

Biannual hearing with the Commissioner of Taxation

Introduction

- 1.1 The biannual hearing with the Commissioner of Taxation (the Commissioner) resulted from an inquiry into tax administration undertaken by the Joint Committee of Public Accounts and Audit (the Committee) in the 41st Parliament.
- 1.2 The hearings increased the scrutiny of the administration of the Australian Taxation Office (ATO) through receiving submissions and then conducting public hearings at which the Commissioner responds to Committee questions.
- 1.3 At the March 2011 hearing the Committee decided to table a report as an additional element of scrutiny.¹ In the report the Committee detailed its findings, areas of concern and suggestions for improvement. At each subsequent hearing the ATO would be asked to respond to the Committee's previous concerns and recommendations.
- 1.4 The Committee, in seeking to further enhance its activities with regards to the scrutiny of the ATO, enlarged the biannual hearings to include public evidence from external review agencies as well as peak and consumer bodies. The external review agencies would be represented by the Inspector-General of Taxation, the Auditor-General, and the

1 Joint Committee of Public Accounts and Audit (JCPAA), *Report 424: Eighth biannual hearing with the Commissioner of Taxation*, June 2011, <<http://www.aph.gov.au/house/committee/jcpaa/taxationbiannual0311/index.htm>> accessed 16 November 2011.

Commonwealth Ombudsman. Different peak and consumer bodies would be selected to appear at each hearing depending on its focus.

Conduct of the hearing

- 1.5 The hearing took place in Canberra on Friday, 23 September 2011. A transcript of the public hearing is available on the Committee webpage.²
- 1.6 In addition to evidence taken orally at the public hearing, the Committee also received two written submissions. The submissions are listed in Appendix B and are also available through the Committee's website.³
- 1.7 The Committee received the ATO's submission one month before the hearing as recommended. In the submission the ATO reiterated that it 'welcomes parliamentary scrutiny, including by the JCPAA and considers it a significant and appropriate element in the structural model of governance, and as a positive opportunity for further constructive dialogue between the Commissioner and the Committee to the benefit of the Australian community.'⁴
- 1.8 In addition to the Tax Commissioner, Second Commissioners and other ATO senior executives, the Auditor-General and senior staff from the Australian National Audit Office (ANAO), the Inspector-General of Taxation and Deputy Inspector-General of Taxation, the Commonwealth Ombudsman, Deputy Ombudsman and senior staff from the Ombudsman's office, the President of the Association of Taxation and Management Accountants (ATMA) and the Senior Tax Counsel and Tax Counsel from The Taxation Institute, attended the hearing as witnesses. Details of the attendees are available in Appendix A.
- 1.9 The Committee wishes to thank those who took part in the hearing through providing written or oral evidence.

2 JCPAA,
<<http://www.aph.gov.au/house/committee/jcpaa/taxationbiannual0311/index.htm>>
accessed 16 November 2011.

3 JCPAA,
<<http://www.aph.gov.au/house/committee/jcpaa/taxationbiannual0311/index.htm>>
accessed 16 November 2011.

4 Australian Taxation Office (ATO), *Submission 1*, p. 3.

Key themes of the report

1.10 This report is structured around key themes which the Committee thinks are important when considering the administration of taxation by the ATO. They are:

- the level of service provided;
- compliance;
- consultation on policy issues; and
- external scrutiny and reviews.

As signalled at the previous hearing, the Committee intends to pursue these key themes in future hearings and reports and to use them as a mechanism for monitoring the ATO's performance. The Committee will add to them in light of emerging ongoing issues confronting the administration of Australia's taxation system.

1.11 There will also be a section titled 'other issues' which will address issues that are more 'one-off' in nature and, while important, may not form part of a continuing process of inquiries and reports. For example at this hearing, matters relating to the national Tax Forum.

1.12 Each theme contains several sub-elements which focus on specific issues.

1.13 The Committee's comments are consolidated at the end of each section, followed by any recommendations the Committee has made.

Theme 1: The level of service provided

- 1.14 The ATO's service standards are a set of performance benchmarks in place to assure the community that the services they provide are of a consistent and high standard. There are 22 service standards reported externally and another 5 used within the organisation, for tracking performance.⁵
- 1.15 In its submission to the Committee, the ATO reported that at June 2011 it was meeting 25 of the 27 service standards.
- 1.16 The Committee noted that the benchmarks for:
- electronic tax returns;
 - refunds of overpaid tax;
 - and the two complaints handling service standards
- were still not being achieved at year end.⁶ The ATO indicated this under-performance had to be considered in the context of the implementation of its new major ICT processing system, the core component of the change program.⁷
- 1.17 A table showing the ATO's service standards performance is presented in figure 1.1 below.

5 ATO, <<http://www.ato.gov.au/content/25940.htm>> accessed on 16 November 2011.

6 ATO, *Submission 1*, Attachment 9: ATO End of Year Service Standard Table 2010-11

7 ATO, *Submission 1*, p. 4.

Figure 1.1 Service Standards - ATO end of year table 2010-11

SERVICE STANDARDS	*Historical Performance			2010-11 Performance													
	07-08	08-09	09-10	Benchmark	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	End Year
	Rating	Rating	Rating		MONTH												
Registrations – Commissioner of Taxation	●	●	●	93% in 28 days	95.3	92.7	97.5	98.4	98.8	97.9	86.9	97.4	93.2	98.3	97.9	98.2	●
Registrations – Australian Business Register	●	●	●	93% in 28 days	98.5	98.6	98.2	96.2	94.4	92.7	65.6	90.9	93.7	95.3	95.4	96.6	●
Electronic tax returns - Individuals	●	●	●	94% in 14 days	55.0	90.9	93.8	95.7	95.3	67.3	85.1	93.7	94.2	87.7	92.5	87.8	●
Paper tax returns - Individuals	●	●	●	80% in 42 days	93.7	95.2	95.8	97.6	93.8	87.0	91.8	93.1	91.8	90.7	91.1	91.0	●
Electronic tax returns - taxable non-individuals	●	●	●	92% in 14 days	93.8	96.1	90.4	92.0	91.6	84.2	88.1	97.1	98.0	91.5	96.5	97.6	●
Paper tax returns - taxable non-individuals	●	●	●	80% in 56 days	89.7	88.5	84.8	90.3	93.1	81.3	95.7	97.4	96.3	95.9	97.1		●
Electronic credit activity statements	●	●	●	92% in 14 days	98.6	98.8	96.8	98.3	98.7	96.9	97.4	98.4	98.0	98.1	98.2	96.5	●
Paper credit activity statements	●	●	●	85% in 14 days	98.5	98.1	94.7	98.7	98.2	94.1	97.4	98.2	97.6	97.6	98.3	93.6	●
Electronic debit activity statements	●	●	●	95% in 14 days	99.9	100.0	99.3	99.9	99.9	99.8	99.4	99.7	99.9	99.5	99.9	99.2	●
Paper debit activity statements	●	●	●	90% in 42 days	98.4	99.6	97.7	99.1	99.5	98.3	96.5	97.9	98.6	96.8	99.2	95.9	●
Refund of overpaid tax	●	●	●	90% in 28 days	66.5	83.1	91.3	94.4	93.9	93.5	82.5	93.2	94.5	97.6	96.9	96.9	●
SHA special account payment requests	●	●	●	80% in 21 days	81.0	50.0	74.7	60.8	48.0	94.4	88.6	81.5	86.7	80.1	92.9	88.3	●
Excise fuel scheme claims	●	●	●	92% in 14 days	91.3	80.4	89.2	95.4	95.3	97.4	97.0	99.2	100.0	99.0	100.0	98.7	●
Automated email response	●	●	●	90% in 3 days	100.0	100.0	89.6	88.8	97.1	99.9	99.4	100.0	98.5	99.5	85.9	92.1	●
Inbound correspondence	●	●	●	85% in 28 days	84.8	88.7	92.2	93.0	93.2	93.7	91.0	93.9	91.6	91.3	90.7	90.2	●
Private written advice	●	●	●	80% in 28 days	84.7	83.4	88.5	88.5	86.7	87.4	79.4	85.3	92.9	93.1	91.2	90.3	●
Telephone general enquiries	●	●	●	80% in 5 mins	82.8	84.4	85.8	85.8	84.0	79.9	80.0	80.1	74.7	73.2	75.9	81.8	●
Tax practitioners' premium service telephone enquiries	●	●	●	90% in 2 mins	90.9	89.1	90.0	89.5	91.8	91.9	91.1	91.9	90.3	91.7	88.1	91.7	●
Visit general enquiry service	●	●	●	90% in 10 mins	89.8	90.4	94.1	94.4	92.1	92.2	91.9	95.3	95.4	95.4	95.0	95.1	●
Electronic amendments	Income tax data	●	●	90% in 28 days	86.2	91.3	95.9	96.8	97.9	90.3	93.9	97.1	98.6	97.0	95.9	97.5	●
	Activity statements	●	●		99.5	99.7	99.5	99.6	99.8	99.6							
Paper amendments	Income tax data	●	●	75% in 56 days	67.9	93.4	90.0	94.2	90.0	81.1	87.0	90.1	93.6	90.5	90.1		●
	Activity statements	●	●		87.5	96.4	96.8	93.4	97.2								
Review of private written advice	●	●	●	85% in 28 days	55.6	61.5	92.3	81.8	100.0	88.9	81.8	94.4	100.0	100.0	100.0	95.7	●
Review other than to private written advice	●	●	●	70% in 56 days	70.0	73.6	78.2	84.4	80.4	83.0	74.8	69.2	79.9	85.1	85.2	85.4	●
Audits and reviews finalised advice	●	●	●	99% in 7 days	99.5	99.6	98.9	99.0	99.5	99.7	99.4	99.8	99.6	99.6	99.7	99.6	●
Complaints - initial contact	●	●	●	85% in 3 days	54.0	63.1	63.1	56.2	77.7	74.9	76.7	82.1	89.9	84.8	86.1	88.1	●
Complaints – resolution	●	●	●	85% in 21 days	72.0	77.5	67.4	70.2	74.4	82.2	72.0	82.2	86.0	90.5	92.8	92.6	●
Clerical and administrative errors	●	●	●	70% in 21 days	****	****	****	****	****	****	****	****	****	****	****	****	N/A

