

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Inquiry into the External Scrutiny of the Australian Taxation Office

16 March 2016

Department/Agency: ATO

Question: 1

Topic: ANAO and IGT audit activity

Reference: Hansard – page 4

Question:

Mr Leeper: To go to your first point, when the complaints function moved from the ombudsman to the inspector-general last May, the experience when it was with the ombudsman would have been exactly the same. That is, a person would make a complaint and the ombudsman would decide whether to close the matter without further investigation or to actually ask the agency to investigate and provide a report. That experience probably has not changed. I would note that the numbers of complaints being received by the inspector-general are higher than we had seen with the ombudsman. That would be my first point.

The second point is probably material. It is that I am not aware that the ANAO varies its planned audit activity on the tax office with regard to the program that is established by the inspector-general. I am not aware that they coordinate their programs of activity. I am happy to take that on notice and check. I think they are actually independently worked out, as it were.

Mr Mills: If I may add, even if that is coordinated it is perhaps not the number of different scrutineers that is the focus of our submission, but the extent to which they are appropriately structured, focusing on strategic issues and avoiding overlap and repetition. We do have examples of where there have been multiple reviews, effectively on the same topic, over a 10-year-plus period. I guess the point is that we are not sure whether that is, in fact, adding value when different scrutineers may cover the same ground at different times over an extended period. So it is not so much the number of different scrutinies, or even the actual bodies that exist. It is: can the scrutiny be coordinated, be forward focused, be strategic and add value for the community?

CHAIR: I will bring your attention to some comments from a previous parliamentary committee. In 2011 the Joint Committee of Public Accounts and Audit recommended:

... 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.

Could you please update the committee on your experience in that regard, as to whether those external agencies are doing that work to ensure that their work programs do not overlap, so there is that reduction in workload but, on the same basis, ensuring that the issues that do arise are properly dealt with.

Answer:

The ATO is informed that both the Inspector-General of Taxation and ANAO consult stakeholders including each other during the development of their respective forward work programs, however we have no visibility of how and to what extent this happens. The two scrutineer bodies would be better placed to respond to the Committee's request on how each of their work programs are developed.

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16 March 2016

Department/Agency: ATO

Question: 2

Topic: ATO's involvement in parliamentary inquiries

Reference: Hansard – page 6

Mrs BRONWYN BISHOP: I am sorry; I do not accept that. You put it in here basically saying, 'Look at all our valuable time you are taking up.' And you use the word—very sneakily, I think—'The ATO is currently involved in 17 parliamentary inquiries.' That means you have been called to give evidence, I take it, with regard to some of them, such as economic security for women in retirement. Now that is not an inquiry into the tax office, that is an inquiry into something very important. But you are 'involved' in it. What is the extent of your involvement in the inquiry?

Mr Leeper: On all of these inquiries—

Mrs BRONWYN BISHOP: What is the extent of your involvement in that inquiry?

Mr Leeper: As I understand it, Mrs Bishop, we are invited to make submission to the inquiry, and from time to time we may be invited to appear in front of a committee hearing.

Mrs BRONWYN BISHOP: Have you given a submission on that inquiry?

Mr Leeper: I personally do not know, but we can take that on notice.

Mrs BRONWYN BISHOP: How many pages is it, and how many times have you been invited to come and give evidence?

Mr Leeper: I do not have that information with me.

Mrs BRONWYN BISHOP: You put it down here as a criticism—

Mr Leeper: It is not a criticism.

Mrs BRONWYN BISHOP: Well, I am sorry. That is the way I see it. And listening particularly to Ms Curtis, I find that also a criticism. I would be very interested to know about the 17 you have listed, which ones you consider are taking up the most of your valuable time and that you should not be asked to be involved in. But if you could tell me about each one of those: what is the degree of your involvement?

Mr Leeper: I want to make this extremely clear: we have not said in our submission, and I have not said in my talking points in any way, that we criticise any form of parliamentary scrutiny. It would be quite inappropriate for any agency of state to take that position.

Mrs BRONWYN BISHOP: Quite so.

Mr Leeper: This chart is our factual recording of our current interactions with the various parts of our external government's framework.

Mrs BRONWYN BISHOP: Terrific. And if it is to be factual, I want to know factually what your 'involvement'—the word you have chosen to use—is in each of those inquiries.

