
The Parliament of the Commonwealth of Australia

External scrutiny of the Australian Taxation Office

House of Representatives
Standing Committee on Tax and Revenue

April 2016
Canberra

© Commonwealth of Australia 2016

ISBN 978-1-74366-523-7 (Printed version)

ISBN 978-1-74366-524-4 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:
<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Contents

Chair's foreword	vii
Membership of the Committee	ix
Terms of reference	xi
List of abbreviations	xii
List of recommendations	xiii
Executive summary	xv
Inquiry background.....	xv
Scrutiny background	xv
Evidence and findings	xvi

THE REPORT

1 Background to the inquiry	1
The biannual hearing of February 2014.....	1
Origins of the current inquiry.....	3
Inquiry overview.....	3
2 Background to scrutiny of the ATO	5
The scrutineers	5
Australian National Audit Office.....	5
The Inspector-General of Taxation.....	7
The Commonwealth Ombudsman.....	8
Joint and House committees	9
Senate Committees.....	10

Courts and the Administrative Appeals Tribunal	11
Summary.....	12
Frequency and coverage of external scrutineer reports	12
International comparisons	14
Recent reviews of the ATO.....	16
The AFTS Review	16
The Capability Review	17
3 Review of evidence and Committee findings	21
Duplication and overlap	21
Background.....	21
Analysis.....	23
Committee comment	27
Cost to government of scrutiny	29
Background.....	29
Analysis.....	30
Committee comment	31
Differential regulation (earned autonomy).....	32
Background.....	32
Analysis.....	35
Committee comment	36
Specific issues	37
Communication between the ATO and Inspector-General.....	37
The position and role of the Inspector-General of Taxation.....	42
The role of this Committee	46
A board for the ATO	48
ATO culture and reinvention.....	51

APPENDICES

Appendix A – Submissions	57
Appendix B – Public hearings	59

Appendix C – Exhibits.....61

Appendix D – Scrutineer reports on the ATO.....63

Appendix E – 2012 response by scrutineers.....67



Chair's foreword

I am pleased to present this report of the Committee's inquiry into the external scrutiny of the Australian Taxation Office (ATO). The ATO is one of the most important public agencies. By collecting revenue, it enables much of our system of government.

The ATO is subject to a substantial degree of scrutiny. Its scrutineers include the Auditor-General, the Inspector-General of Taxation, parliamentary committees, the courts, and the Administrative Appeals Tribunal. Jurisdiction for complaints about tax administration was transferred in May 2015 from the Commonwealth Ombudsman to the Inspector-General. However, the Ombudsman retains jurisdiction for other ATO complaints.

Different agencies are subject to scrutiny from the same organisations, except for the Inspector-General, who covers only the ATO and the Tax Practitioners' Board. However, the importance of the ATO means that scrutineers often allocate more resources to it. For example, approximately 10 per cent of the Auditor-General's performance audits cover the ATO.

The performance of the ATO is critical to our system of government and external scrutiny helps underpin this performance. Further, the ATO has a wide range of powers and resources. External scrutiny helps ensure that the ATO implements its mandate fairly, effectively and efficiently.

The terms of reference asked the Committee to consider in detail the issues of duplication and overlap, cost to government, and differential regulation. After considering these, the Committee has agreed that no substantial changes are required in the external scrutiny of the ATO. The Committee has, however, made some administrative recommendations to make it clearer how the scrutineers co-ordinate their work.

I would like to make two overall points in relation to the inquiry. The first is that the Committee supports the work of external scrutineers in relation to the ATO.

The tax system is complex, the ATO has considerable resources and strong powers, and the cost and practicalities of the court system mean it is not available to most taxpayers. The scrutineers have integrity and expertise. Taxpayers and the Parliament benefit greatly from their work.

Secondly, the quality of communication between the ATO and the Inspector-General of Taxation appears to be problematic. The Committee has recommended that these parties redouble their efforts to improvement communication before, during and after reviews. I would personally add that the Inspector-General and the ATO could also look at occasions to engage in dialogue more widely; not just around reviews. My understanding is that both sides would welcome such an opportunity.

The Committee has greatly benefitted during the inquiry from the views of stakeholders, the scrutineers and the ATO. The Committee very much appreciates the time, effort and expertise that stakeholders applied to their submissions. The Committee also appreciates the contribution made by witnesses at the hearings and their readiness to engage with the Committee.