* Historical performance is a visual representation of year-to-date performance as reported in the 2009-10 Commissioner of Taxation Annual report. There have been changes to service standards (differentiation) and benchmarks (increases/decreases) from year to year that are not shown in this table.
 **** Not reported in 2010-11

Table key

- Met or exceeded benchmark
- Marginally failed benchmark < 2%
- Failed benchmark > 2%

Source Australian Taxation Office

- 1.18 The Tax Commissioner recalled that at the time of the last hearing the Committee raised issues associated with increasing levels of complaints and diminution of service standards, which were attributable mostly to the finalisation of the change program. He was pleased to report that in the intervening six months a 'bounce back' had been achieved. ⁸
- 1.19 There have been changes to service standards over the past few years: increases and decreases of benchmarks; redefinition of standards; and collapsing of categories. For instance the ATO advised that they were no longer reporting on clerical and administrative errors as a service standard.⁹ The Committee were informed that the ATO reviews service standards annually both from the point of view of where gaps exist and from a pragmatic business point of view. The Committee sought to understand the methodology used in setting the service standards and how they were revised, including whether anybody external to the ATO was involved.
- 1.20 The Committee therefore welcomes the announcement that the ATO has commissioned a strategic review of service standards, involving external consultants, to assess the effectiveness of the current measures against community expectations. The Committee heard that any new standards would take account of the needs of the taxpayer so that the response is measured in terms of appropriateness, not just in terms of time taken to complete.
- 1.21 In the ATO's submission to the next hearing, the Committee requests the key results of the external review of the service standards be included.
- 1.22 The Tax Commissioner undertook to put focus and direction into trying to improve and shorten any gap identified between international best practice service standards and current ATO performance.
- 1.23 There was some concern about the view held by the ATO leadership team that 'it is no use promising something that we cannot deliver' ¹⁰ and 'that we put on the table the things we can realistically promise and not just possibilities.'¹¹ It is important, the Committee considered, that the ATO set high standards even if it took some time to reach them.
- 1.24 The Committee expects to see improvements in performance against benchmarks for the two complaint handling service standards by the time the submission to the next hearing is being prepared. It also expects to see
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8 Mr Michael D'Ascenzo, Commissioner of Taxation, Australian Taxation Office (ATO), *Committee Hansard*, Canberra, 23 September 2011, p. 1.

9 ATO, *Submission 1*, p. 4.

10 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 6.

11 Ms Jennie Granger, Second Commissioner, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 6.

continuous improvement against the electronic tax returns service standard benchmark given the amount of time the ATO will have had to iron out any problems with the implementation of the ICT processing system.

- 1.25 The traffic light system for publicly reporting achievements against service standard benchmarks, as recommended by the Committee, has been instigated. It gives a clear indication of how the ATO is performing against each benchmark. However, this information was hard to locate on the Website.

Recommendation 1

The Committee recommends that the Australian Taxation Office increase the visibility of the traffic light reporting system, on its achievements against benchmarks, to a more prominent position on its website with clear signposting for visitors to the website.

Complaints handling

- 1.26 The ATO's submission noted that complaints on hand had reduced significantly, from 4501 at June 2010 to 962 at June 2011, following a concerted effort to improve management of complaints. Also that the total number of complaints received had 'largely returned to traditional levels,' giving the example of July 2009 a total of 2,167; July 2010 a total of 4,594; and July 2011 a total of 1,785.¹²
- 1.27 The Committee appreciates that the ATO has an exceptionally large volume of interactions with its clients both taxpayers and tax practitioners, however the Committee thought the ATO should be wary that it does not become complacent about the level of complaints and continues to strive to reduce the number of them.
- 1.28 As with service standards, the ATO is conducting a review of its complaints and compliments handling processes, including consideration of best practice drawn from Australia and overseas.
- 1.29 Many of the complaints in the previous year were related to Tax Time performance. The ATO reported that early indications were that Tax Time 2011 was going more smoothly than in 2010, with a significant increase in the number of refunds processed in the same time period as last year. The

¹² ATO, *Submission 1*, p. 5.

Taxation Ombudsman's office advised the Committee that, with extra resources and revised processes, service delivery at Tax Time had improved noticeably over the previous year, resulting in their office receiving fewer complaints.¹³

- 1.30 The Taxation Ombudsman's office reported that of all the in-jurisdiction complaints and approaches they had received last year, 2,589 related to the ATO, making it the third most frequent agency about which complaints were received.
- 1.31 However, the ATO were 'pleased to advise the Committee that since the March hearing of the JCPAA we have seen a significant improvement in the ATO's complaints handling,' citing improvements in income tax returns processing area; the level of senior officer involvement in complaint resolution; and the responsiveness of the complaints area of the ATO, as improved aspects of particular note.¹⁴
- 1.32 Complaint numbers were showing a slight trend upward, reported the Ombudsman's office, but overall on a better trajectory. The current issues of most concern are the ATO's communication with taxpayers, followed by the way audits are conducted and then matters of inconsistency in decision making. 'Over 30% of our complaints are resolved by us by providing a better explanation for an ATO decision. This suggests to us that taxpayers are not understanding their interactions with the ATO or do not understand what they are being asked to do.'¹⁵
- 1.33 The Committee considered that the ATO had made a significant effort in the area of complaint handling since the last hearing, both in terms of resource allocation to reduce the number of complaints on hand, and in tackling the issues that led to complaints being lodged. The Taxation Ombudsman confirmed that the new processes for complaint handling were working well. The Committee was pleased that the process of review was ongoing and should result in continuous improvement. They signalled their interest for the next hearing in further discussing the nexus between clear communication and complaints.

13 Ms Alison Larkins, Deputy Ombudsman, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p.11.

14 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p.11

15 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p.11

Change program

- 1.34 At the March hearing the Committee was informed that the implementation of the integrated core processing system, a major component of the change program, was the cause of delays in the processing of refunds which resulted in an increase in the number of complaints.
- 1.35 Tax Time 2011 had gone more smoothly, the ATO reported in their submission - with 100,000 additional refunds processed by 21 August, compared to the same time last year and 1,783 complaints received in July 2011 compared to 4,594 in July 2010.¹⁶
- 1.36 The Tax Commissioner claimed the ATO as one of the leaders internationally in electronic lodgement, with 95% of income tax returns lodged electronically either through tax agents or e-tax.¹⁷ He announced that having finalised the change program, the ATO had commissioned a new program to promote online dealings - ATO Online 2015.
- 1.37 The Committee signalled its intention to inquire further into this program at its next hearing. As mentioned in its last report, the Committee trusts the ATO has learned lessons from the implementation of the large scale change program and that the implementation of ATO Online 2015 will be less disruptive.
- 1.38 Overall the Committee was pleased that the investment in the change program was beginning to pay dividends in reducing processing time and in identifying potentially fraudulent claims which would improve the integrity of the system.

Compromised Tax File Numbers (TFN)

- 1.39 The Committee was particularly interested in the outcome of remedial action taken relating to the 900 compromised tax file numbers that were discussed at the previous JCPAA hearing in March.
- 1.40 The ATO stated categorically that the 900 compromised TFNs had all been finalised.¹⁸ It assured the Committee that those taxpayers were now able to interact with the ATO and with agencies such as Centrelink and Medicare, the banks and other financial organisations, because they either

¹⁶ ATO, *Submission 1*, p. 5.

¹⁷ Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 19.

¹⁸ Mr Paul Duffus, Chief Operating Officer, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 2.

had a new tax file number or the tax file number had been categorised as a very low risk in terms of being potentially fraudulent.

