
The Parliament of the Commonwealth of Australia

Tax disputes

**House of Representatives
Standing Committee on Tax and Revenue**

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Chair's foreword

Disputes between taxpayers and the Australian Taxation Office (ATO) are an unavoidable feature of our tax system. This inquiry has come about because stakeholders and taxpayers have expressed deep concern that the ATO does not always use its powers in a judicious manner and does not always treat taxpayers fairly and with respect.

The Committee acknowledges there have been improvements. Over the past four years, the ATO has demonstrated a trend to settle matters earlier. The current Commissioner has embarked on a project of reinventing the ATO. However, the severity of outcomes for some taxpayers convinced the Committee that an inquiry was warranted. The Committee commenced the inquiry in June 2014 with a focus on small taxpayers and individuals and requested the Inspector-General of Taxation (IGT) to conduct a similar inquiry concentrating on large taxpayers and high wealth individuals.

The adverse outcomes in some disputes arise from a combination of factors. These include that the ATO has strong powers, it does not always engage with taxpayers, and there has not been clear separation between the investigative and review functions within the ATO. The risk is that a taxpayer may not have a fair hearing, or at least perceive that this has been the case, until their matter proceeds to the Administrative Appeals Tribunal (AAT). Such a course involves substantial time and expense.

One of the key issues in the inquiry was the degree of separation between auditors (investigators) and objection officers (reviewers). Over the last 20 years, both of these functions have been within the compliance area of the ATO. The Committee received evidence that objection decisions are now less likely to demonstrate independence, or that a taxpayer's matter has been freshly examined.

Recently, objections for entities with a turnover of over \$100 million annually have been transferred to the legal area in the ATO. The Committee's recommendations build on this reform. The Committee believes that an additional Second Commissioner should be created that manages objections and appeals and that

there should be stricter controls on communications between auditors and objection officers. This has been a prior recommendation of the IGT.

Another important matter was how the ATO manages cases involving alleged fraud or evasion. The Committee received evidence that ATO officers sometimes allege fraud or evasion without turning their mind to the question of whether fraud or evasion actually exists. The taxpayer then has the burden of proof against an allegation for which the ATO may have had only limited evidence.

Also of concern was the AAT's statement that the ATO sometimes has not turned its mind to whether fraud or evasion occurred by the time a matter has progressed to litigation.

The Committee has made a number of recommendations on this matter. The Committee believes that findings or allegations of fraud or evasion should only be made by an SES officer. The Committee would also like to see the burden of proof on these issues switch back to the ATO once the statutory record-keeping period for taxpayers has expired.

The third key issue in the inquiry was that the ATO occasionally refuses to engage with taxpayers or demonstrate that it is listening to the taxpayer's arguments. Witnesses found this frustrating because they had no option other than waiting for their dispute to progress to objection or the AAT.

The Committee would like the ATO to fully implement a prior recommendation of the IGT, namely that ATO staff should consider whether to conduct direct conferences with taxpayers at multiple points in a dispute. In its response to the IGT in 2012, the ATO stated that it agreed to this approach in its large and more complex compliance work. The Committee believes that the opportunity for engagement should be available to all taxpayers.

The final major inquiry issue I would like to raise is that ATO officers can make unreasonable requests for information from taxpayers, both in terms of volume and deadlines. Taxpayers found this particularly frustrating because they saw it as an unnecessary abuse of power and it would turn a routine aspect of a dispute into a major one. The ATO should apply a minimum of 28 days for all information requests, it should permit some negotiation around them, and it should give reasons for them, typically based on a risk hypothesis.

Many people contributed to this inquiry. I would especially like to thank the previous Chair of the Committee, John Alexander, whose leadership helped establish the Committee and contributed to the quality of the evidence and goodwill during the inquiry.

I would also like to thank the IGT for conducting his review of disputes from the perspective of large taxpayers and high wealth individuals. The IGT's report was

released last month and the Committee has referred to it at various points in this report. Further, the IGT has built up a body of work that the Committee was able to refer to during the inquiry. The Committee has also taken the opportunity to reiterate some of the IGT's prior recommendations.

Finally, I would like to thank my fellow Committee members and the individuals and organisations that assisted the Committee through submissions and giving evidence.

