in the law, as follows:

The Commissioner considers himself bound by a GST private ruling from the date of issue until it is withdrawn, replaced by a new private ruling, or altered by a conflicting public ruling. Advance private rulings will be provided where transactions are seriously contemplated and the relevant facts can be provided.⁴

38 Nonetheless, there is concern amongst some tax lawyers about the extent to which the ATO declines requests for GST rulings. A decision by the ATO not to issue a ruling is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*; this is, however, an expensive and time-consuming process for taxpayers who are simply seeking clarity in an aspect of the law.

39 By way of determining if a review into this issue should proceed, the Inspector-General of Taxation could seek information from the ATO on the number and nature of requests it has received for GST private rulings over the last three years, whether any of those requests have been declined and, if so, the reasons for not acceding to those requests. Any ensuing review could also examine whether the legislative framework and associated ATO system for GST private rulings enables businesses to manage their affairs with certainty.

⁴ Commissioner of Taxation, letter of 27 October 2003.

Timeframes for private binding rulings

40 The Taxpayers' Charter specifies that the ATO will finalise Private Binding Rulings (PBRs) within 28 days of receiving all relevant information or in a longer timeframe negotiated with the applicant. Tax practitioners believe that, in practice, there is little point in refusing to negotiate a longer timeframe with the ATO, as the ATO will simply issue a negative ruling if pressed for time.

41 The ATO recently informed the National Tax Liaison Group that it issued more than 15,200 written binding advices in 2003-03 and met its performance target of finalising 75 per cent of those advices within 28 days of receipt of all information required to make a decision. The ATO has raised its performance target to 80 per cent for 2003-04.⁵

42 It is likely that concerns raised with the Inspector-General relate to that proportion of PBRs not finalised in 28 days. In his 2001-02 report on the ATO's rulings system, the Auditor-General found that, while the 28-day standard was met for many PBRs, a significant proportion of small and large business PBRs took over a year to complete, with some complex large business PBRs taking nearly three years.⁶ The ATO advises that a concerted effort has been made to reduce stocks of PBRs that have been outstanding for more than 90 days; at the end of September 2003, stocks had been reduced from 1000 to 400.⁷

43 Business taxpayer groups suggested that delays in PBRs are uncommercial for multi-million dollar transactions because certain parties, including financiers, will not be prepared to keep offers open indefinitely, making it preferable in many cases for businesses to obtain the opinion of Senior Counsel and run any risk. Businesses struggle to understand why the ATO cannot make 'real-time' decisions when businesses are required to do so as a matter of course.

5 Extract from NTLG Agenda, 25 September 2003. Provided to the Inspector-General by the Commissioner of Taxation on 14 October 2003.

6 Australian National Audit Office, *The Australian Taxation Office's Administration of Taxation Rulings*, Audit Report No. 3 of 2001-02, tabled 17 July 2001.

7 Extract from NTLG Agenda, 25 September 2003. Provided to the Inspector-General by the Commissioner of Taxation on 14 October 2003.

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44 On 25 September 2003, the ATO advised the National Tax Liaison Group of a series of initiatives that have been undertaken to improve the timeliness and quality of advice provide via the private rulings system. These initiatives have included:

- The introduction of 'call over' arrangements to actively progress cases;
- Taking a more unified approach to technical decision making, by ensuring that each private binding ruling is based on internal precedent development by specialists – Centres of Expertise and Tax Council Network;
- Ensuring that a comprehensive database of precedent exists to assist case owners;
- Ensuring that officers approving private binding rulings have the necessary skills to do so through a compulsory accreditation program;
- Allocating a unique authorisation number and securely archiving each private binding ruling and publishing an edited (for privacy etc) version on the ATO website;
- Implementing an integrated electronic decision support and case management system (December 2002) incorporating the end to end process for producing a private binding ruling;
- Providing comprehensive instructions to staff through Law Administration Practice Statements;
- Six monthly reviews of the quality of all technical decisions (based on a sample and involving experts external to the ATO). Adherence to practice and process is also measured; and
- Regular reviews of private binding rulings cases on hand, particularly older stocks.⁸

⁸ Extract from NTLG Agenda, 25 September 2003. Provided to the Inspector-General by the Commissioner of Taxation on 14 October 2003.

