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**Submission to the
Senate Economics Legislation Committee
Performance of the Inspector-General of Taxation**

30 August 2019

1. Overview—Summary—Recommendations

Self-Employed Australia has considerable experience with, and strongly endorses, the operations, activities and performance of the Inspector-General of Taxation (IGT).

Our only concern with the IGT is that its powers are not broad enough for the true value of the IGT's capacities and performance to be realised.

We recommend that:

- the IGT's powers be considerably expanded;
- that the Committee look to the *Taxpayer Advocate Service* in the United States as a model for an expanded IGT;
- that, accompanying an expanded IGT, the Committee look to the *Taxpayer Bill of Rights* in the USA as a model for operational principles that could apply to the ATO and over which the IGT could have oversight powers; and
- that the Committee investigate the recently enacted *Taxpayer First Act* in the USA as a model/template for operational reform of the ATO under which an expanded IGT would play a major role.

In section 3 (below) we supply some details and links on each of these items—the USA's Taxpayer Advocate Service, Taxpayer Bill of Rights and *Taxpayer First Act*.

2. Response to specific questions

In relation to each of the specific questions being investigated by the Committee, we respond briefly as follows. The Committee asks:

a) whether the accountability framework the IGT operates within needs to be amended or strengthened

SEA Response: Our understanding of the IGT's current powers is that it can investigate and report on whether the ATO has followed due and correct *processes* in both individual taxpayer cases and systemically. In that sense it is an accountability watchdog over the ATO's processes. However, it only has an investigative and reporting function. The ATO has no obligation to respond to, or take on board, the IGT's observations, criticisms or recommendations.

b) how the IGT conducts its investigations into the Australian Taxation Office (ATO)

SEA Response 1: Our understanding is that the IGT has direct and unimpeded access to all ATO systems and records, giving it a great capacity to investigate issues deeply. However, we also understand that the ATO is under no obligation to cooperate with the IGT. The IGT is therefore in a position of having to maintain a 'relationship' with the ATO so that the ATO does not refuse to cooperate with it or act in opaque, bureaucratically obtuse or obstructionist ways when responding to the IGT. If we are correct in our understanding on this point, then we recommend that changes be made so that the ATO is required to cooperate with all and any IGT investigations and that it be an offence for an ATO officer not to cooperate with the IGT or be obstructive of the IGT in any way.

SEA Response 2: We have found the IGT's investigations and reports to be thorough and detailed. Perhaps our only concern is that, on occasions, we have found IGT reports to be a little too 'public service' in style, requiring some 'reading between the lines' to elicit their true meaning. This seems to happen most often when the IGT may be offering a criticism of the ATO. We have assumed that such 'public service' speak takes place so as not to upset the relationship with the ATO. However, during the latter part of 2018 (and thereafter) we have found IGT reports to be more 'to the point'. We encourage a reporting style that makes criticism both obvious and clear.

c) what safeguards exist to ensure the independence of the IGT

SEA Response: We have concerns that, on occasions, the ATO may have sought to influence and colour IGT reports to lessen or remove criticism. As an example, the *summary* of [the IGT's report](#) (13/3/19) into the ATO's use of garnishees states that allegations of misuse were 'not sustained'. This summary enabled the ATO to claim that the ATO was cleared of any inappropriate behaviour. However, *the body and detail* of the IGT's report clearly identifies misuse of garnishee power. The report's summary is at odds with the body of the report. We find this 'curious' and have concerns about whether

the ATO may have had input into the report. If so, this would raise concerns about the strict independence of the IGT from ATO influence.

We make these comments mindful of the ever-present danger of regulatory capture—that is, where a body subject to regulation ‘captures’ the regulator for its own purposes. The strong criticism of ASIC in the banking royal commission essentially sprang from this point about ‘capture’. It should be expected and anticipated that a public service organisation such as the ATO would have an urge to ‘capture’ its overseer in order to reduce the overseer’s independence. As stated earlier, we have no hard evidence but do have serious concerns given the ATO’s near-obsession with suppressing criticism and denying allegations of failure.

d) the complaints management policies and practices of the IGT

SEA Response: We have been involved in assisting perhaps some dozen taxpayers in lodging complaints with the IGT since the IGT had the power to investigate individual complaints. SEA does not provide tax or other professional advice to our members. SEA is an advocacy organisation. However, we do refer members who are facing difficulties with the ATO to lawyers, accountants and other qualified persons. In doing this we provide support by way of counselling and suggestions as to the processes that can be followed. When a member lodges a complaint to the IGT they do so either directly or through their accountant or lawyer. The IGT communicates directly with the taxpayer. However, where a taxpayer chooses to share the IGT’s correspondence with us, this grants us considerable insight into the IGT’s practices. We can say that, after considerable experience, the IGT’s practices are of the highest professional standard.

In addition, we have made submissions to, and dealt with, the IGT where the IGT has been undertaking an inquiry into aspects of ATO performance. Again, we have found the IGT’s practices to be of the highest professional standard.

e) the protections afforded to whistle-blowers who disclose information to the IGT

SEA Response: We find the treatment of whistle-blowers by the ATO to be scandalous. This is no reflection upon the IGT, as it has no control over the ATO on this issue.