- 1.41 The Committee was perturbed over the time some compromised TFNs remained unresolved, with some outstanding for over a year. The ATO assured the Committee that most were processed in under 28 days; however, there were currently approximately 300 cases that were still unresolved after 90 days. Most of those taxpayers had been provided with a new tax file number so they could interact with the ATO, although the complexity of their tax affairs meant that their cases could not be completely resolved.
- 1.42 The Tax Commissioner noted that there had been a significant increase in compromised tax file numbers over the last couple of years, by nearly 100%.¹⁹ Although it represented a small fraction of the TFNs in the system - some 31,000 of the 27,000,000 in total - it did highlight the increase in fraudulent attempts to steal people's identities requiring the ATO's attention.
- 1.43 Over the peak tax return processing period July/ August, a spike of compromised TFNs is normally created and currently the ATO has 3,000 unresolved compromised TFNs on hand.
- 1.44 Given the sharp rise in the number of compromised TFNs, the Committee sought the ATO's view about any patterns emerging that might indicate it was the work of organised crime. The Tax Commissioner confirmed that the revenue system was under concerted attacks from organised crime syndicates, however this remains at a low level and the ATO has been working with other law enforcement agencies such as the Australian Crime Commission and AUSTRAC to overcome the problem.²⁰
- 1.45 The Committee is reassured that the 900 compromised TFNs considered high risk, on hand at the time of the last hearing, have been dealt with and at very least a new tax number issued so the taxpayer can interact with the ATO and other agencies.
- 1.46 The Committee were also pleased to know that most compromised TFNs are now being resolved quickly. At the next hearing the Committee would welcome information on new strategies for trying to get resolution on the more complex cases that remain outstanding for 3 months or more, recognising that the ATO often requires information to be supplied by the taxpayer which may restrain processing time.

19 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 1

20 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 3.

Organisational Culture

- 1.47 At the March hearing of the JCPAA, the Committee was concerned by the ATO's organisational culture that showed reluctance to identify areas where it considered improvement was required and recognise the importance of complaints as a rich source of information on where to target those improvements. The Committee asked the ATO in its submission to the next biannual hearing to explicitly state and detail actions it had taken to make improvements and outline further planned improvements.
- 1.48 The Committee noted that the results of a regular survey of tax practitioners and the community on the ATO's performance and professionalism, showed a decline in levels of service delivery.²¹ Again, the ATO attributed this to the implementation of the new information technology processing system. Now that this system is fully operational, the Committee would expect the results of the next survey to show a marked improvement.
- 1.49 The following statement made in the ATO submission went some way to assuring the Committee that the ATO had accepted that improvements were necessary and that the organisation had taken on the need for continuous improvement. 'We continually aim to improve the services we provide and the experience of the community in their interactions with the ATO. While generally we provide a high level of service, there is always room for improvement as we strive to learn from our experience and seek to deliver to a higher standard.'²²
- 1.50 The Tax Institute commented that when the ATO did not perform at an expected level, in the majority of cases, they were willing to admit it and work together to satisfactorily resolve issues.²³
- 1.51 Following up on the Committee's probe at the last hearing as to whether or not there was 'group-think' at senior management levels, the ATO provided information on the ways in which they refresh their staff and bring in more skills.

Statistics on the ATO workforce were given including:

- a record number of graduates (403) recruited in the last year;
- a broadened range of graduate disciplines including communications, behavioural psychology and high-end mathematical analytics;

21 ATO, *Submission 1*, p. 4.

22 ATO, *Submission 1*, p. 5.

23 Mr Robert Jeremenko, Senior Tax Counsel, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 22.

- high retention rates for graduates - 96% for the 2010 cohort;
- a boost in the number of lower level processing staff (126) to assist at peak periods;
- reduction in the average age of employees from 47 years to 43 years;
- 80% of staff located outside of Canberra, compared to the 85% figure given at the last hearing;
- approximately 50% of the organisation with careers of 20 plus years;
- 43% of staff with university degrees or diplomas, higher than the public sector average;
- a significant proportion of senior executives having had experiences outside of the ATO; and
- the number of senior executives tracking at 1% of the 22,000 person organisation, less than Australian Public Service averages.

1.52 The Tax Commissioner acknowledged the importance of public confidence in the ATO and its processes, including capacity building processes. The Commissioner said 'we have tried to build into our processes an integrated quality framework, and we are receptive to doing anything more we can in that area to build public confidence.'²⁴

1.53 The Committee appreciated the ATO's provision of detailed information about recruitment and staffing profiles both in their submission and at the hearing. The Committee was reassured that the ATO is making efforts to ensure its culture is moving to one of greater openness and acceptance of the need for improvement.

1.54 However the Committee will continue to take an interest in recruitment practices, staff turnover, and training of ATO officers. The Committee will monitor any attrition of the skills base at lower levels which might place a burden on the longer serving, more experienced staff. The Committee will be looking for evidence that audits and assignments are not just target or quantity focused but also quality focused.

24 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 18.

Theme 2: Compliance

- 1.55 In its previous report the Committee requested that the ATO include a summary of its compliance activities in its next submission, detailing specific action taken to make compliance easier and improve communications.
- 1.56 At this hearing the Committee focused on the relative ease and cost of compliance on Small and Medium Enterprises (SMEs) and micro businesses.

Making compliance easier

- 1.57 The ATO's submission explained how it takes a risk management approach to compliance and is increasingly differentiating its engagement with taxpayers based on its view of their relative likelihood of non-compliance and the consequences of that behaviour.
- 1.58 The submission outlined the rationale for the Compliance Program which is underpinned by the Compliance Model and also the taxpayer's willingness to comply. The ATO stated that 'we want to make it as easy as possible for taxpayers to do the right thing by providing information, tools, services and guidance to assist with record-keeping, reporting and lodgement.'²⁵
- 1.59 As well as the provision of practical support to meet the paperwork requirements, the ATO gives forewarning of the particular areas of the economy that will be under investigation in the upcoming year. The ATO's 2011-12 Compliance Program was included as part of their submission.
- 1.60 The Tax Commissioner described the publication of the Compliance Program as a way of seeking community feedback. 'This is where we think our risks are to the community. Please tell us if you think we are right.'²⁶
- 1.61 Another strategy employed to make compliance easier is the ATO's use of data to pre-fill lodgement forms. This helps to identify discrepancies and anomalies as it is based on previous information held by the ATO or supplied by employers, Centrelink or other organisations with which the ATO has data sharing arrangements. More generally the ATO is promoting and fostering online dealings because the Commissioner said

25 ATO, *Submission 1*, p. 11.

26 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 5.

'we believe that will make it easier for people in the longer term and easier for businesses in particular.'²⁷

Cost of compliance on small business

- 1.62 At the hearing a number of issues were raised around the ease/difficulty with which businesses, particularly the smaller ones, were having with compliance. These included:
- meeting obligations in circumstances of extreme hardship such as caused by natural disasters;
 - the burden of record keeping;
 - the applicability of benchmark data;
 - the complexity of lodgement processes;
 - the perceived u-turns on interpretation of tax law;
 - the impost of audits; and
 - problems with the clarity of communication.
- 1.63 Committee Members discussed examples from their own constituencies of the impost of tax compliance on small businesses. Similar examples were raised by the representatives from the tax profession in attendance at the hearing. The Inspector-General of Taxation also reported that his clients believe the ATO's administrative approach to timeliness, certainty and compliance costs could be significantly improved.²⁸
- 1.64 The Tax Commissioner noted that he met with the Small Business Advisory Group a number of times a year and got feedback and guidance from the small business representatives about where the ATO might improve services. The ATO provided more than 85,000 assistance visits to businesses over the course of the last year.²⁹
- 1.65 The ATO informed the Committee that it had provided a great deal of assistance to small businesses in distress, due to the natural disasters that occurred in Australia earlier in the year. This included record reconstruction, deferring lodgements and negotiating payment arrangements - some interest free.
- 1.66 The Committee acknowledged the support being offered to businesses though sought to know if there had been any simplification of the
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27 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 20.

28 Mr Ali Noroozi, Inspector-General of Taxation, Office of the Inspector-General of Taxation, *Committee Hansard*, Canberra, 23 September 2011, p. 10.

29 Mr Shane Reardon, Acting Second Commissioner, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 7.

lodgement processes. They were aware that a recent MYOB study had found 7 in 10 business owners believed Business Activity Statement (BAS) were too hard and needed to be simplified.³⁰

- 1.67 The ATO responded that 'lodgement on its own has not been a major issue that the businesses have raised with us in the many forums where we talk to them.'³¹ The Inspector-General of Taxation offered that from his experience, large business was better organised and able to bring their issues forward, whereas often with Small and Medium Enterprises (SME) his office had to be proactive, going out and talking to them and taking their issues on board.³²
- 1.68 The ATO asserted that they placed an emphasis on record keeping, giving businesses information to assist them to keep good records so that their business performance was enhanced as well as giving them the ability to meet the tax obligations that flow from that. They pointed to the Small Business Advisory Service that had been operating for a number of years where businesses can request a 'no strings attached,' one-on-one visit from the ATO. 'We just go out and talk with them. It is not an audit. We just sit down with the business and their records and give them advice about their situation. It is tailored and practical. Some of our products that we send out now through the mail are much more tailored to the business. Instead of sending them a booklet that covers every possible obligation, it is tailored to them.'³³
- 1.69 The Committee believes compliance and lodgement present challenges for micro businesses and urges the ATO to simplify the processes, use plain language communication and any other ways it can to lift the burden for them.
- 1.70 The ATO pointed to the work it had done with the tax agent community in publishing benchmarks to assist business to help gauge their performance. Over 100 industries had been benchmarked using income tax return data which show the broad expectations the ATO has of business performance, and hence tax payable, in those industries.
- 1.71 The Inspector-General of Taxation noted that his office had heard from micro businesses questioning the appropriateness of the use of benchmarking and the level of record-keeping required. The micro businesses were saying that they are quite different one from another and they can all differentiate themselves from the benchmarks. They consider

30 'Business dislikes BAS,' *Australian Financial Review*, 16 September 2011, p. 57.

