Appendix – Inquiry into the performance of the Inspector-General of Taxation (IGTO)

Senate Economics Legislation Committee

Questions taken on notice during hearing on 6 December 2019

> Senator PATRICK: How many times have you not got the information that you wanted from the tax commissioner?
>
> Ms Payne: We would have to take that on notice....
>
> ... Ms Payne: Another way we could perhaps improve the integrity of the response rate would be if there were some kind of mechanism where we had an obligation to report in our annual report the number of times and the circumstances in which we requested something and we were refused, or we made a recommendation for something and it was refused without good reason.
>
> Senator PATRICK: It's okay; you don't have to put that in your annual report because we've asked for that on notice now....
>
> ... Senator PATRICK: That was the nature of the question I was trying to articulate, and you did a much better job. Could you please answer that question on notice for the last three years, please.
>
> ... Mr McLoughlin: I think it's also reasonable to include undue delay. ...
>
> Senator PATRICK: Can you please, on notice, provide us circumstances where you thought there was undue delay in responding to a request.
>
> ... Senator PATRICK: And perhaps maybe generally comment now what effect that has upon an investigation.
>
> Mr Pengilley: Yes, certainly.

The IGTO understands that the following questions represent the information requested by the Committee in the extract noted above.

In respect of the last three financial years, please advise:

1. The number of times in complaint investigations where the IGTO requested information from the Australian Taxation Office (ATO) and it was not supplied (e.g. requested information was not provided or the request was refused) and the effect this had on the investigation.

2. The number of times (and the circumstances) where the IGTO's preferred resolution to the case was refused by the ATO without reason or without good reasons.

3. The number of times (and the circumstances) where the IGTO requested information from the ATO and there was an undue delay by the ATO in responding to the request.

IGTO response

Introductory comments to the IGTO's answers

The IGTO notes that the Senate Economics Legislation Committee reported in 2002 that:

"The Committee has no desire to see the power of the Inspector-General increased to the extent that he or she can direct the Commissioner of Taxation to follow a recommendation. It believes that ***the investigative process itself coupled with the ability of the Inspector-General to report publicly on the administration of taxation laws is sufficient incentive for the Commissioner of Taxation to take appropriate action if required..."***[1]

The IGTO notes that this statement was made in respect of the function of the Inspector-General of Taxation as originally introduced. However, the incentive provided through public reporting should apply equally to the Taxation Ombudsman service. That is, public reporting in aggregate (and de-identified) information which illustrates:

- responsiveness of the ATO/TPB and timeliness of their responses;
- level of acceptance by the ATO/TPB of suggested improvements;
- level of acceptance by the ATO/TPB of suggested, recommended and remedial actions; and
- adoption and implementation of the same by the ATO/TPB.

The public reporting on these indices (and other relevant statistics) are important features of the governance and accountability arrangements for the taxation administration system.

Complaint Categories

For the purposes of understanding the information supplied in this response it is important to note the definition of a complaint as adopted by the IGTO and consistent with International Standards Organisation standards: *Any expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.*

Complaint Categories where no investigation notice is sent to the ATO	
0	Complaints that are assessed and no further action is taken or contact is lost with the complainant.
1	Complaints that are able to be resolved by the IGTO directly, including those which are referred elsewhere.
2	Complaints: - where feedback is being provided to the agency without an investigation; - transferred to another agency (e.g. Commonwealth Ombudsman); or - following consideration of the issues, is declined.

[1] Senate Economics Legislation Committee, Parliament of Australia, *Inspector-General of Taxation Bill 2002* (2002) p 14.

Complaint Categories where an investigation notice is sent to the ATO	
3.1	Relatively simple complaints that are expected to be resolved in a timely manner. In these cases, the IGTO has commenced an investigation and notified the ATO/TPB, however, the ATO/TPB have asked that they be provided opportunity to resolve the complaint directly with the complainant first and the IGTO agrees that it would be appropriate to do so.
3.2	Relatively simple Complaint investigations that are expected to be resolved in a timely manner and with minimal information gathering.
4	Complex Complaint investigations that warrant direct and ongoing IGTO involvement.
5	Highest level of Complex Complaint investigations that require the involvement of Senior Executive Staff responsible for the subject of the complaint.