45 By way of deciding whether to proceed with a review into this issue, the Inspector-General of Taxation could seek disaggregated data from the ATO on PBR processing times to discover the cause of business concern about delays in PBRs. Any ensuing review could also assess the ATO's proposed improvements to the Private Binding Ruling system in terms of their success in reducing business and taxpayer concerns.

Affirmative private binding rulings

46 It was suggested that a series of objective criteria for the issue of private rulings could be developed to overcome concerns expressed by tax practitioners and businesses about the ATO issuing too many negative rulings.

47 The Commissioner of Taxation advised that the concerns raised with the Inspector-General may not be representative of broad trends in successful PBR applications. ATO data indicate that:

... of 150 plus private rulings issued in 2002-03 in the large business and international market, ... unfavourable rulings were issued in only 16% of cases (i.e. 84% were fully (67%) or partially (17%) favourable. Likewise in the small business market, unfavourable rulings issued in only 28% of cases.

In the individuals market, of a sample of 104 private rulings that issued in a one week period in each of November 2002 and May 2003 showed that only 30% were unfavourable. A similar sample of the 73 GST rulings issued in a one week period in September 2002 revealed unfavourable rulings issued in only 21% of cases.

These figures exclude cases where rulings were not issued because, for example, requests were withdrawn or were invalid.⁹

48 The Inspector-General of Taxation could seek further data from the ATO and consult with small and large businesses to discover whether the perception that the ATO issues a high proportion of negative rulings is consistent with actual experience.

⁹ Commissioner of Taxation, letter of 14 October 2003 to the Inspector-General of Taxation.

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49 Any ensuing review could consider options for the ATO to draw upon private sector expertise in the development of private rulings. The review could also examine the ease and rapidity with which businesses can use the statutory review and appeal mechanisms to challenge unfavourable ATO rulings.

Private Binding Rulings and Part IVA

50 Several submissions were received expressing concern about the inability of taxpayers to obtain rulings on whether tax arrangements will attract the general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936).

51 The Review of Business Taxation recommended that the Commissioner of Taxation be specifically allowed to issue legally binding rulings on the potential application of Part IVA of the 1936 Act (also known as the general anti-avoidance rule) subject to taxpayers providing sufficient factual details; and covering the elements of Part IVA in applications.¹⁰

52 This issue has again come to the fore because some taxpayers have obtained favourable private rulings, acted in accordance with those rulings, but then faced action by the ATO under Part IVA to recover tax benefits.

53 There is concern that this can happen even when there was full and true disclosure of all aspects of a tax arrangement at the time the ruling was sought and when the ruling itself may indicate that no Part IVA issues are disclosed on the face of the facts presented.

54 Investors who sought PBRs – and maintain that they would never have entered into tax effective arrangements without the security of a PBR – are now questioning the value of PBRs if they do not cover Part IVA.

55 Any review by the Inspector-General of Taxation could explore the interaction of the rulings system and Part IVA (and other anti-avoidance provisions in tax legislation). Such a review would need to balance the need to minimise risks to taxpayers against the ATO's responsibility to manage risks to the integrity of the tax system.

¹⁰ Recommendation 3.1.

Public rulings that override private rulings

56 Taxpayer groups are concerned that the legislative provisions underpinning the rulings regime – in the TAA 1953 – allow for private rulings to be overridden by public rulings. It was the view of tax practitioners that, at the least, the ATO should be under an obligation to inform any entities holding PBRs inconsistent with a new public ruling.

57 The ATO advised as follows:

... this is a practical issue only in relation to private rulings concerning indirect tax laws (eg GST, Wine Equalisation Tax and Luxury Car Tax). A private binding ruling issued under Part IVAA of the Taxation Administration Act in relation to a tax law (eg income tax, FBT) cannot be overridden by a subsequent, inconsistent public ruling unless the private ruling can be withdrawn. However, the Commissioner cannot withdraw a private binding ruling without the consent of the rulee if the arrangement that is the subject of the private ruling has been entered into, unless in the opinion of the Commissioner, another person would suffer a disadvantage that would be much greater than any disadvantage the rulee would suffer¹¹

58 A review by the Inspector-General of Taxation would focus on the systems the ATO has in place to withdraw private rulings inconsistent with new public rulings or emerging case law. Such a review could examine the need for the ATO to notify holders of PBRs of the release of any draft public rulings that would override those PBRs.