Answer:

The level of ATO involvement in parliamentary inquiries can vary, including:

- providing a written submission
- attending a hearing to provide evidence
- responding to questions on notice
- receiving, actioning and responding to recommendations.

Further work is undertaken within the ATO to prepare witnesses for inquiries, including reviewing and summarising submissions, preparing opening statements and briefings where required.

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The table information below summarises the ATO involvement in the 17 listed inquiries.

Inquiry name	Number of submissions	Number of pages	Number of hearings attended	Number of questions on notice	Number of recommendations
Senate Economics References Committee Inquiry into corporate tax avoidance and minimisation	1	45	4	21	Awaiting report
The House of Representatives Standing Committee on Tax and Revenue Inquiry into the External scrutiny of the Australian Taxation Office	1	100	1	5	Awaiting report
Senate Economics References Committee Inquiry into penalties for white collar crime	1	9	0	0	Awaiting report
Senate Economics References Committee Inquiry into forestry managed investment schemes	1	8	1	6	1
House of Representatives Standing Committee on Education & Employment Inquiry into Inhibitors to employment for small businesses and disincentives to working for individuals	1	112	0	0	2
Senate Standing Committee on Economics Inquiry into foreign bribery	1	34	0	0	Awaiting report
Parliamentary Joint Committee on Law Enforcement Inquiry into illicit tobacco	1	7	1	2	Awaiting report
Parliamentary Joint Committee on Intelligence and Security Report into the Counter-Terrorism Legislation Amendment Bill (No.1) 2015	1	3	0	0	1
Senate Economics References Committee Inquiry into Cooperative, mutual and member-owned firms	0	0	1	2	0

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Inquiry name	Number of submissions	Number of pages	Number of hearings attended	Number of questions on notice	Number of recommendations
House of Representatives Standing Committee on Economics Inquiry into Tax deductibility	0	0	1	1	Awaiting report
Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity on its Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity	0	0	1	0	Awaiting report
House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations	0	0	1	0	Awaiting report
Senate Economics References Committee Inquiry into economic security for women in retirement	0	0	1	0	Awaiting report

When the ATO receives an invitation but does not provide a submission or attend a hearing, we offer to be available to assist with information or answer questions from the Committee. This was the case for the following four inquiries:

- Senate Economics References Committee Inquiry into carbon risk disclosure.
- Senate Economics References Committee Inquiry into the causes and consequences of the collapse of listed retailers in Australia.
- Senate Economics Legislation Committee Inquiry into Tax and Superannuation Laws Amendment (2016 Measures No.1) Bill 2016.
- Senate Economics Legislation Committee Inquiry into Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016.

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16 March 2016

Department/Agency: ATO

Question: 3

Topic: Provision of the ATO's organisational structure

Reference: Hansard – page 7

Question:

Mr HASTIE: There is, and the reason I ask is that, coming from a defence background myself, I have seen a lot of these. What I always ask for afterwards is an organisational chart because that best demonstrates the flow of information and who has oversight. I am not sure if I missed that, but that would be handy.

Mr Leeper: We could provide that, but effectively, in my substantive capacity I am responsible, with Ms Curtis, for corporate functions, service delivery and technology functions, including debt. Mr Olson, who is not here today, is responsible for client engagement, which is the new name for our compliance functions. Mr Mills is responsible for our law, design and practice area. So there is a professional stream, a client engagement stream and the operational technology and corporate functions of the organisation. That is how we organise it at a second commissioner level. We will provide the organisation structure on notice.

Answer:

The ATO's organisational structure is provided below.

ATO organisational structure



Correct as at 4 April 2016.

A/g represents an acting arrangement.

Each box represents a business line, apart from: the Chief Operating Officer; and the independent internal functions that support the Commissioners and are located for administrative purposes in ATO Corporate.

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16 March 2016

Department/Agency: ATO

Question: 4

Topic: Recommendations from scrutineer reports

Reference: Hansard – pages 9-10

Question:

CHAIR: Can I just jump in there. In that response to that question from the ANAO about the work program, if it was done two years ago, would your response document contain the recommendations and the actions you have taken as a result of those recommendations from that prior review?

Mr Leeper: Yes. In fact—

CHAIR: Or is the expectation from the ANAO, 'Go back and look at it'?