The Committee believes that the ATO is a well-run, highly professional organisation, and that the vast majority of disputes are handled in an appropriate and fair manner. The Committee does not wish this report to be seen as lessening the ATO's role in collecting revenue legally due. However, there is scope for improvement and full implementation of the Committee's recommendations will produce a fairer tax system, leading to better outcomes for taxpayers and also for the ATO.

Bert van Manen MP
Chair



Membership of the Committee

Chair Mr John Alexander OAM (to 4/3/15)

Mr Bert van Manen (from 10/3/15)

Deputy Chair Dr Jim Chalmers

Members Mr John Alexander OAM (from 4/3/15) Mr Angus Taylor

Ms Terri Butler

Mr Bert van Manen (to 10/3/15)

Mr Ian Goodenough

Mr Tim Watts

Ms Clare O'Neil

Mr Matt Williams

Mr Michael Sukkar

Committee Secretariat

| | |
|--------------------------------|---|
| Secretary | Ms Susan Cardell |
| Inquiry Secretary | Mr David Monk |
| Research Officers | Mr Shane Armstrong Ms Samantha Leahy |
| Administrative Officers | Ms Tamara Palmer Ms Yvonne Lee |



Terms of reference

The Committee is to inquire into and report on disputes between taxpayers and the Australian Taxation Office (ATO), with particular regard to:

- collecting revenues due
- fair treatment and respect of taxpayers
- efficiency, effectiveness and transparency, from the perspective of both taxpayers and the ATO, and
- how the ATO supports the outcomes of efficiency, effectiveness and transparency through the use and publication of performance information.

The Committee is to examine these issues through the following themes:

- small business
- large business
- high wealth individuals
- individuals generally
- the legal framework for disputes, including:
- the model litigant rules
- real time compliance initiatives, including annual compliance arrangements, pre-lodgement compliance reviews, and the reportable tax position schedule, and
- alternative dispute resolution, and
- the governance framework for disputes, including:

- ⇒ the arrangements for and appropriate level of separation between the compliance, investigation, objection and litigation functions, and
- ⇒ comparisons with tax administration bodies overseas.

The Committee may consider and report on these themes individually or group them together.

The Committee may request that the Inspector-General of Taxation undertake aspects of this inquiry under section 8(3)(d) of the Inspector-General of Taxation Act 2003. If the Inspector-General agrees to any such request, then under the Act the Inspector-General would conduct a formal review and provide a report to the Assistant Treasurer for tabling in the Parliament.



List of abbreviations

| | |
|-------|---|
| AAT | Administrative Appeals Tribunal |
| ADR | Alternative dispute resolution |
| ATO | Australian Taxation Office |
| CAANZ | Chartered Accountants Australia New Zealand |
| CDDA | Compensation for detriment caused by defective administration |
| DPO | Departure prohibition order |
| GIC | General interest charge |
| HWI | High wealth individual |
| IGT | Inspector-General of Taxation |
| IPA | Institute of Public Accountants |
| KPI | Key performance indicator |
| PS LA | Practice Statement Law Administration |
| PwC | PricewaterhouseCoopers |
| SIC | Shortfall interest charge |
| SME | Small or medium enterprise |
| TAA | <i>Taxation Administration Act 1953</i> |



List of recommendations

2 Performance measurement and reporting

Recommendation 1

The Committee recommends that the Australian Taxation Office review its performance reporting measures and:

- develop a measureable key performance indicator of taxpayer perceptions of fairness in tax disputes;
- that this key performance indicator be monitored and reviewed by the Australian Taxation Office executive on a regular basis (at least half-yearly); and
- that the outcomes against such a key performance indicator be reported in the Australian Taxation Office Annual Report.

3 The legal framework

Recommendation 2

The Committee recommends that the Government amend the tax laws and the Australian Taxation Office consider other administrative means by which interest charges would not act as leverage against a taxpayer during a tax dispute.

Recommendation 3

The Committee recommends that the Australian Taxation Office amend its internal and external guidance so that it remits interest where:

- the Australian Taxation Office takes longer than the 60 days available to it to finalise an objection and the taxpayer has acted in good faith; and

- the Australian Taxation Office changes arguments after assessments have been made (such as during an objection or litigation).