The IGTO's Corporate Plan for 2019-20 introduces several new measures for Key Performance Indicators (KPIs) including:

KPA 1 – PROVIDE AN EFFICIENT AND EFFECTIVE TAX COMPLAINTS SERVICE FOR TAXPAYERS

- Average number of days to resolve complaints (as arranged by complexity):
  - *Category 0 – 2*
  - *Category 3*
  - *Category 4*
  - *Category 5*
- % complaints where the IGTO considered the agency's administrative actions on the primary issue to be reasonable
- Complaints where the IGTO's recommendations were not implemented by the agency

However, as these KPIs are principally designed to measure the performance of the IGTO agency, additional reporting may be needed for improved accountability through reporting for the ATO and TPB.

The IGTO would welcome the Committee's views on what information and reporting is consistent with good governance of the taxation administration system and whether additional reporting would improve the accountability and transparency of the ATO and TPB in the taxation administration system.

Question One

The number of times where the IGTO requested information from the ATO and it was not supplied (e.g. requested information was not provided or the request was refused) and the effect this had on the investigation

In answering this question, it should be noted that the IGTO's complaints case management software – *Resolve* – has not been designed to routinely capture the information requested in a way that can automatically generate a report. A software modification would be needed to capture this information in a structured way. However, for the purposes of providing the Committee with greater understanding, we have manually analysed information which has been extracted through the available reporting functions.

Also, the IGTO does not request information from the ATO in all complaint cases (notably Categories 0, 1, 2 and 3.1) as many cases may be resolved without IGTO investigation or by affording opportunity for the ATO to resolve complaints directly with the complainant before the IGTO commences information gathering[2]. For all other complaint investigations (which are referred to as 'Category 3.2, 4 and 5 complaint investigations' in Table 1.1 below), the IGTO requests information from the ATO at least once and often at different stages during the investigation. Where information is supplied by the ATO in such investigations, it is assessed and recorded as either being suitable, unsuitable or insufficient. Where requested information is not supplied, it is recorded as an unsuitable response. Action taken as a result of information being assessed as unsuitable or insufficient depends on what is considered necessary to re-engage with the ATO and progress the matter toward resolution.

Table 1.1 below provides the numbers of investigations in which information requests were made and whether they were either refused or not supplied. Table 1.2 provides numbers on the impact that these refused or not supplied information requests have had on the investigations. The criteria for selecting cases for manual examination were all investigations of complaints received since 1 July 2016 where the investigation was identified as either:

- having a highest level of complexity (Category 5);
- involving unsuitable or insufficient information provided by the ATO in response to an IGTO information request; or
- requiring further IGTO investigation or the making of adverse comments after having received and reviewed the ATO information.

A manual analysis of these 207 investigations identified 102 investigations where information requested from the ATO was not supplied (see Table 1.1). The impacts that unsatisfactory responses to information requestions have had on investigations is set out in Table 1.2.

[2] E.g. an investigation notice was issued to the ATO, but it was considered appropriate to afford the ATO opportunity to resolve the complaint and did not require the IGTO's to actively investigate the ATO's actions in order for the complaint to be resolved.

Table 1.1 – Investigations where Information Requested was refused or not supplied

Complaint investigations	Financial year received			Total
	2016-17	2017-18	2018-19	
A - Total complaint investigations where information requested from the ATO was not supplied[a]	30	50	22	102
B - Total complaint investigations manually analysed[b]	56	96	55	207
A/B - Proportion of complaints sample where information requests were refused or not supplied	53.6%	52.1%	40.0%	49.3%
C - Total Category 3.2, 4 and 5 complaint investigations[c]	517	620	579	1,716
A/C - Proportion of Total complaint investigations where information requested from the ATO was not supplied	5.8%	8.1%	3.8%	5.9%

[a] The variance in totals between Tables 1.1 and 1.2 are due to investigations in which multiple impacts were experienced.

[b] These figures represent the total number of complaint investigations which involved unsuitable or insufficient information provided by the ATO in response to an IGTO information request, requiring further IGTO investigation or the making adverse comments or being categorised as having a higher level of complexity.

[c] These figures represent the total number of complaints investigated less those which were resolved without investigation or which the ATO was afforded opportunity to resolve the complaint directly with the complainant before the IGTO became actively involved.