A new class of rulings for individual taxpayers

59 An outcome of the ATO's experience with mass marketed tax effective investments has been a consideration of how the rulings system might have assisted in providing certain taxpayers with more certainty about their investments.

11 Commissioner of Taxation, letter of 27 October 2003.

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60 Tax practitioners have been critical of the ATO not providing rulings on questions of fact, but only on questions of law. It is claimed that, in relation to mass-marketed tax effective investments, taxpayers could not seek a private binding ruling on such questions as whether entities were 'carrying on a business' for the purposes of the tax laws – the issue on which Court cases may now turn.

61 The rulings provisions in TAA 1953 allow for rulings on the interaction of law and fact. Specifically, Section 14ZAF provides that 'a person may apply to the Commissioner for a ruling on the way in which, in the Commissioner's opinion, a tax law or tax laws would apply to the person in respect of a year of income in relation to an arrangement'.

62 The Review of Business Taxation recommended expanding the scope of the public and private ruling systems, to the extent possible, to provide for the Commissioner of Taxation to be legally bound by rulings on ultimate conclusions of fact involved in the application of a tax law.¹²

63 A review by the Inspector-General of Taxation could examine the possibility of taxpayers having the right to seek a private binding ruling on their personal tax affairs using an application form structured to resemble the tax return for individuals. Such a ruling would preclude the ATO from amending an assessment if the taxpayer then self-assessed in accordance with the ruling.

Potential conflict between rulings and case law

64 One of the most serious concerns identified by the tax professions was inconsistency of the ATO's rulings with case law and/or inconsistency amongst ATO rulings themselves.

¹² Recommendation 3.1.

65 An example repeatedly raised by taxpayer groups and the professions was the *Essenbourne* case.¹³ The ATO is not appealing this Federal Court decision but has nonetheless stated publicly that it does not agree with the Fringe Benefits Tax (FBT) and Part IVA aspects of this decision.¹⁴

66 There is an ATO public ruling on the register (TR99/5) relating to the fringe benefits tax implications of employee incentive trust arrangements that is seen by some tax practitioners as inconsistent with the case law.

67 Taxpayers Australia called for a review of the way in which the ATO has responded to this case, noting that:

*The ATO has chosen to set itself above the law and has chosen to make itself the final arbiter of the law and how it should be applied. ... If any taxpayer sought to apply the position that the ATO has adopted to their own affairs then the full force of the law would be brought to bear.*¹⁵

68 The Commissioner of Taxation advised that the ATO has responded to Taxpayers Australia, confirming that it will not be appealing the *Essenbourne* case but will clarify the application of the law through litigation of representative cases. Importantly, in the meantime the ATO advised that:

*It's not our intention to disallow objections against FBT assessments or seek to recover fringe benefits tax in respect of employee benefit trust cases pending clarification of the law.*¹⁶

69 There are also claims that the public rulings system itself is internally inconsistent, with conflicting rulings in existence.¹⁷

70 A review by the Inspector-General of Taxation could examine what systems the ATO has in place to withdraw rulings inconsistent with emerging case law or new public rulings.

¹³ *Essenbourne Pty Limited v Commissioner of Taxation* [2002] FCA 1577 (17 December 2002).

¹⁴ The Commissioner announced on 14 March 2003 that the ATO regarded the Court's decision in the *Essenbourne* case as flawed in relation to Part IVA of the ITAA 1936 and fringe benefits tax, and that the ATO would not appeal *Essenbourne* but seek to challenge the interpretation of the law in other cases.

¹⁵ Taxpayers Australia, Editorial, 28 April 2003.

¹⁶ Correspondence between Kevin Fitzpatrick and Peter McDonald, provided by the Commissioner to the Inspector-General on 14 October 2003.

¹⁷ For example, TR96/15 of July 2002 is seen as inconsistent with IT2015 and IT 2441 in its treatment of 'foreign source income'. Similarly, claimed inconsistencies have arisen in relation to what constitutes 'carrying on a business' with the recent Taxation Ruling (TR2003/04) on charter boats appearing to contradict the earlier ruling MT2000/1.