Recommendation 4

The Committee recommends that the Australian Taxation Office amend its internal guidance so that findings or suspicion of fraud or evasion can only be made by an officer from the Senior Executive Service.

Recommendation 5

The Committee recommends that the Australian Taxation Office only make allegations of fraud against taxpayers when evidence of fraud clearly exists.

Recommendation 6

The Committee recommends the Australian Taxation Office should ensure that allegations of fraud or evasion are addressed as soon as practicable in an audit or review.

Recommendation 7

The Committee recommends that the Government introduce legislation to place the burden of proof on the Australian Taxation Office in relation to allegations of fraud and evasion after a certain period has elapsed. The change should be harmonised with the record keeping requirements. These periods could be extended, subject to concerns of regulatory costs on business and individuals.

Recommendation 8

The Committee recommends that the Government introduce legislation to require judicial approval for the Commissioner of Taxation to issue a departure prohibition order.

Recommendation 9

The Committee recommends the Australian Taxation Office better engage with taxpayers prior to litigation so that they are aware of what the model litigant rules require, and do not require, of the Australian Taxation Office.

Recommendation 10

The Committee recommends the Australian Taxation Office approach the Australian Government Solicitor to determine if they can provide advice and assistance to the Australian Taxation Office in terms of best practice in complying with the model litigant rules.

Recommendation 11

The Committee recommends that the Government review the Small Taxation Claims Tribunal and determine whether it should continue. If so, there should be a one-off increase to the \$5,000 limit to take account of inflation since 1997 and a system introduced so the threshold increases incrementally in future to keep pace with inflation.

4 Readiness to engage**Recommendation 12**

The Committee recommends that the Australian Taxation Office implement recommendation 3.5.2 from the Inspector-General's report on alternative dispute resolution for all taxpayers (i.e. considering whether to engage in direct conferences with taxpayers at multiple points in a dispute).

Recommendation 13

The Committee recommends that the Australian Taxation Office give more consideration to taxpayers when making information requests, with priority given to:

- setting timeframes in practice statements, with a minimum of 28 days for all requests;
- giving taxpayers the opportunity to seek an extended timeframe upon receipt of a request; and
- giving reasons for an information request, typically based on a risk hypothesis.

Recommendation 14

The Committee recommends the Australian Taxation Office introduce a triage system for disputes so that, early in a dispute, matters can be escalated to ATO staff sufficiently senior or with the appropriate technical skills to resolve the dispute quickly and effectively. Such decisions should consider taxpayer fairness, among other criteria.

5 Other administrative matters**Recommendation 15**

The Committee recommends that, as much as practicable, the Australian Taxation Office should give taxpayers written notice of issues and topics to be raised in section 264 interviews.

Recommendation 16

The Committee recommends that the Australian Taxation Office invite the Commonwealth Ombudsman to advise on improving its compensation processes, including compensation liability and amounts.

6 The governance framework**Recommendation 17**

The Committee recommends that the Australian Taxation Office ensure that the information passed between an auditor and an objection officer surrounding a dispute only consist of the factual case documents, and the audit conclusion provided to the taxpayer. Any internal auditor commentary on the dispute should remain with the audit team.

Recommendation 18

The Committee recommends that the Australian Taxation Office develop protocols to ensure that an individual Tax Counsel Network officer only be allowed to provide advice or contribute to the provision of advice at the audit or objection stage of a dispute.

Recommendation 19

The Committee recommends that the Australian Taxation Office establish a separate Appeals area:

- under the leadership of a new Second Commissioner – Appeals to carry out the objection and litigation function for all cases;
- establish and publicly articulate clear protocols regarding communication between Appeal officers and compliance officers, including a general prohibition against ex parte communication, save where all parties are informed of, and consent to, such communication taking place; and
- empower the appeals function to independently assess and determine whether matters should be settled, litigated or otherwise resolved (for example, Alternative Dispute Resolution).

Recommendation 20

The Committee recommends that the Government establish a new position of Second Commissioner - Appeals, reporting to the Commissioner of Taxation to head up the new Appeals area within the Australian Taxation Office.