Finally, I would to thank my colleagues on the Committee for their support and assistance during the inquiry.

Bert van Manen
Chair



Membership of the Committee

Chair Mr Bert van Manen MP

Deputy Chair Hon Bernie Ripoll MP

Members Hon Bronwyn Bishop MP

Ms Terri Butler MP

Mr Andrew Hastie MP

Mr Steve Irons MP

Ms Clare O'Neil MP

Mr Michael Sukkar MP

Mr Tim Watts MP

Mr Matt Williams MP (until 22/2/16)

Committee Secretariat

Secretary Mr David Brunoro

Inquiry Secretary Mr David Monk

Research Officer Dr Anne Holmes

Administrative Officer Ms Tamara Palmer



Terms of reference

The Committee will inquire into the scrutiny arrangements that apply to the Australian Taxation Office (ATO), with particular regard to:

- removing inefficiency and duplication
- reducing cost to government
- the 'earned autonomy principle' set out in Stage 2 of the Public Management Reform Agenda.

The review should not include the Australian National Audit Office role in the auditing of the ATO's financial statements.



List of abbreviations

AAT	Administrative Appeals Tribunal
AFMA	Australian Financial Markets Association
AFTS	Australia's Future Tax System
ANAO	Australian National Audit Office
APSC	Australian Public Service Commission
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CAANZ	Chartered Accountants of Australia and New Zealand
COSBOA	Council of Small Business Australia
CTA	Corporate Tax Association
EDCA	External debt collection agency
IGT	Inspector-General of Taxation
IRS	Internal Revenue Service
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit



List of recommendations

3 Review of evidence and Committee findings

Recommendation 1

To increase transparency, the Committee recommends that the Auditor-General, Commonwealth Ombudsman, and Inspector-General of Taxation examine ways to increase the profile of their co-ordination activities – potentially through their websites, annual reports, and consultations undertaken for work programs.

Recommendation 2

To increase transparency, the Committee recommends that the Auditor-General, Commonwealth Ombudsman, and Inspector-General of Taxation improve the explanation in their reports of why each review was conducted and how the review fits in with past and other current reviews.

Recommendation 3

The Committee recommends that the Australian Taxation Office and the Inspector-General of Taxation redouble their efforts to improve communication before, during and after reviews.

Recommendation 4

The Inspector-General of Taxation examine opportunities to conduct targeted reviews based on complaints and emerging issues in tax administration, and work with the Australian Taxation Office to develop a mutually efficient system for such reviews.

Recommendation 5

The Committee recommends that the Standing Committee on Tax and Revenue of the next Parliament consider expanding its biannual inquiries

into the Australian Taxation Office to include scrutiny of the Inspector-General of Taxation, or alternatively to conduct a separate dedicated regular inquiry into the annual report of the Inspector-General.



Executive summary

Inquiry background

The Australian Taxation Office (ATO) raised the issue of its external scrutiny with the Committee at a biannual hearing in February 2014. The ATO suggested that its external scrutiny may be excessive.

The Committee's initial view in its March 2014 report was that scrutiny arrangements were appropriate. The ATO's external scrutiny was much the same as other agencies. The main exception was the Inspector-General of Taxation, but other agencies with strong powers, in particular the security and intelligence agencies, also had their own Inspector-General. The Committee noted comments from the ATO's Capability Review in 2013 that it is 'fortunate' to receive a great deal of external scrutiny.

On 1 February 2016, the Committee received draft terms of reference from the Treasurer, the Hon Scott Morrison MP. The Committee adopted the terms of reference and called for submissions shortly thereafter.

Scrutiny background

The ATO's scrutineers for the purposes of this inquiry comprise the Australian National Audit Office (ANAO), the Inspector-General of Taxation, the Commonwealth Ombudsman, parliamentary committees, the courts and the Administrative Appeals Tribunal. Responsibility for complaints about tax administration was transferred from the Ombudsman to the Inspector-General in May 2015.

The scrutineers work very differently. Some make policy recommendations while others do not. Statutory scrutineers operate within the ATO with access to detailed data, while parliamentary committees work at a distance and rely more on public submissions and witness testimony.