31 Mr Reardon, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 7.

32 Mr Noroozi, Office of the Inspector-General of Taxation, *Committee Hansard*, Canberra, 23 September 2011, p. 16.

33 Mr Reardon, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 7.

that the levels of record keeping they need to show in order to disprove that these benchmarks do not apply to them are too stringent for a business of their size. The Inspector-General of Taxation intends to investigate those claims in an upcoming review.³⁴

- 1.72 The Committee supports and encourages the ATO to work closely with the Inspector-General of Taxation on this work.
- 1.73 The Committee endorses the publication of a Compliance Program highlighting the areas where the ATO will focus their attention in the upcoming year. It works as an important communication tool for the ATO increasing public confidence in the transparency of its operations.
- 1.74 The assistance provided to the public, both private taxpayers and businesses, around paperwork requirements and the pre-filling of electronic lodgement forms is acknowledged as making compliance easier. However, the Committee will monitor unintended consequences such as the large number of 'stops' for checking that were put on taxpayer refunds where discrepancies were identified resulting in delays to many refunds.
- 1.75 The trust Australian taxpayers have in the ATO is critical to the integrity of the tax system. The 'no strings attached' small business advisory service is a clear way this trust can be increased. The use of benchmarks as indicators of likely tax obligations is also an area where mutual trust can be built, as well as being an effective administrative innovation by the ATO. However, any taxpayer perceptions that either of these innovations is not being managed in good faith will undermine any potential benefits. With these comments in mind, that Committee notes the importance of avoiding any perception that the 'no strings attached' small business advisory service is an information gathering exercise for future audits.
- 1.76 The Committee felt that the 'no strings attached' small business advisory service was a commendable initiative by the ATO and encourages wide business sector participation. To maximise uptake, the Committee recommends that the ATO consider additional cost effective promotion of this service – for example through the existing communication channels of correspondence to taxpayers; through tax information brochures; and through key industry bodies such as Council of Small Business of Australia.
- 1.77 The Committee also emphasises the importance of evaluating the practicality of applying benchmarks to some sectors and micro-businesses types. There will be a need to adjust the approach if the benchmarks are found to be overly generic or if they are perceived as an attempt to mould
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34 Mr Noroozi, Office of the Inspector-General of Taxation, *Committee Hansard*, Canberra, 23 September 2011, p. 16.

unique businesses to fit a predetermined picture. The Committee has therefore requested that the ATO report on an evaluation of the benchmarks method for smaller businesses as part of the ATO's next submission.

- 1.78 Finally, the Committee commends the ATO on their engagement with tax practitioners, especially around Tax Time. The work of the Tax Practitioner Forum in developing tips to reduce common errors and communicate warnings around the risk of over-claiming and fraud was noted. The Tax Agent Portal was highly praised by tax industry professionals.

The tax gap and random audits

- 1.79 The Committee sought a fuller understanding of the 'tax gap' concept - the difference between expected and actual revenue raised by taxation.
- 1.80 In 2010 the ATO identified that the before-tax profit of companies increased significantly, yet tax revenue budgeted by the government decreased. The ATO said it was making ongoing efforts to track long-term trends to see whether and why a tax gap exists.
- 1.81 The Tax Institute informed the Committee the tax gap issue was raised at the National Tax Liaison Group, one of the ATO's consultative committees. Their interest was in knowing what sort of analysis was being undertaken by the Commissioner and the ATO to ensure the revenue estimates are accurate.
- 1.82 The ATO pointed to work in other jurisdictions on how to measure whether or not the right amount of tax is disclosed and brought to account. 'We know from all the international work that has gone on to actually be confident about a figure you would need to support that with a random audit program. A random audit program would be costly to the taxpayer.'³⁵ The Tax Commissioner said that approach has its own problems and that the compliance costs of a random audit program that would be passed on to the taxpayer would be prohibitive and unfair. 'It is very expensive for the community and at the end of the day you are not sure whether it produces a very clear or robust outcome.'³⁶
- 1.83 The Association of Taxation and Management Accountants representative attributed the tax gap to the timing difference between when the money is flowing into the coffers from good times and a rapid slowdown in revenue when the good times turn bad. The effect of the bad times is reflected in the tax revenues collected, but does not show up until 12-18 months

35 Mr Reardon, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 29

36 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 31.

afterwards, when the revenue for that period is collected. 'The tax revenue is always a reactionary process of the moneys coming in well and truly after the event.'³⁷

- 1.84 The ATO uses Australian National Accounts³⁸ information to derive benchmarks on how the law is operating relative to the intended outcome. This has highlighted a variance in company tax between the accounting profits and the tax payable. The ATO agreed that one explanation could be the time lag, as suggested by the Association of Taxation and Management Accountants. However, this also calls into question whether or not 'the costings associated with a number of legislative measures are playing out in the way the parliament and government intended.'³⁹
- 1.85 Despite the assertions that calculating the tax gap is a potentially unproductive activity, concrete evidence was not provided to the Committee to substantiate these opinions. It was not clear whether a thorough analysis had been conducted into this issue to determine the possible costs and benefits. Given the national importance of the tax gap, the Committee wishes to see a comprehensive analysis of gap and its implications as part of the ATO's submission to the next hearing.

Tax base integrity

- 1.86 The Committee explored the broader issue of tax base integrity focusing on the large number of prosecutions the ATO had pursued and their relative success rate.
- 1.87 The tally of prosecutions for the past financial year totalled 1,700. From March to June the ATO had made 600 prosecutions, consisting of 450 individuals and 140 companies - resulting in penalties and back taxes of more than \$9.5 million. However, the Committee noted that there seemed to be quite a high strike rate of losses in rulings of the court. 'The way the courts are interpreting your prosecutions it seems to be a question of the integrity of the tax system generally.'⁴⁰
- 1.88 The Tax Commissioner asserted that the courts have almost unanimously found in favour of the Commissioner in civil penalty or criminal penalty areas, with some clear messages in sentencing for white collar crime.

37 Mr Robert Duncan, President, Association of Taxation and Management Accountants (ATMA), *Committee Hansard*, Canberra, 23 September 2011, p. 31.

38 Australian Bureau of Statistics (ABS), '5206.0 - Australian National Accounts: National Income, Expenditure and Product, June 2011', <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/5206.0>> accessed 16 November 2011.

39 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 31

40 Mr Robert Oakeshott MP, Member for Lyne, Chair, JCPAA, *Committee Hansard*, Canberra, 23 September 2011, p. 4.

However, the Tax Commissioner had concerns about the legal position and interpretation of the law in relation to some claims of not having to pay tax on income or deductions. 'Our success rate is still very positive in terms of numbers, but there are some very worrying signs in relation to the courts' approach to the general anti-avoidance provisions of the law.'⁴¹

1.89 The Committee asked the ATO about the integrity of the tax base in relation to some of the recent court rulings. In response the ATO advised: 'it is then a matter for government and parliament to say that we think this degree of structuring of arrangements is more than the tax base can bear, because if that is not within the net then the base is diminished accordingly.'⁴²

1.90 The Tax Commissioner also referred to the consultative committees as another way to give people opportunities to discuss collaboratively how the law operates and is interpreted. 'I would welcome more upfront real-time sharing of information so that we can make it clearer for people and give practical certainty where we can.'⁴³

1.91 The Committee sought to understand what is considered when making decisions about when and whom to prosecute, and who had the responsibility to make such decisions. The ATO described their risk management approach in making judgements about where to allocate priorities. 'There is a point about whether or not it would be cost-effective, and we do make those choices in those sorts of cases. We have that level of decision about, with our limited resources, where we apply those resources.'⁴⁴

1.92 Conscious of the importance of the on-going integrity of the tax base, the Committee decided to continue to monitor the ATO's success rate in the courts and potentially provide support to the ATO for change if the anti-avoidance provisions are found to be ineffective.

Improving communications

1.93 At the previous hearing in March with the JCPAA, the Committee proposed a future focus of the ATO could be on improving the quality of its communication with members of the public, making its communication more accessible and easier to understand. The ATO had admitted that, notwithstanding the work they had undertaken on communications, there

41 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 4.

42 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 4.

