



Australian Government
Inspector-General of Taxation

New IGT Work Program

On 10 April 2014, the Inspector-General of Taxation (IGT), Mr Ali Noroozi, announced his new work program for improving tax administration in Australia following a community-based consultation process.

The IGT consulted with taxpayers, tax professionals and their representative bodies to identify concerns and improvement opportunities. The Assistant Treasurer, the Parliamentary Standing Committee on Tax and Revenue and government agencies, namely the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Australian Taxation Office (ATO) and the Department of Treasury, were also consulted.

This formal work program consultation process assists the IGT in directing his limited resources to target the most appropriate areas for review. Although the IGT seeks to set a robust work program, it is not possible to review every topic raised. Therefore, the work program reflects the issues of greatest community concern or significance in achieving a more efficient, fair and transparent tax administration.

Direct and incremental improvements are made as a result of each IGT review. Although the full benefit of a given review may not always be immediately apparent, incremental changes brought about by the reviews and other actions result in enduring improvements to tax administration over time for the benefit of all Australians.

The IGT expresses his appreciation to all who contributed to the development of the work program which is briefly outlined below.

Review into the ATO's approach to debt collection

Stakeholders have raised significant concerns with the ATO's approach to debt collection. These concerns include overdue recovery action, disproportionate action when debts are pursued and the use of external debt collectors. Debt collection has also been a persistent source of complaints to the Commonwealth Ombudsman, accounting for 23% of all complaints received by him in 2013,¹ and has attracted substantial media attention.²

The review will examine the concerns raised above as well as the ATO's approach to debt collection more generally including the use of administrative and legislative instruments to secure payment (e.g. garnishee notices, director penalty notices and freezing orders), its approach to insolvency action, the re-raising of 'written-off' debts, debt relief decisions and payment arrangements.

Review into the ATO's services and support for tax practitioners

Tax practitioners form an integral part of the tax system as intermediaries between taxpayers and revenue authorities. An ATO strategy which positively engages with tax practitioners offers potentially significant benefits to each party in this important tripartite relationship.³ Consequently, the ATO seeks to support tax practitioners in a number of ways, such as through the Tax Agent Portal (Portal) and relationship managers. However, tensions arise when the ATO faces difficulties in providing such support.⁴ An ATO survey has acknowledged that tax practitioner satisfaction with its services has dropped from 74% in 2007 to 51% in 2011.⁵ The concerns raised in submissions to the IGT have focused on the Portal, relationship managers, the

¹ Commonwealth Ombudsman, Submission No 1 to House of Representatives Standing Committee on Tax and Revenue, *Inquiry into the Australian Taxation Office Annual Report 2012-13*, January 2014, p 5; Commonwealth Ombudsman, *Ombudsman 2012-2013 Annual Report* (2013) p 56.

² For example: Adele Ferguson, 'Taxman wields axe on small business', *Sydney Morning Herald* (Sydney) 9 August 2013.

³ Organisation for Economic Co-operation and Development, *Study into the Role of Tax Intermediaries* (2008) p 54.

⁴ Australian Taxation Office, *Tax Practitioner Action Plan 2011-15* (2011).

⁵ *ibid.*

management of the lodgment program (85% on-time requirement), the tax practitioners risk differentiation framework and the ATO's consultation groups for tax practitioners.

The review will consider the above concerns and will more broadly examine the existing and proposed services provided to tax practitioners.

Review into the ATO's Taxpayers' Charter and taxpayer protections

Stakeholders have raised a range of concerns regarding the adequacy of the ATO's *Taxpayers' Charter* and related taxpayer protections. These concerns included access to enforceable remedies for defective ATO administration, commitment to procedural fairness and, more broadly, adherence to the model litigant obligations.⁶ Stakeholders point to international developments regarding a 'taxpayer bill of rights' with enforceable remedies.⁷ The Commonwealth Ombudsman has also noted that in many cases the aggrieved taxpayers do not receive the desired remedy⁸ with certain taxpayer cases garnering significant media attention.⁹ The IGT has previously acknowledged concerns with aspects of the ATO's *Taxpayers' Charter*, compensation schemes and their administration in a number of reviews¹⁰ and in the *IGT Annual Report 2012-13*.¹¹

The review will consider the above stakeholders concerns, including the nature of the *Taxpayers' Charter*, the existing avenues available to taxpayers seeking redress for defective ATO administration and further forms of redress that may be required.