Mr Leeper: No. Once we come out of review, an ANAO review, an ombudsman review or Inspector-General review, recommendations which are accepted and agreed by us go onto the work program and they become part of the work program of our audit committee. So those will be routinely reported on. If things are either late—that is, we are not getting to the actions as quickly as we said we would—we have reporting systems that will draw attention to that. The ANAO are in the committee for those conversations, so they can see how we are travelling. You may want to direct that question to them about why they might make a decision to audit something which they have seen has had some other scrutiny in the last couple of years.

Mrs BRONWYN BISHOP: No, that is not the way it works. The Australian Auditor-General is responsible to the Joint Standing Committee on Public Accounts and Audit. I was a member of that committee when we brought in that relationship. We were concerned that if government was funding the audit office, the audit office could be limited in its function because the government could cut its budget. For that reason, it was decided that the parliament should be the correct body for that budget to be set. I have sat on meetings where they have put forward the costing of their audit program and they are going about their statutory duties. Every now and again, we have had great movements from various agencies saying: 'We don't need the Auditor-General. We can have a private sector auditor.' I have fought that tooth and nail, along with others, because the function of the Auditor-General and the function of a private sector Auditor is totally different.

To say that you have had 51 audits and overviews and so on, with 366 recommendations, I would very much like you to let the committee know, not now, how many of those 366 recommendations were agreed to, how many of them have been implemented and how long it took you to implement them? That does not even go to other recommendations that other committees have made that have impinged on the tax office itself; that is just the simple auditory function.

Mr Leeper: We can take the detail on notice, but of those 366 recommendations, three-quarters of them related to Inspector-General reviews—

Mrs BRONWYN BISHOP: No, you said 53 per cent were audit office.

Mr Leeper: No, 53 per cent of the audits were conducted by the ANAO; 80 per cent of the recommendations arose from reviews conducted by the Inspector-General.

Mrs BRONWYN BISHOP: That, to my mind, says that it is doubly important that the Inspector-General is part of the reviewing process, because he is the person to whom individuals can have access when they have complaints to make. You can let us know—not now—in due course how many have been accepted, how many have been implemented, how long it took to implement them and how many are outstanding.

Mr Leeper: Once they are accepted, we are responsible for implementing them, and, as I mentioned to the chair a moment ago, that is under the attention of our audit committee. I think from memory we have over 200 findings on hand at the moment, and we just work to the process.

Mrs BRONWYN BISHOP: Do not try to do it now. Let's just make it accurate and let us have it when you are ready, when you have got it together. I am looking at dot points 83, 84, 85 and 86 on page 14 of your submission—'Effective and efficient scrutiny'. If that is not a directive, I do not know one. And it is not the province and function of the ATO to be giving such a directive.

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Answer:

The table below outlines the number of recommendations the ATO agreed to implement, how many we have implemented and the average time taken to implement all relevant recommendations in a report.

The perceived value of scrutiny in the past has often been measured by the number of recommendations and the number that have been agreed to by the ATO. This is a misleading measure as it doesn't reflect the fact that in many instances the recommendations capture work already under way. The numbers in the table below do not take this key observation into account.

External scrutineer reports 1 July 2010 – 31 March 2016

	Reports	Total recommendations	Recommendations directed to ATO	Recommendations for Government or other agency	Agreed recommendations for ATO implementation	Recommendations implemented	Recommendations yet to be implemented	Average time taken to implement all recommendations*
2010/2011	12	48	44	4	41	41	0	21 months
2011/2012	8	92	88	4	84	84	0	19 months
2012/2013	8	77	55	22	53	51	2	14 months
2013/2014	11	83	82	1	79	60	19	14 months
2014/2015	10	39	29	10	29	14	15	10 months
2015/2016	2	27	26	1	23	4	19	(in progress)
Total	51	366	324	42	309	254	55	17 months

*Note: The average length of time between the date the report is released and the date the last recommendation to be implemented is closed. Of the 51 reports, 40 have been finalised with relevant recommendations fully implemented.

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16 March 2016

Department/Agency: ATO

Question: 5

Topic: Analysis of the 366 scrutineer recommendations

Reference: Hansard – page 10-11

Question:

Mr Mills: Directly assess suggestions as to what might be an appropriate framework to establish scrutiny, or what good scrutiny is, but that is always a matter for the parliament to determine. Those are just suggestions as to what the right framework might be. They are not directions.