Moderating risk of amended assessments

Time taken by the ATO to amend assessments

71 Under section 170 of the ITAA 1936, the Commissioner of Taxation has the power to amend self-assessments. The Commissioner can make these 'adjustments' notwithstanding the assessed tax may have already been paid by the individual or business in respect to that assessment.

72 The statutory review periods in which the Commissioner may amend an assessment vary depending on taxpayer circumstances. The standard review period for a taxpayer is four years after the day on which the notice of assessment is served; this amended assessment period can be extended a further two years, to six years, in the case of tax avoidance; there is no time limit in cases of fraud or evasion.

73 *A New Tax System (Tax Administration) Act 1999*, introduced a two year amended assessment review period known as the shorter period of review (SPOR). Under Section 6AD of ITAA 1936 an individual taxpayer may qualify as a SPOR taxpayer if their tax affairs comprise only salary and wages, interest and dividend income, excluding capital gains and losses.

74 In early consultation with tax practitioners, accountants and industry representatives, it has become apparent that there is a level of confusion amongst taxpayers as to the powers of the Commissioner in amending assessments over extended periods of time. Particular areas of concern include:

- a lack of understanding among taxpayers that their 'notice of assessment' is not a final account of their tax affairs for any tax year and that the Commissioner has not given his 'tacit' approval to their tax affairs but may, in fact, review their assessment years later;
- the alleged ATO reliance on extended statutory review periods to protect the revenue where it has failed to perceive the revenue impact of certain investment products at the time;
- the application of a 'nil assessment' provision by the ATO, where the Commissioner has an extended statutory review period beyond the four year limit if a taxpayer has lodged a non taxable return in respect of any year; and

- the application of the General Interest Charge (GIC) to amended assessments; the compounding nature of the GIC, when applied to a tax debt deemed by the ATO to have been incurred for up to six years earlier, is said to remove any revenue incentive for the ATO to act quickly to amend assessments.

75 The Inspector-General of Taxation could examine the systems that the Commissioner has in place to review self-assessments expeditiously to minimise risk and uncertainty for taxpayers. The Inspector-General could also examine whether the statutory review periods in the ITAA 1936, including the six year review period in Part IVA of the Act, remain appropriate.

General Interest Charge

76 The General Interest Charge (GIC) was introduced on 1 July 1999 as a new standardised interest charge to replace all pre-existing late payment penalties administered by the Commissioner of Taxation. The GIC was to be transparent, consistent, commercially based and easy to administer, with rates to be set at a level that would encourage the payment of tax debts on time.

77 The GIC compounds on a daily basis and is calculated by adding an uplift factor of seven per cent to a specified base rate (the 90-Day Bank Bill rate). The GIC is fully deductible to taxable entities with taxable income, thus reducing the effective level of the charge by up to 48.5 per cent for income taxpayers on the top marginal rate.

78 Under the TAA 1953, the Commissioner has the discretion to remit all, or part of, the GIC applied to a taxpayer's liability. Section 8AAG(5) of the TAA 1953 allows the Commissioner to remit the GIC in special circumstances, by reason of which it would be fair and reasonable, or where it is otherwise appropriate to do so.

79 The words 'otherwise appropriate to do so' were added to section 8AAG(5)(b) in 2000, allowing the Commissioner to remit GIC on other than a case by case basis (that is to exercise the remission discretion across a larger group of taxpayers). In this regard, the Explanatory Memorandum for the amending Bill explained that: 'The effect of the amendment is to give the Commissioner a broader discretion to remit the GIC than under the current provision.'

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80 Tax practitioners, taxpayer groups and industry representatives have expressed substantial concerns at the Commissioner's exercise of this power, in particular that his approach, especially in the area of Mass Market Tax Effective Investments, is inconsistent with his practice elsewhere.

81 Additionally, there is a view among accounting bodies that the Commissioner is reluctant to use his power to remit the GIC.

82 The Commissioner has published policy guidelines that set out the law and policy governing remission of the GIC. The Remission Guidelines do not restrict the Commissioner's discretion to remit the GIC on a case by case basis, but they do provide taxpayers with guidance on the circumstances in which they might expect remission of the GIC to be granted.