The Committee also made some international comparisons of ATO scrutiny and found that much of what the ATO deals with in Australia is also present in comparable jurisdictions. For example, Auditors-General regularly scrutinise revenue agencies, public accounts committees follow-up these reports, there are external complaints mechanisms, and parliamentary committees conduct general oversight, as well as ad hoc inquiries.

There are also some differences. Only Australia and the United States have an Inspector-General. However, overall, the Committee concluded that the oversight of the ATO is similar to that of comparable jurisdictions.

The Committee noted some past reviews of the ATO. The Australia's Future Tax System Review in 2009 mainly covered tax policy, but also discussed the ATO's accountability. It noted that over time the ATO has become larger, better resourced, and taken on more functions. The Review recommended steps to improve the ATO's governance, such as establishing an advisory board for the ATO, ensuring the scrutineers are properly resourced, and that parliamentary committees follow up scrutineer reports.

The Capability Review in 2013 was conducted under the auspices of the Australian Public Service Commission. It found that the ATO was in need of transformational change and that its pace of innovation was starting to slow. Overseas revenue agencies were beginning to overtake it, especially in electronic services. The ATO's culture tended towards risk aversion and it needed to manage risk, rather than avoid it. The Commissioner's reinvention program should be viewed in this context.

Evidence and findings

Duplication and overlap

In 2011, the Joint Committee of Public Accounts and Audit (JCPAA) held a hearing with scrutineers and the ATO. The meeting discussed the co-ordination of scrutineers' work and that Committee recommended that they report back on this. The scrutineers provided a joint statement in 2012. They noted past examples of co-ordination and promised to meet collectively to further co-ordinate their work.

During the inquiry, some stakeholders suggested that there was overlap in reviews, or that external scrutiny was 'haphazard'. The ATO gave several examples of overlap, including director-penalty notices, which it claimed had been reviewed seven times in five years.

The scrutineers rejected the claim of overlap. They stated that they held the co-ordination meetings and that they were effective. Some scrutiny reports have expressly addressed the issue of duplication and how reviews relate to each other.

The Committee notes that having reviews cover related topics does not necessarily indicate duplication. In the case of director penalty notices, four of the seven reports only mentioned the topic by way of background. Two covered it in some depth, albeit for different purposes. The seventh report made a policy recommendation to government and probably did not involve an information request of the ATO.

The Committee concluded that the extent of any duplication, if it does occur, is minimal. The Committee supports the ability of scrutineers to select the reviews they think are the most valuable, within their mandate. The Committee also concluded that their co-ordination process is sound.

However, the Committee did find opportunity for the scrutineers to improve the transparency of the co-ordination. The Committee **recommended** that the scrutineers improve the profile of their co-ordination activities and that they improve the explanation in their reports of why each review was conducted and how it fits in with other reviews.

Cost to government of scrutiny

The ATO argued during the inquiry that it diverted significant resources to respond to the work of scrutineers. It also noted that there is a drive across government to reduce red tape. However, the ATO did not provide detailed information about scrutiny costs.

Stakeholders pointed to the benefits of scrutiny. They argued that scrutiny promotes community confidence in the tax system and that it is a form of investment.

The Committee supports the view that external scrutiny is an investment in the tax system and that the benefits of the scrutiny accrue more widely than the ATO. The Parliament, Australian businesses and individuals also benefit. The costs of external scrutiny also need to be kept in perspective relative to the size of the ATO and its importance to the economy.

There is also scope for the ATO to manage its costs during a review. This includes how it engages with scrutineers. Further, the ATO can decline scrutineer recommendations if it believes that implementation would be costly, and has done so in the past.

Differential regulation

Differential regulation is the replacement term for 'earned autonomy'. This concept is based on the provisions in the *Public Governance, Performance and Accountability Act 2013* that allows the Finance Minister to apply the Act's requirements differentially. The Act governs the management of public resources, performance reporting, financial reporting, and appropriations. The ATO argued that if it demonstrated good risk management and high standards of performance, then the idea of differential regulation could be extended to reduce its external scrutiny.

The Auditor-General made some important comments on this topic. He noted that the ANAO selects agencies for audit partly on the quality of their administration. Well-managed agencies have, on average, fewer audits. Further, the Auditor-General is an officer of the Parliament. Differential regulation refers more to how the Executive applies regulatory frameworks to its own entities. The Auditor-General also stated that scrutineers' independence will be compromised if a third party can decide whether the ATO has earned less scrutiny. Finally, the size of the ATO means that scrutineers will always have an interest in its operations.