If I may just finish off an aspect of the question you were asking, Chair, in relation to why the same question may get asked. It is usually a function of the scope of a particular review. If I can talk about the one that was mentioned before—the review around employer obligations. The issue of director penalty notices came up in quite a number of different reviews and will be examined again in the context of this review. For example, in 2015 it came up in the context of the promoting compliance with super guarantee obligations by the ANAO, and again in 2015 the Inspector-General looked at it in the context of a review on debt collection. In 2014 the Inspector-General looked at it in the context of the ATO's administration of penalties and again looked at it in the context of the implementation of some other reports or recommendations and further reports between 2009 and 2010. The ANAO again looked at it back in 2013 in the context of the management of debt relief arrangements and again in 2012 in the engagement of external debt collection agencies.

Mrs BRONWYN BISHOP: It sounds to me like they were not satisfied with what you did.

Mr Mills: My point is that the scope of the reviews, although they are ostensibly on other topics, will tend to impinge upon often similar areas if they are not managed appropriately.

Mrs BRONWYN BISHOP: And you should have the material ready and at hand. It should be no trouble at all.

Mr Leeper: Chair, we would say on the record that the processes that led to the Inspector-General deciding to inquire into something are not transparent to us. That is why we are struggling to answer the question. The Inspector-General, quite appropriately, has his or her own powers to decide where to inquire into things, and they receive information, advice, complaints, feedback from people. We are not always privy to the information that has caused them to inquire into particular areas, which is why I guess we may appear to be struggling to answer this particular question. That is not a process that we are necessarily involved in, so we would not be able to assist you in determining how those things get onto the work program.

Mrs BRONWYN BISHOP: We do not want to know that, do we?

CHAIR: I am interested to know, because of the duplication—I think over a period of five or six years the same thing came up five or six times.

Mrs BRONWYN BISHOP: But did it? Does that mean it was not dealt with properly in the first place? The Australian Audit Office is a highly competent group of people and they do not muck about.

CHAIR: We are going to be speaking to them in due course, so we can we re-ask that question of them to understand that process better. From the ATO's perspective, who we have here today, do you have any idea of the information that you provided at those various inquiries, how different that was each time or whether it was similar? And were there specific recommendations from early on—from, say, the first time there was a review on it, or an inquiry into it, to the last time where recommendations were not acted on or were not dealt with that resulted in it being raised in subsequent inquiries?

Mr Mills: I am happy to get that for the committee.

Mrs BRONWYN BISHOP: I can give you an example of my own experience, when I sat on the Joint Committee of Public Accounts and Audit: having a particular issue, dealing with the relationship between the Australian Taxation Office and ASIC, with regard to companies being struck off and whether or not superannuation could be collected. It was brought up at a public hearing: 'Oh, yes, we will look into that. We will do it.' Six months later they came back: 'Where is the answer?' 'Oh, we haven't done it.' You bet we asked the question again and got into it again. I can cite many examples, along those lines, over that time.

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Answer:

The issue of duplication relates to the various external scrutineer inquiries where the scope of the reviews impinge on similar areas covered in previous reviews but from a different perspective.

Examples of overlaps in past review focus areas have been provided as requested. We believe for future reviews there should be a holistic way of looking at systemic issues.

In relation to the implementation of recommendations from external scrutineers (see ATO response to question on notice number 4 for further detail) the ATO has a very robust process of monitoring the implementation of all agreed recommendations from external scrutineers. Quarterly updates on implementation of agreed recommendations are presented to the ATO's Audit and Risk Committee. The ANAO is represented on the Audit and Risk Committee and therefore maintains full oversight of the implementation process. The regular report to the Audit and Risk Committee shows the status of recommendations as implemented, open or overdue (based on the time frame set for the implementation of each individual recommendation).

The Inspector-General of Taxation (IGT) undertakes periodic follow up reviews into the ATO's implementation of agreed recommendations. The Inspector-General performed two such follow ups (14/11/2014 and 21/03/2011). Neither of those follow up reviews resulted in a further recommendation to the ATO.

The above notwithstanding, layers of duplication exist between inquiries by different scrutineers, and sometimes the same scrutineer. Reviews of ATO disputes handling provide a good example of this - over the past 12 years the ATO has been subject to 13 reviews that have had some focus on our handling of disputes. In this time some reviews commenced only a few months after the previous review was finalised, while some reviews ran concurrently.

The following case studies provide details of overlap in review focus areas.