83 A review by the Inspector-General of Taxation could examine the Commissioner's remission of the GIC, including the ATO's Receivables Policy and Practice Statements on GIC remission.

84 As taxpayer concern about the GIC is greatest in relation to amended assessments, where several years worth of GIC may have accumulated before the taxpayer is aware they must pay GIC, the Inspector-General could initially focus on remission of GIC in cases of amended assessments.

Minimising self-assessment compliance costs and risk

Individual tax returns

85 The PAYG taxpayer with a single source salary, bank interest and several deductions is required to consider as many as 110 boxes and to navigate their way through up to 130 pages of supporting documentation to complete their tax affairs. If that taxpayer invests in a managed fund, this complexity may be expanded by a further 166 boxes and an additional 70 pages of supporting documentation.

86 Taxpayer organisations have indicated that the amount of information required by the ATO, coupled with the use of the tax system to achieve social policy objectives (Family Tax Benefit, Senior Australian Tax Offset and the 'Baby Bonus'), is increasing the level of complexity experienced by taxpayers lodging returns. The desire of taxpayers to find easier ways to comply is

evidenced by the dramatic increase in the use of the ATO's 'E-Tax' electronic tax return.

87 The sheer bulk of TaxPack documentation, and the inability, or lack of desire, of individuals to handle this level of complexity has resulted in tax practitioners spending the majority of their time focusing on tax compliance, rather than the provision of 'real' taxation advice to the public. It is estimated that around 75 per cent of Australia's 10 million personal income taxpayers now rely on tax practitioners and accountants to complete their tax affairs.¹⁸

88 The advent of the personal Tax File Number, which, in most cases, is provided by individuals to their employers, financial and investing institutions, as well as government agencies, has resulted in the ATO electronically collecting the majority of information required to complete a PAYG tax return. Nonetheless, a taxpayer is still required to independently provide this information to the ATO, with the possible application of fines if they fail to do so.

89 The Inspector-General of Taxation could examine the quantum of information collected by the ATO to complete a PAYG tax return, with a view to determining whether this information is still required or whether there is a more effective way to lodge a return. Such a review would also examine the extent to which taxpayers are exposed to penalties or criminal sanctions for mistakes that could result from not understanding tax return documentation.

Notice of Assessment

90 At the end of each financial year when a taxpayer lodges their tax return with the ATO they are issued with a 'Notice of Assessment' via mail. This notice informs the taxpayer of their taxation liability for the previous financial year, identifying levies, rebates and credits, along with any outstanding tax debt or refund to which they are entitled.

91 A particular area of concern is the apparent lack of understanding among taxpayers as to what their individual 'notice of assessment' is actually saying. Tax practitioners have indicated that taxpayers are struggling to decipher their own self-assessment notices and, in many cases, do not realise that the notice is not an ATO assessment (final account) of their tax affairs.

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92 In this regard, a report by the Taxation Ombudsman into the ATO's handling of claims for tax deductions by investors in a mass marketed tax effective investment product know as 'Main Camp', released in January 2001, recommended that:

*'The ATO analyse the extent to which taxpayers generally are aware of and understand the implications of the self-assessment system, and develop an information and education program aimed at addressing areas of misunderstanding or ignorance which is directed at the taxpayer (as opposed to the tax professional community).'*¹⁹

93 The same report also recommended that:

*'The ATO provide, with Notices of Assessment, an explanation of the way the self-assessment system applies to that assessment.'*²⁰

94 The ATO has since included additional information in Tax Pack on self assessment as well as notifying taxpayers on their Notice of Assessment that the ATO reserves the right to review tax returns for a period of up to six years.²¹

95 The Inspector-General of Taxation could review the structure and content of the Notice of Assessment, with a view to providing the Commissioner with guidance on how to better target these statements and thus ensure that the ATO message is being conveyed effectively.

18 ATO, *Compliance Program 2003-04*, p. 8.

19 Commonwealth Ombudsman: *Report of the investigation into the ATO's handling of claims for tax deductions by investors in a mass marketed tax effective scheme know as Main Camp*, January 2001, Recommendation 1, p. 4.

20 Commonwealth Ombudsman, *Main Camp*, Recommendation 2, p. 4.

21 Commonwealth Ombudsman, *Main Camp*, Recommendations 1 & 2, p. 4.

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