The Committee concluded that differential regulation is not applicable to the external scrutiny of the ATO. The Committee notes that scrutineers already take risk into account in determining review topics, which could be termed 'differential scrutiny'.

Specific issues

Communication between the ATO and Inspector-General

Evidence during the inquiry indicated that both the ATO and the Inspector-General considered that communication during reviews could be improved.

The ATO stated that it was not aware how the Inspector-General selected topics for review and did not take on board its comments on draft reports. The Inspector-General commented that the ATO had considerable opportunities to discuss reviews as they progressed, but could do more to engage his office. Instead, the ATO might conduct its own parallel reviews, justify or contextualise the information it provides, and allocate significant resources to defending strongly-held views.

The Committee is concerned about the state of communication between the two parties. If there are substantial opportunities for communication, then perhaps the issue is its quality. If communication over the past few years had been better, this inquiry may not have been necessary. The Committee has **recommended** that the

ATO and the Inspector-General redouble their efforts to improve communication before, during and after reviews.

The position and role of the Inspector-General of Taxation

A majority of submissions supported the position of the Inspector-General, often suggesting that his role be widened, either through greater resources or powers. A small number of submissions suggested that the position be abolished. The Commonwealth Ombudsman noted that an oversight body that covered a small number of agencies ran the risk of being either captured by them, or becoming antagonistic towards them.

The Committee is of the view that the office of Inspector-General should continue. This office has proven its worth through quality reviews that have improved the ATO's operations and the position of taxpayers. It also has strong support among almost all stakeholders.

The Inspector-General has taken on a new role in handling complaints about tax administration. There is now the opportunity for the Inspector-General to conduct shorter, timelier reviews based on complaints data. Not only did some stakeholders suggest this, but both the ATO and Inspector-General did as well. The Committee has made a **recommendation** to this effect.

The Committee acknowledges that the structural issues raised by the Ombudsman must be managed. The Committee **recommends** either expanding its own biannual hearings with the ATO to include scrutinising the Inspector-General, or holding regular, separate inquiries to examine the Inspector-General's performance.

The role of this Committee

The Committee has taken up the role of scrutinising tax administration since its creation in 2013, following previous work by the JCPAA. The Committee received feedback about its work from the ATO and stakeholders and appreciates the various suggestions made. The two comments in particular that the Committee will examine more closely in future are to follow up scrutineers' reports on the ATO and to give stakeholders greater input to, and notification of, topics for regular ATO scrutiny hearings.

A board for the ATO

Some submissions recommended that a board be created for the ATO. The issue of a board is outside the Committee's terms of reference, however it was raised by a number of stakeholders during the inquiry.

Three types of board have been discussed over time for the ATO:

- an advisory board, that provides advice to senior management on issues such as information technology, strategy and culture
- a management board, that takes management decisions, although in revenue agencies it does not make decisions about individual taxpayers
- a policy board that provides advice to key parties on tax policy.

The Board of Taxation was created in 2000 and is a policy board. The Australia's Future Tax System Review in 2009 recommended that an advisory board be created for the ATO. It did not support a management board because this would interfere with the clarity of responsibility between a statutory authority and its minister.

The key question from the perspective of the inquiry is how an internal mechanism, such as a board, affects external scrutiny. Internal controls and external scrutiny are complements, rather than substitutes. Therefore, establishing a board may have little effect on external scrutiny. The Committee is of the view that establishing a board for the ATO should not change current scrutiny arrangements.

ATO culture and reinvention

During the inquiry, the Committee received a number of complaints about the ATO. These included mediation during tax disputes, enforcement and debt collection, determining whether a taxpayer is an employee or contractor, allegations of fraud, and the cost to small business of ATO compliance activities.

The Committee covered these issues in its report on tax disputes in March 2015 and the ATO has agreed to implement or examine many of the Committee's recommendations. Further, the Committee believes that the ATO is going through a process of genuine cultural change under the Commissioner's reinvention program and acknowledges that significant cultural change can take years.

The Committee encourages continued action and looks forward to seeing the positive outcomes that cultural change will bring to the ATO, taxpayers and tax practitioners.