43 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 5.

44 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 5.

remained more to be done. The Committee therefore were keen to see what had been achieved in the intervening six months.

- 1.94 In their submission the ATO highlighted some of the actions they had taken to improve the accessibility of their communications. These included:
- engaging ATO consultative forums to seek advice and early design on products;
 - engaging the community directly through user-testing and market research activities;
 - engaging tax volunteers around Tax Time who helped about 50,000 people in the income bracket under \$40,000 or \$50,000 with their tax returns;
 - creating products to assist people with non-English speaking backgrounds and people with disabilities;
 - established a corporate correspondence capability to assist all ATO areas to review content and improve their letters;
 - set in place a rolling schedule of reviewing and improving different types of correspondence such as debt letters, Business Activity Statements, notices of assessment, statements of account;
 - piloting improvements to debt letters and assessing how the language used impacts on compliance behaviour;
 - undertaking a review of 450 generic letters and rewriting some of them in a 'people to people' style which is less formal, jargon-free with a simplified message;
 - begun to interact with taxpayers using social media – Twitter, YouTube and Facebook, providing information to support the Tax Time campaign, responding to questions in a time, manner and place suitable to users; and
 - offered online tools such as self-help calculators, a tool to help small business assess their eligibility for capital gains tax concessions and currently developing a tool to determine and assess GST implications for property transactions.
- 1.95 The submission also listed planned future improvements relating to website navigation, form simplification and decision support tools.
- 1.96 The Ombudsman's office rated communication with taxpayers as their highest issue of current concern with the ATO. Almost a third of all the complaints received about the ATO are resolved by the Ombudsman's office providing a better explanation for an ATO decision. The Ombudsman's office said 'this suggests to us that taxpayers are not

- understanding their interactions with the ATO or do not understand what they are being asked to do.’⁴⁵
- 1.97 Collaborative work between the ATO and the Ombudsman’s office is continuing on the consistency of decision making across audits and in communication of those decisions with taxpayers.
- 1.98 The Ombudsman is convinced that simplification is the key to making compliance much easier. Using the United Kingdom’s tax administration as an example, he said simplification could occur in two ways: firstly a tax system where fewer people are required to lodge a return and secondly; use of a simple communication form.
- 1.99 The Ombudsman also observed that across the range of business lines of the ATO there has been a considerable improvement in responsiveness to some of the difficult issues. He singled out the Debt business line as one that is leading the way in experimenting and piloting better methods of communication.
- 1.100 The ATMA representative said the ATO was very conscious of words not being understood totally by people and gave the following example: ‘In one of the forums that I sit on, the accounting working group, we often look at letters and correspondence going out to tax agents and to taxpayers, particularly in the Business Activity Statement (BAS) area, to see whether they can make the language simpler so that people understand more of it.’⁴⁶
- 1.101 The Tax Commissioner assured the Committee that his office would continue with their endeavours to simplify communication. He said: ‘The key point is that every effort we can make to make things easier in terms of understandability in communication is something that we support, and we are more than happy to work with this committee and others to try to improve that as much as we can. It is an ongoing challenge. We have done a lot of things. I could list this and that. It is not as if we have been sitting on our hands in this space. We are probably as innovative as any administration around the world in what we have done, but I think there is always more that we can do.’⁴⁷
- 1.102 Members of the Committee raised questions of communication and access more broadly, highlighted by the recommendations of an ANAO audit into ATO shopfronts.

45 Ms Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p. 11.

46 Mr Duncan, ATMA, *Committee Hansard*, Canberra, 23 September 2011, p. 21.

47 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 15.

- 1.103 The ATO proposal will close off shopfronts at the end of their leases and they are trialling alternative options of service delivery, particularly online and call centre services. The Committee inquired about access for particular groups who might not have the financial, educational or other capacity to engage in those modes of communication, noting that they may be the ATO's preferred modes of engagement, but not necessarily those preferred by everyone.
- 1.104 The Ombudsman echoed the Committee's concerns over social exclusion saying that a strong theme of his work across the whole of the Commonwealth Australian Public Service was to ensure that vulnerable individuals, individuals with disabilities and otherwise, do not lose ready access to services.
- 1.105 That ATO assured the Committee that despite closing of some shopfronts it did not feel that the overall service delivery or accessibility would be diminished. The ATO acknowledged the need to maintain easy public access to face-to-face consultations and stated that they are working with other government agencies, such as Centrelink, to ensure these services can be provided through alternative shopfronts.
- 1.106 Overall, the Committee is pleased with the multiplicity of efforts to improve communication happening across the ATO and is heartened by the innovation highlighted in some areas. The Committee will however keep this area, as well as equitable access to services, in focus while their constituents bring it to their attention.
- 1.107 Acknowledging that tax law and its interpretation is a complex area and that the ATO are required to inform taxpayers of their rights and responsibilities under it, the Committee cannot stress enough the importance of plain language communication. Taxpayers need to understand in clear and simple language what is being communicated to them and what they need to do about it. Therefore, the Committee has requested that the ATO include a report on progress they have made in producing plain language communications, including 'before' and 'after' examples, as part of their submission to the next hearing.

Theme 3: Consultation on policy issues

1.108 At the previous hearing the Committee had requested the ATO detail, in its next submission, the process for developing implementation plans for policy. The Committee perceived the levels of consultation between the policy development departments and the ATO to be ad-hoc and sought reassurance adequate processes were in place.

Level of consultation

1.109 Although new policy formulation is outside the responsibility of the ATO, the cost of compliance and the administrative feasibility of the policy are areas where the ATO could provide useful input. This input could minimise the negative impact on the tax administration and the operation of the tax system more broadly, hence its importance for the Committee. This is another key issue for the integrity of the tax system.

1.110 The ATO described their role in the design of tax policy and tax law as 'the voice of administration'.⁴⁸ They gave examples of advising on practical impacts of proposals, the lead times needed for affected taxpayers and the ATO to prepare for new measures, the likely impact on revenues and compliance costs and on the design of the law so that it is likely to be interpreted by the courts in a way that achieves its policy intent.

1.111 The ATO informed the Committee that it is 'currently implementing almost 200 new policy measures.'⁴⁹ A group of senior executives, the Policy Implementation Forum, oversees the ATO's implementation of new tax and superannuation policies. Where policy proposals are deemed to have significant administrative impacts for the ATO and the community, a 'rapid response' process is used. This is a group of very senior level people who can quickly provide advice on the ATO's response.

1.112 The Tax Policy Co-ordination Committee is a monthly discussion forum, at senior officer level, held between Treasury and the ATO. It operates to ensure a high level of integration and coordination across policy, legislative and administration including changes proposed by government and changes recommended by Treasury. This supports day to day operations for developing implementation plans for new measures.⁵⁰

48 ATO, *Submission 1*, p. 14.

49 ATO, *Submission 1*, p. 14.

50 ATO, *Submission 1*, p. 15.

Timeliness, transparency and breadth of consultation

- 1.113 A protocol developed between Treasury and the ATO was provided to the Committee setting out how they work together throughout the policy development and legislative design process.⁵¹ The protocol provides that if Treasury and the ATO cannot reach agreement on tax policy and legislation matters, Treasury will ensure that the ATO view is provided to the Minister in a form agreed by the ATO, or the ATO may advise the Minister separately in consultation with Treasury, but not alone. Although the protocol looks to be a useful tool for ATO-Treasury interactions, the Committee notes that it fails to address the issue of timing – i.e. the point at which the ATO should be consulted.
- 1.114 The Committee received an unsolicited submission from a member of the public who requested to remain anonymous. In this submission attention was drawn to a section of the protocol with Treasury showing that the ATO notifies Treasury of legislative problems the Commissioner encounters but that the Treasurer does not provide the communications to the parliament or the public. The writer claims such secrecy is inconsistent with the doctrine of the separation of powers as the ATO is a statutory agency independent of government. There is an obligation, he asserts, to be open, transparent and accountable to the parliament as a whole, not just to the Treasurer.⁵²
- 1.115 The Committee acknowledged the complexity of the issue the submitter had raised and sought input from the Tax Commissioner and the representatives of the external review agencies.
- 1.116 The Tax Commissioner confirmed that the protocol with Treasury was consistent with the traditional protocol between the Commissioner of Taxation and the Minister. The independence, he said, came in terms of the application of the law to the facts of particular taxpayers, and the direct responsibility to parliament in terms of the annual report process and the committee processes. In addition the Tax Commissioner raised the responsibilities his office has to Ministers to ensure they are kept informed of areas of the law that are operating in an unintended way.⁵³
- 1.117 The Inspector-General of Taxation thought the issue being raised was about being able to understand the intention of the law. ‘Generally the Tax Office would say that the intention does not become relevant; if the legislation is clear on reading, you do not need to look at the intention. It is

51 ATO, *Submission 1*, Attachment 8: ATO Treasury Protocol

52 Name withheld, *Submission 2*, [p. 1].

53 Mr D’Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 11.

when it is not so clear.⁵⁴ The Inspector-General of Taxation directed the Committee to relevant reviews he had completed in 2009, the so called U-turn review. The Deputy Inspector-General added that there is concern where taxpayers do not have access to material that would explain an interpretation of the law consistent with the underlying policy intent.

