

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 305-307

Topic: ATO Rules and Guidelines

Written: 17 June 2013

Senator MILNE asked:

305. Are you satisfied that the ATO has appropriate rules for the compensation of taxpayers whom they have overcharged?
- a. Is their use of confidentiality clauses in settling disputes appropriate?
306. Do you believe the ATO has improved its procedures for resolving disputes in line with your May 2012 *Review into the Australian Taxation Office's Use of Early and Alternative Dispute Resolution*?
- a. If so, what are the main measures they have taken?
307. Does the ATO have a target or an 'aspirational benchmark' of upholding less than a fifth of objections to assessments, regardless of their merits?
- a. If so, is this an appropriate guideline?

Answers

305. By way of background, it may be useful to note that the manner in which the Inspector-General of Taxation (IGT) undertakes reviews into systemic tax administration issues is governed by the *Inspector-General of Taxation Act 2003* (IGT Act).

In accordance with the IGT Act, the IGT consults with a broad range of stakeholders when selecting topics for review (IGT work program). Formal reviews are then conducted into the topics selected by taking into account stakeholder submissions. Section 25 of the IGT Act affords the Commissioner of Taxation an opportunity to comment on any implied or actual criticisms of the ATO contained in reports before these are finalised. A report is then provided to the Assistant Treasurer.

With respect to the term 'taxpayers whom [the ATO] have overcharged' used in your question, the IGT has assumed it refers to the ATO assessment decisions which increase a taxpayer's liability but are subsequently overturned as a result of an internal or external (administrative or judicial) review. The IGT has not conducted a formal review into the adequacy of compensation in such circumstances and, therefore, is unable to provide a formal response.

Any person may make a submission to the IGT to have any topic included on the IGT's forward work program. You are therefore welcome to suggest to the IGT to consider this topic when developing his next work program. You should also note that paragraph 8(3)(d) of the IGT Act envisages that requests for reviews may originate from, amongst other sources, a resolution of a Committee of either House, or both Houses, of the Parliament.

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To be eligible for selection, a suggested topic must fall within the remit of the IGT — it must be a systemic tax administration issue. Whether or not an eligible topic is then selected by the IGT is subject to the agency's resources, priorities and specific Ministerial direction to conduct a review under the IGT Act. Generally, in developing his work program, the IGT is conscious of maximising improvements to tax administration for as many taxpayers as possible.

Further information about the IGT's consultation and development of his work program was provided to the Joint Committee of Public Accounts and Audit (JCPAA) on 6 December 2012. The document containing this information is in the attached appendix and can also be found on the IGT and the JCPAA websites.

305.

- a. As noted above, since the IGT has not conducted a formal review into this area he is unable to provide a response as to the appropriateness of the ATO's use of confidentiality clauses at this time.

By way of general comment, the IGT recognises a potential role for such confidentiality clauses to encourage and expedite settlements between parties in dispute. Such confidentiality clauses should not prevent taxpayers from disclosing all aspects of the dispute and the settlement to the IGT. These disclosures to the IGT may be important in identifying potentially systemic issues worthy of review.

306-306a.

At this stage it is difficult to fully answer your question as not all agreed recommendations in the above report have been fully implemented by the ATO. However, the IGT has received some positive feedback from stakeholders particularly in relation to the implementation of recommendation 3.6¹.

By way of background, the implementation of agreed recommendations arising from the IGT's reviews is monitored by the ATO Audit Committee (which includes non-ATO members). The ATO Audit Committee undertakes this action for all agreed scrutineer recommendations including the Auditor-General, Commonwealth Ombudsman and IGT. The ATO Audit Committee approves 'implementation plans' drafted by ATO management and scrutinises the action to completion. The IGT also provides feedback to ATO management on the design of these draft implementation plans.

ATO management has undertaken to progressively publish on their website information about the implementation of these recommendations. In relation to this review, the ATO has not yet published such information on its website. However, the ATO has publicly conveyed information about the following recommendations:

- Recommendation 3.6 has been explored in the Commissioner's speech on 14 March 2003.

¹ Conducting an ADR pilot using in-house trained facilitators.

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- A number of recommendations requiring stakeholder consultation have been discussed at the ATO's National Tax Liaison Group Dispute Resolution sub-committee.

The ATO has also given briefings to the IGT on the progress of its implementation of recommendation 3.6 and recommendation 5.4². The IGT has also been advised that the ATO Audit Committee considers recommendation 5.3³ as completed and the remaining 19 agreed recommendations to be in progress.

It should be noted that the IGT reserves the right to conduct formal reviews regarding the implementation of agreed recommendations or, indeed, a new review into these areas if stakeholder concerns persist.

307-307a.

The IGT has not conducted an ATO-wide review into this matter. However, these targets may be aimed at improving the quality of audit decisions at first instance rather than upholding initial decisions regardless of their merits. Having said that, caution needs to be exercised when using targets of this nature.

The IGT's 2012 *Review into the ATO's compliance approaches to small and medium enterprises (SME) with annual turnovers between \$100 million and \$250 million and high wealth individuals* cited one of four aspirational targets set by the ATO for the SME business line in 30 April 2010.

Paragraph 3.19 of the report of the above review states: "Among these measures, one aspiration is for objections to be legitimately upheld in taxpayer's favour in 20 per cent of cases."

Whilst the IGT welcomes measures aimed at improving the quality of audit decisions at first instance, he has suggested caution in paragraph 3.20 of the same report:

"The IGT believes that a level of caution is required in setting aspirations to have taxpayers' views upheld on objections in only 20 per cent of cases. Setting aspirational measures of this nature can sometimes drive behaviours that cause problems in other areas or merely shift the problem to another part of the process..."

² Capturing and publishing feedback on completed ADR processes.

³ When entering into ADR, the representatives of both parties should be fully engaged and possess the requisite authority to settle all matters in dispute.