The case of high-profile ATO whistle-blower Richard Boyle is instructive. The facts as we understand them is that Richard Boyle as a long-time ATO employee lodged an internal report to the ATO to the effect that ATO processes concerning garnishees were breaching policy. His internal report was ignored. Richard Boyle then lodged a report with the IGT. Richard was sacked by the ATO. The [IGT’s report](#) issued on 13 March

2019 and referred to above in section 2 (c) was essentially an investigation into Richard Boyle's report to the IGT. As stated before, we consider the IGT's *summary* of its findings to be at odds with the *body* of its findings. This heightens our concerns about the integrity of the processes for the handling of whistle-blowers.

Richard Boyle is now facing charges which, if he is convicted on all counts, could result in him being jailed for 161 years—although it could be assumed that the maximum sentence is unlikely to be imposed. Given that this matter is before the courts, we make no comment on the specifics of the charges.

f) any related matters—Why the IGT, and an expanded IGT, is needed

It is taken for granted in Australia that appropriate oversight and regulation of private-sector activity is essential. Without oversight, organisations that achieve a dominant position in a market will have a strong inclination to exploit and abuse their position in that market.

There is also a cultural disposition in Australia to assume that government organisations are not like private-sector organisations and will work for the good of society. It is this assumption that underpins the fact that the ATO lacks effective or real oversight, transparency or accountability. By statute the ATO is effectively only accountable to itself. This cultural assumption, that government organisations will always work for the common good, is dangerously wrong.

The reality is that any organisation, private or public, that has a dominant position can easily slide towards unaccountability and abuse its powers. This is part and parcel of human behaviour. It is the nature of large organisations. Oversight, accountability and transparency are essential if the abuse of power is to be limited.

SEA is and has long been highly critical and vocal about the abuse of power by the ATO—particularly of small business people. We have produced evidence of ATO power abuse in submissions (see section 4 below) and media and other campaigning. The ATO refuses to acknowledge that it has a problem with the abuse of its powers within the organisation.

The IGT is the only organisation that brings some measure of real-time transparency to abuse by the ATO. Scrutiny by parliament and the courts occurs after the damage has been done. Following the *Four Corners* program (April 2018) '[Mongrel Bunch of Bastards](#)' the recorded evidence of ATO's abuse of power has grown substantially.

Parliamentary and other reports (Small Business Ombudsman, etc.) have added to the evidence during 2018–19.

The IGT is the only speedy ‘brake’ on the abuse of powers by the ATO. SEA has called for (and is calling for) major structural reform of the ATO with the implementation of measures promoting strong oversight, accountability and transparency of ATO performance. We want to see the principles of accountability that apply to the private sector apply to the ATO as well. This, we believe, will create a better and more effective tax administration system in which people can be confident that they will be treated with fairness and within the principles of the rule of law. Such confidence encourages voluntary compliance with tax obligations, the core strength of any effective tax collection system.

It is because of these general principles and understandings that we believe the powers, capabilities and effectiveness of the IGT as a real-time watchdog of the ATO need to be expanded and enhanced.

3. The USA example

The USA provides a potential template, or at least a comparative model, for how taxpayers should be protected from ATO abuse.

3.1 The Taxpayer Advocate

The USA has long had a [Taxpayer Advocate Service](#).

The Advocate’s website states that it is “An independent organisation within the IRS, that is here to protect your rights as a taxpayer, and help you with tax problems you can’t resolve on your own”.

The Advocate is a much beefed-up version of Australia’s Inspector-General of Taxation.

3.2 Taxpayer Bill of Rights

The Advocate ensures the application of the [Taxpayer Bill of Rights](#) to taxpayers’ dealings with the IRS.

The Taxpayer Bill of Rights is stated on the Advocate’s website as follows:

The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with tax laws. They are entitled to clear explanations of the law and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to have a way to file complaints about inadequate service.

The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due and to have the IRS apply all tax payments properly.

The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year. Taxpayers have the right to know when the IRS has finished an audit.

The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and a collection due process hearing where applicable.

The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect the IRS to investigate and take appropriate action against its employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to be told that if they cannot afford to hire a representative they may be eligible for assistance from a Low Income Taxpayer Clinic.

The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

3.3 Taxpayer First Act 2019

Even with these long-established taxpayer protections and services, the US Congress recently found it necessary to expand taxpayer protections after extensive evidence of IRS abuse.

On 1 July 2019 President Trump [signed into law](#) the [Taxpayers First Act](#). The Bill passed Congress with [support from all political parties](#).

There are [twelve-or-so measures](#) in the Act which include:

1. **Greater Access to Independent Review:** Guarantees taxpayer access to an independent appeal on an audit decision. Before an appeal the IRS must hand over to the taxpayer the taxpayer's case file.
2. **Limited Seizure of Property:** Property seizure limited to illegal cash transactions or concealing criminal activity. Post seizure and hearing requirements to protect taxpayers. (***)Highly relevant to the ATO garnishee issue.)
3. **Listening to the Taxpayer Advocate.** The USA has an independent Taxpayer Advocate (NTA), somewhat similar to the Australian Inspector-General of Taxation (IGT). The US law

would grant the NTA significant new powers to give the IRS enforceable directives on taxpayer cases.