Case study 1 – Dispute handling

- 22 April 2016 (report due): *Corporate Tax Avoidance* – covered issues of settlements for large corporate taxpayers (Senate Economics Legislation Committee)
- 2 November 2015: *Review into the ATO's Taxpayers' Charter and taxpayer protections* – covering off on model litigant obligations (Inspector-General of Taxation)
- 26 March 2015: *Inquiry into Tax Disputes* (House of Representatives Standing Committee on Tax and Revenue)
- 27 February 2015: *The management of tax disputes* (Inspector-General of Taxation)

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- 14 November 2014: *Follow up review into the ATO's implementation of agreed recommendations in five reports released between August 2009 and November 2010* - which revisits the Review into the underlying causes and the management of objections to Tax Office decisions and Review into aspects of the Tax Office's settlement of active compliance activities (Inspector-General of Taxation)
- 8 July 2014: *Review into the ATO's administration of penalties* - covering disputes in relation to penalty decisions (Inspector-General of Taxation)
- 12 Feb 2014: *Management of Complaints and Other Feedback* (Australian National Audit Office)
- 31 July 2012: *Review into the ATO's use of early and alternative dispute resolution* (Inspector-General of Taxation)
- 1 December 2009: *Review into aspects of the Tax Office's settlement of active compliance activities* (Inspector-General of Taxation)
- 11 August 2009: *Review into the underlying causes and the management of objections to Tax Office decisions* (Inspector-General of Taxation)
- 5 March 2008: *Follow up review into the Tax Office's implementation of agreed recommendations included in the six reports prepared by the Inspector General of Taxation between August 2003 and June 2006* - which revisits a review of Tax Office management of Part IVC litigation (Inspector-General of Taxation)
- 7 August 2006: *Review of Tax Office management of Part IVC litigation* (Inspector-General of Taxation)
- 18 November 2004: *Review of the remission of the general interest charge for groups of taxpayers in dispute with the Tax Office* (Inspector-General of Taxation)

The reviews have tended to focus only on single aspects of dispute resolution – such as settlements, objections, penalties, litigation. This leads to a fractured approach to review and recommendations that do not consider the impact across the whole dispute resolution system, for both taxpayers and the ATO. The rapid succession of reviews (and often follow up reviews) on the same subject matter (e.g. objections, settlement) often means there is little time for any recommendations or improvements to be bedded down. Different scrutineers are also approaching their topic from different perspectives resulting in recommendations not always being well aligned.

Case Study 2 – Debt

Debt, as a topic, has featured in both the Australian National Audit Office (ANAO) and the Inspector-General of Taxation (IGT) work programs between 2011 and 2015. Three reports ensued:

- *The Engagement of External Debt Collection Agencies* (ANAO 2012)
- *Management of Debt Relief Arrangements* (ANAO 2013)
- *Review into Debt Collection* (IGT 2015).

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The three reviews generated 422 pages of findings and a total of 24 recommendations for the ATO. The ATO agreed with 21, noting in each instance there were a number of debt improvement strategies already underway that address some of the concerns highlighted.

There were common themes across both the IGT and ANAO reports, the main areas of crossover being:

- promoting early intervention and engagement of taxpayers where they are unable to meet their tax obligations
- understanding taxpayers behaviours and why tax debts arise and supporting them to meet their tax obligations and minimise tax debt
- providing more information to the public, e.g. on debt prevention and debt relief
- potential for remission of General Interest Charge (GIC)
- use of external debt collectors
- improving staff capabilities and
- process for managing serious financial hardship cases.

In the most recent IGT review on debt collection six of the 19 recommendations included components recommending the publishing of statistics or information.

Case Study 3 – Superannuation

The topic of Superannuation Guarantee Charge appeared on the *Inspector-General of Taxation 2009-10 Work Program* with the *Review into the ATO's administration of the Superannuation Guarantee Charge* completed in 2011. The same topic appeared on the ANAO's *Audit Work Program July 2013* and with the audit *Promoting Compliance with Superannuation Guarantee Obligations* being completed in 2015.

The two reports generated 237 pages of findings and a total 16 recommendations, seven full recommendations and three part recommendations directed to ATO, with the remainder directed to Government. The ATO agreed with 15.

Both the review and audit focused on a number of common themes. The main areas of duplication related to the following:

- difficulty in collecting Superannuation Guarantee Charge raised
- targeting of employer compliance
- identification of high risk populations
- administrative burden for small business employers
- employer difficulty in classifying employees and contractors
- the penalty system
- ATO handling of complaints and
- ATO conduct of compliance activities.