- 1.118 Regarding breadth of consultation, the Committee heard that in addition to the Treasury the ATO works with a range of agencies, such as: the Department of Education, Employment and Workplace Relations; the Department of Human Services; and the Department of Families, Housing and Indigenous Affairs. The Committee heard that further work is being done to boost the ATO's profile with other departments to have involvement on any possible tax implications of new policy proposals.
- 1.119 Regarding overall policy development involvement, the Committee now has greater confidence that the ATO is being brought into the policy design process with Treasury and other departments in a more systematic way. This should allow the ATO to have input on the impact of the policy on the administration and operation of the tax system, and hence a more effective system being developed over time.
- 1.120 The Committee notes the continued work of the ATO with Treasury in relation to earlier involvement in the policy design process⁵⁵ and will be seeking confirmation, at its next hearing, that it is occurring.
- 1.121 Finally, the Committee acknowledges the questions raised regarding the transparency of the legislative problems highlighted to the Treasury by the ATO. Although this is a difficult area - which involves balancing issues of maintaining confidence in the tax system with ensuring appropriate confidentiality of possible tax system problems before they are rectified - the Committee felt that increased transparency was justified. If substantial legislative problems have been identified, it is important that these issues are promptly fixed and that, after time, the public is notified of the improvements made. The Committee has therefore recommended that ATO notifications to the Treasurer on tax policy and legislative problems be made public within 12 months of submission, along with the Government's response. This could possibly be done through an annual statement or tabling in parliament.

54 Mr Noroozi, Office of the Inspector -General of Taxation (IGT), *Committee Hansard*, Canberra, 23 September 2011, p. 12.

55 ATO, *Submission 1*, p. 16.

Recommendation 2

The Committee recommends that Australian Taxation Office notifications to the Government, either directly or through Treasury, on tax policy and legislative problems be made public within 12 months of submission, along with the Government's response.

Theme 4: External scrutiny and review

- 1.122 At the last hearing the Committee signalled its intention to become the central monitoring and scrutiny body within parliament with regards to ATO administration. In order to accomplish this, the Committee said it would seek greater involvement of the external scrutiny organisations and incorporate their work into future hearings.
- 1.123 In particular the Committee was looking to use the work of the Australian National Audit Office (ANAO), the Commonwealth Ombudsman and the Inspector-General of Taxation (IGT) to help assess the performance of the ATO. The Committee also wanted to investigate the links and mechanisms by which these organisations work together to scrutinise the operations of the ATO.
- 1.124 The Committee was also keen to enlarge future biannual hearings to include public evidence from peak industry and consumer bodies since all of these organisations have expertise and client experience upon which the Committee can draw when scrutinising the administration and operation of the ATO.
- 1.125 The following sections deal firstly with external scrutiny bodies and then with the professional bodies. The discussion regarding external scrutiny bodies considers the following four points:
- their respective roles and responsibilities;
 - their relationships with the ATO;
 - the handling of recommendations made by the scrutiny bodies; and
 - co-ordination between the scrutiny bodies.
- 1.126 The discussion regarding professional bodies focuses on their respective roles and responsibilities and on their relationships with the ATO.

The role of scrutiny bodies

- 1.127 Each of the scrutiny bodies has a mandate to consider different aspects of the work of the ATO.
- 1.128 The ANAO undertake both financial statement audits of the ATO as well as a range of performance audits.
- 1.129 The Inspector-General of Taxation is responsible for identifying systemic issues in tax administration and making recommendations for their improvement.
- 1.130 The Commonwealth Ombudsman is also the Tax Ombudsman. His office can investigate the fairness of actions and procedures of the ATO. Individuals, businesses, groups or organisations who consider they have

been disadvantaged by the ATO can make a complaint and the Ombudsman can investigate all complaints related to tax administration. While the Ombudsman may disclose information about any issue within his jurisdiction if he believes it is in the public interest, there is no compulsion to act upon the recommendations in his reports.

The ATO's relationships with scrutiny bodies

- 1.131 On relationships with the ATO, the scrutiny bodies were unanimous - relationships were 'good and getting better'. The Auditor General said: 'I would rate our relationship as very good.'⁵⁶ The Inspector-General of Taxation said: 'the relationship with the ATO continues to evolve with some resulting improvements'.⁵⁷ The Office of the Commonwealth Ombudsman reported: 'they are pleased with how the relationship is developing'⁵⁸, crediting the last hearing as having assisted in improving relationships with the ATO considerably.
- 1.132 The IGT acknowledged however that a degree of tension should exist between an administrator and a scrutiny body to ensure true independence of the scrutineering function and to provide the community with confidence in their work.⁵⁹

Recommendations made by scrutiny bodies

- 1.133 The Committee recommended in its report of the eighth biannual hearing with the Commissioner of Taxation, that the ATO details its responses to recommendations made by the external review agencies as set out in their reports or reviews.
- 1.134 In its submission the ATO informed the Committee that it responds to all reports and reviews of external scrutineers. These responses are published on the scrutineer's websites, as well as a summary provided in the ATO's annual report. External review agencies indicated that almost all of their recommendations are agreed to in full or at the very least, in principle.
- 1.135 The scrutiny bodies also agreed that improvements in tax administration were achieved informally through direct day-to-day interactions with the ATO and not just from formal recommendations.

56 Mr Ian McPhee, Auditor-General, Australian National Audit Office (ANAO), *Committee Hansard*, Canberra, 23 September 2011, p. 9.

57 Mr Noroozi, Office of the Inspector-General of Taxation (IGT) *Committee Hansard*, Canberra, 23 September 2011, p. 11.

58 Ms Larkins, Office of the Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p. 11.

59 Mr Noroozi, Office of the Inspector-General of Taxation, *Committee Hansard*, Canberra, 23 September 2011, p. 11.

- 1.136 On some of the Inspector-General of Taxation's reviews an advisory group made up of external stakeholders, such as taxpayers or tax advisers, are included in the discussions, leading to a high level of agreement with the final recommendations. The Ombudsman's office described the process as 'seeking to craft a recommendation that is implementable and that we basically agree represents a good solution to the problem.'⁶⁰
- 1.137 The ANAO, as a general rule, has reduced the total number of recommendations it makes in its reports where it can see an organisation is already undertaking changes or improvements in an area under review. This is to ensure the focus remains on the most significant issues. The ANAO considered the ATO responded positively to their audit findings and understands the ATO monitors progress in implementing the ANAO recommendations through its own internal Audit Committee which includes three independent private members and representatives from the ANAO.
- 1.138 The scrutiny bodies acknowledged the challenges the ATO faces relating to 'the inherent difficulties of administering complex taxation, excise and superannuation legislation through a large and geographically dispersed network',⁶¹ with a diverse taxpayer population, however they believed the ATO could improve the timeliness of the implementation of the recommendations they made.
- 1.139 The role of the Inspector-General Taxation is an advisory one and as such there is no compulsion for the ATO to act on the recommendations made in his reviews. 'The Commissioner also has statutory independence in the administration of the tax law. Accordingly, the Commissioner has discretion in the acceptance or rejection of Inspector General Taxation recommendations.'⁶²
- 1.140 Reviews by the office of the Inspector-General of Taxation are provided to the relevant Minister and it is at his or her discretion as to when they are released. This lag time, between the completion of a review and its release, has caused some frustration for the Inspector-General Taxation who is keen for the results of his work to be made public and acted on as soon as possible to ensure currency and relevance.
- 1.141 The Inspector-General Taxation recently undertook a follow up review of the implementation of agreed recommendations relating to six reports undertaken by his office between June 2006 and October 2008. The review

60 Ms Larkins, Office of the Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p. 14.

61 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 September 2011, p. 9.

62 Mr Noroozi, Office of the Inspector -General of Taxation, *Committee Hansard*, Canberra, 23 September 2011, p. 10.

was completed in June 2010, but was not released by the Minister until March 2011. The Inspector-General of Taxation was pleased to report that the ATO had agreed wholly, or in part, to implement 41 of the 45 recommendations made in the six reports and had implemented, or made significant progress, with the vast majority (38 of 41) of the agreed recommendations.

- 1.142 There is now a reporting assurance process in place with the ATO to ensure the Inspector-General of Taxation's review recommendations are appropriately implemented.
- 1.143 The Inspector-General of Taxation suggested the Committee may wish to focus future hearings on recommendations which the ATO has not agreed to; proposing that further open and transparent debates about the merits of those recommendations could be beneficial. The Auditor-General commented that in the ANAOs experience particular attention is paid to those recommendations which are not agreed to because it is unusual for agencies to disagree, particularly where a good relationship exists between them and where there is a clear understanding of each other's perspective.⁶³
- 1.144 Overall, the Committee was satisfied with the ATO's handling of the recommendations in reviews and reports made by the external review agencies, especially the large number of recommendations agreed to and implemented.
- 1.145 At the next hearing, in addition to checking the timely implementation of agreed to recommendations from the external scrutiny bodies, the Committee pay particular attention to the recommendations that are not agreed to by the ATO. The Committee will be interested investigating the reasons given for not agreeing to particular recommendations, especially given the reduced the number of recommendations made and the partnership approach to identifying issues during the reviews.
- 1.146 The Committee also urges the Assistant Treasurer to release the reviews done by the Inspector-General of Taxation much more quickly. This will allow earlier agreement to recommendations and commencement of their implementation.