Table 1.2 – Complaint investigations where ATO responses to IGTO Information Requests were incomplete or not supplied

Complaint investigation where information requested from the ATO was incomplete or not supplied	Consequence or Impact	Financial year received 2016-17	2017-18	2018-19
The ATO repeatedly did not provide information	The investigation was finalised without the information being provided	1		
The ATO did not provide information or provided incomplete information in the early stages of an investigation,	Necessitated Escalation to the Director level	18	33	17
The ATO repeatedly did not provide information	Necessitated the drafting of a Preliminary View to be sent to the ATO	1	2	2
The ATO repeatedly did not provide information	Necessitated that the investigation be escalated to the Senior Executive level	5	5	2
The ATO provided information that was found to be inaccurate, incomplete or was not the information requested	Resulted in delays in the investigation	14	10	15
The ATO disagreed with the IGTO's position for substantial periods of the investigation before agreeing with the IGTO	Delayed the case	10	7	5
Total circumstances where information requested from the ATO was not supplied[a]		49	57	41

[a] The variance in totals between Tables 1.1 and 1.2 are due to investigations in which multiple impacts were experienced.

Question Two

The number of times where the IGTO's suggested or recommended resolution was refused by the ATO without reason or without good reasons, and the ultimate outcome of that investigation

It should be noted that the IGTO's complaints case management software – *Resolve* – has not been designed to routinely capture the information requested in a way that can automatically generate a report. A software modification would be needed to capture this information in a structured way. However, for the purposes of providing the Committee with greater understanding, we have manually analysed information which has been extracted through the available reporting functions.

At the commencement of a complaint investigation, the IGTO sets out a potential resolution which is based on facts known at that point in time. On this basis, the ATO may agree with the IGTO and change the view it had initially expressed to the taxpayer. Further facts may also come to light and the IGTO may change its view. Where there is a difference of opinion after all facts are known, the case may be escalated to the Directors and/or Senior Executives in each agency for consideration. If different views remain after this escalation process and the ATO's reasons for disagreeing with the IGTO's suggested or recommended resolution is considered unreasonable, the IGTO will typically respond by issuing a preliminary view[3] to the ATO setting out its concerns.

Preliminary views may result in the ATO:

- agreeing with the IGTO view and suggested outcomes – albeit later in the investigation;
- providing further information that changed IGTO view – albeit later in the investigation; or
- continuing to disagree with the IGTO view and suggested outcomes.

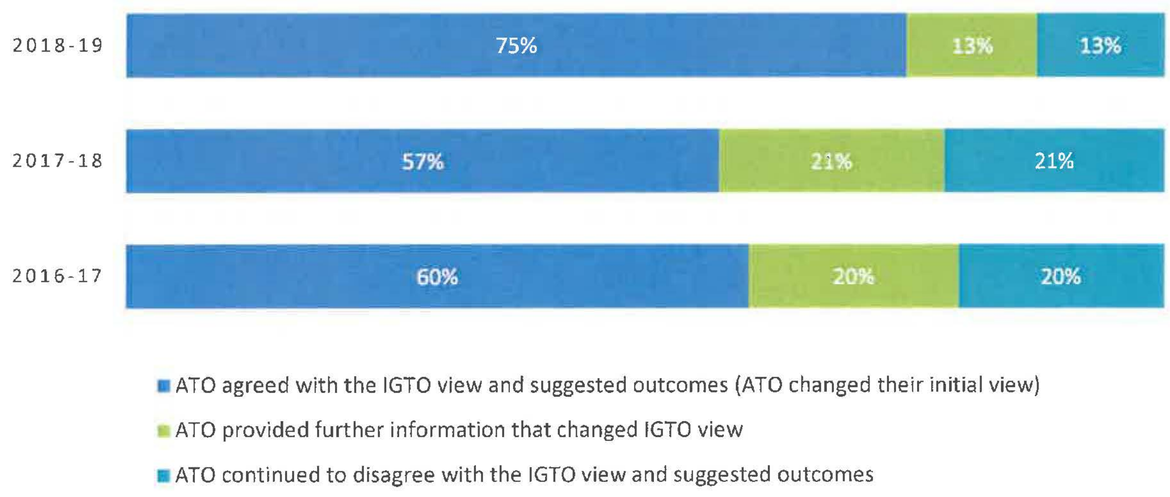
The numbers in Table 2.1 and Figure 2.1 below were identified by manually examining investigations of complaints received since 1 July 2016 in which the IGTO had issued a preliminary view to the ATO. A sample of 27 preliminary views is analysed below:

Table 2.1 – Outcome of preliminary views sent to the ATO

Outcome of preliminary views	**Financial year received**			**Total**
	2016-17	**2017-18**	**2018-19**	
ATO agreed with the IGTO view and suggested outcomes (ATO changed their initial view)	3	8	6	17
ATO provided further information that changed IGTO view	1	3	1	5
ATO continued to disagree with the IGTO view and suggested outcomes	1	3	1	5
Total	5	14	8	27

[3] A preliminary view provides the ATO with an opportunity to make submission on proposed adverse comments and suggested actions for the purpose of s12(4) of the *Ombudsman Act 1976.* Preliminary views set out the IGTO's understanding of the facts relevant to the complaint as well as its observations. The ATO is provided opportunity to correct any factual errors and make submission on any adverse opinions as well as reconsider its position and take corrective action. The ATO's response is independently considered before the investigation is finalised and the outcome communicated to the taxpayer.

Figure 2.1 – Outcome of preliminary views sent to the ATO



Question Three

The number of times (and the circumstances) where the IGTO requested information from the ATO and there was an undue delay by the ATO in responding to the request

It should be noted that the IGTO's complaints case management software – *Resolve* – has not been designed to routinely capture the information requested in a way that reports can be automatically generated. A software modification would be needed to capture this information on a regular and routine basis. However, for the purposes of providing the Committee with greater understanding, we have manually analysed information which has been extracted through the available reporting functions.

The relevant reporting function can extract data from a series of sequential actions – collectively known as 'workflows' – which are used to monitor the progress of complaints. A number of these actions identify durations where the IGTO is awaiting a response from the ATO. These actions can be used to calculate the timeframes for actions identified as awaiting response from the ATO. It is important to note, however, that in interpreting this data:

- There are a number of reasons for the timeframes an action is awaiting an ATO response, which will not necessarily involve any *undue* delay by the ATO.
- One complaint investigation may have multiple 'await response' actions within it.

In answering this question, data was extracted from complaints received since 1 July 2016 where:

- The complaint had been investigated; and
- The ATO was not afforded opportunity to resolve the complaint directly with the complainant before the IGTO commenced active investigation activities (i.e. those cases categorised as Category 3.2, 4 or 5).

As a result, the IGTO identified 978 complaint investigations containing 1,174 'await response' actions as well as the duration for those actions. Table 3.1 below provides quantitative data about the duration of these actions, by number of weeks. Table 3.2 presents the proportion of these actions' durations, as percentages.

Table 3.1 – Duration of 'await response' actions for IGTO complaint investigations about the ATO

Duration	Financial year received		
	2016-17	2017-18	2018-19
1 week	159	229	238
1-2 weeks	63	94	86
2-3 weeks	26	41	56
3-4 weeks	20	34	21
4-5 weeks	9	12	10
5-6 weeks	8	10	5
6-7 weeks	6	6	5
7-8 weeks	4	2	1
8-9 weeks	1	3	2
9-10 weeks	1		1
10-11 weeks	3		2
11-12 weeks	1	7	
12+ weeks	1	4	3
Total	302	442	430

As the table and charts below illustrate, although the majority of responses are received within one week, there are delays in receiving responses which can delay the timeliness of our investigations.

Table 3.2 – Measures of ATO 'Await Response' – A proxy for responsiveness

Duration	Financial year received		
	2016-17	2017-18	2018-19
Within 1 Week	52.6%	51.8%	55.3%
More than 1 week	47.4%	48.2%	44.7%
	100%	100%	100%
More than 2 weeks	26.5%	26.9%	24.6%
More than 3 weeks	17.9%	17.6%	11.6%
More than 6 weeks	5.629%	4.977%	3.256%

Figure 3.1 – Measures of ATO 'Await Response' – A proxy for responsiveness