4. **Improved customer service:** IRS required to adopt best practices of private-sector customer-service providers.
5. **Easier Settlement Procedures:** No fees by IRS if a settlement deal is done with the taxpayer.
6. **Earlier Notice of third-party questioning:** The IRS must notify a taxpayer before it makes enquiries of third parties about your tax (for example, a customer).

3.4 Recommendation

We recommend to the Committee that these measures of accountability and transparency applied to the IRS in the USA be investigated for possible application in Australia. Such application would, by necessity, involve major enhancements to the IGT's powers and capabilities.

4. SEA – Observations and reports of ATO failures and abuse of power

SEA has had a long and close involvement with the ATO dating back to 2000. From about 2012 we became increasingly concerned about evidence we were seeing of ATO abuse of its powers in relation to self-employed small business people. We case-study situations, report on what we observe and look to identify the public policy issues that flow from such studies.

In general, we observe that on far too many occasions the ATO seeks to (and does) bully tax revenue from small business people rather than secure the revenue that the facts show should be raised. In some sections of the ATO this 'revenue by bullying' is the primary and systemic method of revenue-raising.

The IGT is the only organisation that has the authority and capacity to investigate such bullying in real time—that is, while the bullying is under way. Unfortunately, the IGT does not have the authority to order the bullying to stop.

The following are links to some of the reports and submissions we have made, with extracts from some of the reports/submissions.

4.1 Submission to the Board of Taxation: May 2014
[A Review of Tax System Impediments Facing Small Business](#)

Extract

1. Based on our experience, the ATO is failing on each of these principles in relation to small business people.
 - The ways in which many of the key laws are administered and interpreted by the ATO are, from the small business person's perspective, unclear, inconsistent, 'unknowable' and seem more a reflection of the imagination of the ATO than anything related to the real life of business in the community.
 - Consequently, the ATO is often seen as a bad but dangerous 'joke' and unreliable.
 - Such a situation reduces, rather than encourages, voluntary compliance.
2. We comment in particular on the following issues:
 - Allocation and refusal to allocate Australian Business Numbers.
 - Failures in relation to basic, core administrative functions.
 - Failure of ATO officers to comply with the ATO's own rules.
 - Poor policy in relation to compliance in the construction sector.
 - An ATO dispute resolution system that is not seen to be open and fair and which allows the ATO to win its claims by commercial intimidation. That is, small business people cannot afford to challenge the ATO because of the costs of litigation.
 - Incoherent application of policy in relation to Personal Services Income Tax laws.

4.2 Submission to Inspector General of Taxation: December 2015
[Review into the ATO's Employer Obligations Audits](#)

4.3 Submission to Parliamentary Tax and Revenue Committee: March 2016
[Inquiry into whether the Australian Taxation Office is subject to too much scrutiny.](#)

Extract

Specifically, ICA calls for:

- Increased powers and resources for the Inspector-General of Taxation to oversee the processes of the ATO.
- The creation of a Small Business Tax Tribunal that has oversight of the ATO's interpretation of the legal facts and its application of tax law to self-employed small business people.

Further, increased scrutiny as proposed will:

- Force the ATO to address its ingrained systemic inefficiencies.
- Facilitate improved ATO efficiency, thereby creating government cost savings.

ICA holds the position that the ATO has not earned the right to have the ‘earned autonomy principle’ applied to it.

4.4 SEA Position paper on ATO reform: April 2018
[“The Power to Audit is the Power to Destroy”](#)

Extract

The ATO is effectively police, investigator, prosecutor, judge, jury and financial jailer all in one. The evidence is that the ATO abuses those powers in relation to small business people and thereby victimizes them.

This paper calls for major reform of the structures within and around the ATO to ensure that the ATO exercises its powers ethically and within the law

4.5 Submission to House Tax and Revenue Committee October 2018
[Request for comments on the administration of the taxation system.](#)

Extract

In our view, based on our experience and collection of hard facts, the ATO:

- fails properly to audit individuals who dodge tax, resulting in significant revenue loss; but instead
- focuses claims of tax debt against small business people who are open, transparent and truthful about their tax affairs.

The ATO also:

- creates false claims of tax debts based on erroneous application of the law
- falsifies documents to support its claims of tax debt against individuals (we have clear evidence of this);
- when caught out creating false claims of tax debt and as a result withdraws its claims, nonetheless persecutes its victims by putting them through a compensation claims process that can only be described as a ‘sham’, and further
- gives special treatment to select individuals (mostly high-wealth people) resulting in a loss of tax revenue on a large scale.

In addition, we submit that the ATO:

- Issues misleading publications and guidance.
- Misleads Members of Parliament.
- Attacks its critics rather than dealing with the substance of their criticisms.
- Is coercive and threatening in its behaviour towards individuals.
- Pursues cases that have no merit.