Recommendation 3

The Committee recommends the Inspector-General of Taxation's reviews be made public within a reasonable time.

63 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 September 2011, p. 13.

Co-ordination between the scrutiny bodies

- 1.147 The Ombudsman's office raised the issue of oversight in the governance structure and whether, 'with the plethora of players in the oversight space or the integrity agency space, there was some confusion and a need for greater clarity.'⁶⁴
- 1.148 The Inspector-General of Taxation referred the Committee to a submission to the Tax Forum he had made in which he expressed his views on governance arrangements for external scrutineers of the ATO.⁶⁵
- 1.149 In this submission the Inspector-General of Taxation proposed a single, centralised and well-resourced scrutineer function for the ATO. The roles and responsibilities of the Inspector General of Taxation and aspects of those of the Ombudsman and Auditor-General's offices that relate to tax administration, would be brought together into one statutory agency. Its work would cover resolving complaints, considering taxpayers administration issues and identifying systemic issues. By removing the overlap between the current scrutineer agencies, the Inspector-General of Taxation argues, it would provide economies of scale and scope. The ATO would only be required to deal with one tax administration scrutineer agency, reducing the time and cost associated with a multiplicity of scrutineers arguably enabling the ATO to enhance its responsiveness. It is envisaged that the head of the centralised scrutineer agency would participate on the management board level of the ATO. As well the scrutineer agency would provide reports on issues and improvements to be considered by the JCPAA, to ensure Parliament receives independent and candid information on the problems taxpayers are experiencing and the scrutineer's opinion on their redress.
- 1.150 The Committee understands that the external scrutiny agencies currently communicate their broad future work programs to each other, but only to a limited extent. The extent to which the agencies can strategically co-ordinate their work programs and share relevant information during investigations, in a manner appropriate to their legislative positions, is less clear.
- 1.151 The Committee agrees that overlap and duplication of effort is to be avoided and welcomes ideas for the external scrutiny agencies to work together as effectively and efficiently as possible. However, the Committee also recommends proceeding with caution on any proposal that separates

64 Ms Larkins, Office of the Ombudsman, *Committee Hansard*, Canberra, 23 September 2011, p. 14.

65 Inspector General of Taxation, *Tax Forum – next steps for Australia*, September 2011, <http://www.futuretax.gov.au/content/taxforum/statements/fed_agencies/igt.pdf> accessed 16 November 2011.

out parts of the roles of the statutory officers such as the Auditor-General and Ombudsman.

- 1.152 The Committee feels that the level of scrutiny of the ATO provided by the Auditor-General, the Inspector General of Taxation, and the Ombudsman is of high quality and should provide the public with confidence in the robustness of their tax system. However, the Committee is also keen to see continuous improvement in this area. Therefore the Committee has requested that further analysis be undertaken as to possibilities for more strategic planning and improved information sharing between the external review agencies.

Recommendation 4

The Committee recommends that the external review agencies investigate and report on opportunities for more strategic planning and improved information sharing as they undertake their reviews to avoid duplication of their efforts and the Australian Taxation Office's resources.

The role of professional bodies

- 1.153 At the last hearing with the Tax Commissioner in March, the Committee expressed a desire to draw upon the expertise of peak industry and consumer bodies when scrutinising the administration and operation of the ATO, to add another degree of transparency and accountability to its work.
- 1.154 The ATO has over 50 consultative bodies with whom it interacts regularly. One of the most influential is the National Tax Liaison Group (NTLG) which addresses the key strategic issues facing the tax system. Three tax professional organisations from that group were invited to attend the hearing: CPA Australia; The Tax Institute; and the Association of Taxation and Management Accountants.
- 1.155 The Tax Institute and Association of Taxation and Management Accountants (ATMA) were represented at the hearing. CPA Australia was unable to attend. The Tax Institute provides professional development events and education for its 13,000 members. It undertakes research activities and discussions with government and the media on tax policy and its administration. The ATMA promotes the welfare and professional development of its members and represents their special interests and needs to government and statutory bodies. The membership consists of small business accountants; suburban and country practitioners who focus

on taxations, management accounting and small business management plus management accountants in commerce and government.

The ATO's relationship with professional bodies

- 1.156 The ATMA said that relationships with the ATO had improved in the last 10 to 15 years. 'The openness and ability to talk to senior people within the ATO and the communication coming out of the ATO, is constantly improving.'⁶⁶ They also commended the proactivity of the ATO when the need arose for some direct action in the area of tax relief for businesses in times of natural disaster. This has been very well received and shown the ATO to 'have a heart.'⁶⁷
- 1.157 From The Tax Institute's point of view there is a strong relationship with the ATO and that 'overall they do a pretty good job. There are times when they do not and they will admit that in the majority of cases, which is great.'⁶⁸
- 1.158 The willingness to have so many consultative forums and engage at such a senior level was seen in a very positive way by the tax professional organisations. 'In terms of the consultation and engagement with industry, the number of fora the ATO is involving in and where they welcome participation from professionals I think is really world class.'⁶⁹ The Tax Institute said that what the profession values in the relationship is the open dialogue to work through problems and resolve issues that arise. 'There are candid discussions. At times there are robust discussions in these forums, but the point is that it is all about making sure the tax system functions as well as it can.'⁷⁰
- 1.159 The Committee welcomes the reassurances provided by the professional bodies that relationships and interactions with the ATO were solid and also continuously improving. Having robust input on the impacts of tax administration as well as suggestions for possible improvements is of obvious benefit to the ATO. The Committee recognises the ATOs significant and commendable efforts in this area.

66 Mr Duncan, ATMA, *Committee Hansard*, Canberra, 23 September 2011, p. 21.

67 Mr Duncan, ATMA, *Committee Hansard*, Canberra, 23 September 2011, p. 31.

68 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 22.

69 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 23.

70 Mr Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 22.

Other Issues

- 1.160 Three other issues were considered by the Committee during the hearing. These included:
- The administration of self managed super funds;
 - The administration of inefficient taxes; and
 - The governance structure of the ATO.
- 1.161 Each of these areas is detailed below.

The administration of self managed super funds (SMSFs)

- 1.162 The ATO is responsible for administering the superannuation guarantee charge, self-managed superannuation funds and the lost members register, co-contributions and unclaimed superannuation money.
- 1.163 In its submission to the Committee the ATO reported that the ATO is implementing a suite of changes to the superannuation system, following the Government's acceptance of certain policy recommendations from the Super System and Australia's Future Tax System reviews.
- 1.164 The Committee were informed that there are 435,000 self managed superannuation funds (SMSF) with some \$403 billion of funds invested.
- 1.165 The Tax Institute Counsel said 'It is a very challenging area for taxpayers and for people who are investing in SMSFs. The superannuation legislation is incredibly complex. We would see a lot of people who are investing in these vehicles using the services of tax agents and our members just to be able to understand the legislation and their obligations.'⁷¹
- 1.166 It is further complicated because there is co-regulatory responsibility between Australian Securities and Investments Commission (ASIC) and the ATO.
- 1.167 Committee members raised examples of representations to their offices from people concerned about the strict governance of SMSF and the consequences of inadvertent errors by people who were in some cases still learning how to manage their funds. They questioned the amount of flexibility the Commissioner of Taxation has to respond when a genuine occurred.
- 1.168 The ATMA confirmed that heavy fines and penalties are imposed for inefficiencies, particularly for contributions in excess of the limit and

71 Mrs Tamera Lang, Tax Counsel, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 24.

noted that the Tax Commissioner does not have a lot of discretionary power in that area. Their representative called for the Tax Commissioner to be given more discretionary power where a genuine mistake had been made.⁷² The Tax Institute welcomed the recent announcement of the \$10,000 discretion for, in effect, first time breaches of the SMSF contribution cap.