Review into the ATO's conduct of employer obligation compliance activities

Concerns have been raised with the IGT regarding the additional and unwarranted compliance costs arising from the ATO's compliance activities with respect to employers' obligations. Stakeholders have raised particular concerns with the ATO's determinations of contractor or employee status and access to avenues of appeal. Additional concerns include ATO feedback on employee complaints, incorrect assessments and the unwillingness of ATO staff to engage on issues.

The review will examine the ATO's conduct of employer obligation compliance activities, including pay-as-you-go withholding, fringe benefits tax, director penalty notices for super guarantee charge and the ATO's engagement with both employees and employers in the resolution of these activities.

Further topics

Further significant topics that stakeholders have raised include the following three topics. Whilst these are important, the IGT considers that there would be benefits in allowing some time to elapse before these issues are reviewed.

Review into the ATO's administration of the General Anti-Avoidance Rules

Significant concerns continue to be raised with the IGT regarding the uncertainty of the ATO's approach to and application of the general anti-avoidance rules. The amendment of Part IVA of the *Income Tax Assessment Act 1936* on 29 June 2013 has also raised stakeholder concerns with potential compliance costs

⁶ *Legal Service Directions 2005* app B.

⁷ National Taxpayer Advocate, *2011 Annual Report to Congress* (2011); National Taxpayer Advocate, *2013 Annual Report to Congress* (2013); European Commission, 'A European Taxpayer's Code' (Consultation paper, TAXUD.D.2.002 (2013) 276169, 2013); Asia-Oceania Tax Consultants Association, Confederation Fiscale Europeene and Society of Trust and Estate Practitioners, *Model taxpayer charter to promote greater fairness in taxation across the world* (Media release, 13/05/2013).

⁸ Office of the Commonwealth Ombudsman, *Activities 2006* (2007) p 6.

⁹ 7:30 ABC TV (9 April 2012) in John Bevacqua, 'Redressing the Imbalance – Challenging the effectiveness of the Australian Taxpayer's Charter' (2013) 28 *Australian Tax Forum* 377, p 398

¹⁰ Inspector-General of Taxation (IGT), *Review into the ATO's Change Program* (2010); IGT, *Report into the Australian Taxation Office's large business risk review and audit policies, procedures and practices* (2011); IGT, *Review into improving the self assessment system* (2012).

¹¹ IGT, *IGT Annual Report 2012-13* (2013) p 7.

and inappropriate reputational impacts. However, stakeholders have generally acknowledged that it may be beneficial to await any resultant changes in ATO administrative practices and application to cases before undertaking such a review.

Review into the ATO's public consultation arrangements

Stakeholders have raised concerns with the ATO's new public consultation arrangements. Whilst they agreed that there may have been too many consultation groups previously, they believe that certain groups should have been retained. Although some have been reinstated, there are concerns that the previous level of transparency and engagement has not been maintained. Given the recent implementation of these changed arrangements, stakeholders acknowledge that it would be useful to allow an appropriate period of time to elapse before these arrangements are reviewed.

Review into the ATO's information gathering activities

A significant number of submissions have raised concerns with the ATO's formal and informal information gathering particularly from third parties. Such an approach is considered to be using businesses as a simple means to obtain information on a wholesale basis, shifting the costs of compliance to third parties. However, as the ATO has recently updated and published its approach to information gathering, the IGT believes that it would be appropriate to conduct a review in this area after a further passage of time.

Reviews currently in progress

Two reviews that were announced in the previous IGT Work Program are also being progressed.

The IGT's review into the *ATO's administration of valuation matters* commenced with the release of the terms of reference on 19 November 2013 and is ongoing.

The IGT's follow up of the *Review into delayed or changed ATO views on significant issues* (the so-called 'U-turns' review) has received considerable stakeholder interest due to the ATO's approach in recent litigation. This follow-up review is being progressed and a standalone report will be produced.

Accordingly, the so-called 'U-turns' review no longer forms part of the IGT's earlier announced *Review of the ATO's implementation of agreed recommendations arising out of reports published between August 2009 and November 2010*. This follow-up review is also ongoing and now only covers the following previous IGT reviews:

- *Review into the Tax Office's administration of public binding advice;*
- *Review into the underlying causes and the management of objections to Tax Office decisions;*
- *Review into the non-lodgment of income tax returns;*
- *Review into aspects of the Tax Office's settlement of active compliance activities;* and
- *Review into the ATO's administration of the Superannuation Guarantee Charge.*

Inspector-General of Taxation

10 April 2014