- 1.169 The Tax Counsel for the Tax Institute said that there should be some safeguards for SMSFs to make sure the money is both protected and the strict laws are adhered to. 'I would say that the ATO does devote a lot of time and effort towards consulting with the profession on the way the laws should be interpreted, and that is welcomed.'⁷³
- 1.170 In response to questions on whether the rules should be different for SMSFs from those of other superannuation funds, the Tax Institute argued that as a private savings vehicle they would not be subject to as much corporate governance as an industry fund or large public offer fund. 'There are different operational structures, so I think it probably is appropriate that they have different regulatory structures to some extent.'⁷⁴ However the ATMA did not favour making more regulation for SMSF as it would become more complicated for people. They commended the ATO's simply written publications on SMSFs, available both on the website and in hard copy. They raised the idea of some formal training for SMSFs trustees so they become aware of their obligations.
- 1.171 In its submission the ATO reported they had 'worked with industry to implement a number of initiatives focussing on areas previously susceptible to illegal early release of superannuation monies, including rollovers to self managed superannuation funds and the registration stage for new funds. This resulted in a visible and significant reduction in the instances and inherent risk of illegal early access to superannuation monies.'⁷⁵
- 1.172 At the hearing there was a focus on the conditions for early release of funds where there was a genuine pressing hardship and whether some reform might be introduced to help speed up being able to access a proportion of their superannuation.
- 1.173 It was the ATMA's view that 'you have to have a condition of release to have access to your super moneys. You can't just do what you want to do with it at any time. You must follow the process and the rules, because

72 Mr Duncan, ATMA, *Committee Hansard*, Canberra, 23 September 2011, p. 24.

73 Mrs Lang, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 25.

74 Mrs Lang, The Tax Institute, *Committee Hansard*, Canberra, 23 September 2011, p. 25.

75 ATO, *Submission 1*, p. 13.

super is there for a purpose. You have to remember the sole purpose test of what a self-managed super fund is; to provide income and benefits in retirement.⁷⁶

- 1.174 The ATO were of the view that superannuation funds were responsive to the cases they saw where there was a need for people to have money quickly, acknowledging there may be some very tough cases where people are suffering and are delayed. However, the tax professional representatives and the Committee members reported that from the experiences shared with them, even when it was agreed that funds could be released early, people had to wait for months to receive them.
- 1.175 The Tax Commissioner promised that 'one of the things that came out very clearly from this committee is: do not forget those who are vulnerable, and make sure that you have processes in place that protect them as best you can. We will take that away. One of the things that we will do, for instance, in that super area is to see whether or not there is anything we can do from our processes to speed up those situations.'⁷⁷
- 1.176 The Committee welcomes this acknowledgement and undertaking by the Tax Commissioner. Due to the complexities of this area and the need to ensure the rules and administration of SMSFs are appropriate, the Committee intends to follow up SMSF issues further at its next Tax Commissioner hearing.

The administration of inefficient taxes

- 1.177 In the context of the national Tax Forum held in October 2011, the Committee sought input from the representatives of the external review agencies and the tax professional bodies on the ATO's role in the administration of inefficient taxes.
- 1.178 There was agreement among the witnesses that the question of inefficient taxes was a matter of policy and therefore outside their area of interface with the ATO.

The governance structure of the ATO

- 1.179 In the context of the national Tax Forum held on 4 and 5 October, the Committee sought input on the governance structure of the ATO from the representatives of the external review agencies and the tax professional bodies.

76 Mr Duncan, ATMA, *Committee Hansard*, Canberra, 23 September 2011, p. 24.

77 Mr D'Ascenzo, ATO, *Committee Hansard*, Canberra, 23 September 2011, p. 32.

- 1.180 In its submission to the Committee, the ATO stated that it has arrangements in place that support robust corporate governance and transparency of their administrative processes and that the Committee's scrutiny was an integral part of those arrangements. 'The ATO welcomes parliamentary scrutiny, including by this Committee, as a significant and appropriate element in the structural model of governance, and as a positive opportunity for further constructive dialogue between the Commissioner and the Committee to the benefit of the Australian community.'⁷⁸
- 1.181 The scrutiny bodies at the hearing were in accord that the ATO had sound governance structures in place and a strong leadership group. In particular they made mention of an effective Audit Committee which has processes in place to see that the recommendations are being implemented, obtain feedback from the operational areas on how the implementation is going and provide updates to the external review agencies.⁷⁹
- 1.182 The ATMA declared the governance structure within the ATO, with its range of responsibilities as a government agency, to be doing an excellent job in both meeting its statutory obligations with openness and transparency in its dealings.⁸⁰
- 1.183 The Tax Commissioner referred the Committee to a paper on governance issues currently under consideration by the government. This contained a proposal for a Tax System Advisory Board, as a new oversight board for the ATO. It would consist of government-appointed members with a range of diverse skills and an independent Chair. The proposal included involving experts, such as in Human Resource or Information Technology management. It is envisaged that the Board would operate as a small set of trusted external advisers with whom the Tax Commissioner could freely discuss organisational issues tapping into the Board members experience and expertise. The Tax Institute commented that they had been active in consulting with government on the Tax System Advisory Board and was eagerly anticipating the next stage of its development.⁸¹

78 ATO, *Submission 1*, p. 3.

79 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 23 September 2011, p. 12.

80 Mr Duncan, ATMA, *Committee Hansard*, Canberra, 23 September 2011, p. 23.

81 The Treasury, *Designing a Tax System Advisory Board*, discussion paper prepared by the Treasury, January 2011, <http://www.treasury.gov.au/documents/1940/PDF/Discussion_paper_TSAB.pdf> accessed 16 November 2011.

Concluding Comments

- 1.184 The Committee considers that its hearings with the Tax Commissioner add to both the transparency and accountability of the ATO. Such scrutiny helps to shape improvements in the ATO's operations, and leads to better outcomes for the Australian public. Through the hearings, the public has also heard reassuring evidence that the ATO is in fact listening to taxpayers, and that the ATO is being responsive to what they are being told.
- 1.185 The new enlarged format for the hearings worked well, and provided a useful framework for future hearings. The Committee found it valuable to draw on the expertise of different organisations and their interactions with taxpayers and the ATO. The Committee therefore intends to invite the Ombudsman, the Auditor-General and the Inspector-General of Taxation to again give public evidence at the next hearing. Representatives from peak industry and consumer bodies will also be invited, with a likely focus on organisations which deal with small to medium sized business issues.
- 1.186 The Committee's work was further assisted by receiving the ATO's submission a month before the hearing. This allowed time to consider the issues it raised and to relate the material in the submission to other information, including the experiences provided by Member's constituents. The Committee expects that future submissions from the ATO will continue to meet this timeframe in advance of the hearings.
- 1.187 The approach taken by the Committee in this report has focused on requesting information as part of ATO's submission to the next hearing – with a summary of areas to be covered included in the recommendation below. The Committee expects that the information provided will demonstrate that concrete actions have been taken throughout the year to improve ATOs administration and effectiveness. Given the constructive approach taken by the ATO during the past six months and at the recent hearing, the Committee has full confidence that the ATO will work towards this goal also.
- 1.188 Furthermore the Committee is keen to see how the external review agencies can build on their already strong operations through more co-ordinated and collaborative work. The Committee has asked them to explore opportunities, within the constraints of their mandated areas, for greater sharing of their investigations' findings, looking for greater efficiency and less duplication of effort.
- 1.189 Due to the expanded scope of the hearing, both in terms of the time needed and the increased number of witnesses giving public evidence,

combined with the effort and resources required to complete the preparatory work, the Committee has decided to hold future hearings with the Tax Commissioner annually rather than biannually.

- 1.190 The next hearing is likely to be held in September 2012. This new timeframe acknowledges the size and complexity of the ATO's operations and that the ATO would benefit from having a longer timeframe to implement improvements and to evaluate related outcomes.
- 1.191 Meanwhile, the Committee will monitor any significant proposed changes to Australia's tax system and recommits to advocating that the ATO is well resourced and supported to be able to implement any such changes.
- 1.192 Finally, the Committee wishes to thank the organisations and individuals who took part in the hearing. In particular, the Committee would like to acknowledge the time taken by the Commissioner of Taxation; the Ombudsman; the Auditor-General; and the Inspector General of Taxation. Representatives from The Tax Institute and the Association of Taxation and Management Accountants also deserve acknowledgement for their valuable contribution and time they have taken to meet with the Committee.

Recommendation 5

The Committee recommends that all future Australian Taxation Office submissions are provided at least one month before the scheduled public hearing into tax administration.

Recommendation 6

The Committee recommends that the next Australian Taxation Office submission include information on the following areas:

- findings of the review of service standards;
- gaps identified between international best practice service standards and current Australian Taxation Office performance;
- learnings from complaints and their nexus with clear communication;
- initiatives for simplification of communication and the use of plain language – including some 'before' and 'after' examples;
- trends in compromised Tax File Numbers and identity fraud, including work with crime detection agencies;

- **new strategies for resolving complex compromised Tax File Numbers;**
- **simplification of lodgement processes for medium, small and micro businesses;**
- **efforts to promote the update of the 'no strings attached' small business advisory service;**
- **evaluation, including taxpayer feedback, of the use of benchmarks;**
- **work done on estimating the tax gap and its possible impacts;**
- **interaction with Treasury and other key agencies on policy development consultation;**
- **a summary of legal cases that may have significant tax administration implications;**
- **progress on any changes to the Australian Taxation Office governance structure;**
- **progress on the Australian Taxation Office Online 2015 project;**
- **implementation of recommendations by the external scrutiny bodies, and recommendations not agreed to and why; and**
- **processes for speedy release of superannuation funds in crisis situations.**

Rob Oakeshott MP
Committee Chair

November 2011