

EXECUTIVE MINUTE

on

**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT
REPORT 426**

Ninth biannual hearing with the Commissioner of Taxation

General comments

In its report on the ninth biannual hearing with the Commissioner of Taxation, the Joint Committee of Public Accounts and Audit (the Committee) considered the respective roles and responsibilities of the ATO's external scrutiny organisations (Australian National Audit Office, the Commonwealth Ombudsman and the Inspector-General of Taxation). The Committee noted the high quality of existing scrutiny activity. However, in the context of continuous improvement, the Committee requested further analysis as to the possibilities for more strategic planning and improved information sharing between the agencies. The Committee recommendation is set out below.

Recommendation No.4 paragraph 1.152

The Committee recommends that the 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.

Joint response to the recommendation

**Australian National Audit Office (ANAO)
Commonwealth Ombudsman
Inspector-General of Taxation (IGT)**

The recommendation has been actioned. The three external review agencies will meet collectively as part of their annual planning processes to share information and consider more broadly the overall ATO review activity. This enhances the current bilateral consultative processes in place. Within the boundaries of the respective legislative frameworks, consultation between the agencies on review activity will continue to be undertaken as appropriate.

Date: 30 May 2012

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Supporting information

The following information is provided to support the agencies' joint response. It provides an overview of the agencies' current joint review arrangements, and a summary of the three agencies' roles and responsibilities.

As noted by the JCPAA in its report, the review activities conducted by the three agencies provide confidence to the community in the robustness of the tax system. Importantly, in developing this response, the agencies did not identify any specific issues of duplicated review activity or issues arising from an inability to share information. However, having regard to future possibilities, the three integrity agencies have committed to continue to explore opportunities to improve the scrutiny system.

Review of existing cooperation arrangements between the three external scrutineer agencies

The planning processes of the ANAO, Ombudsman and IGT include consultations on a bilateral basis. This consultation provides an opportunity to share information about potential audit and review themes, to identify common areas of interest and avoid duplication of effort. This current approach has been useful, and maintains the independence of each statutory officer in exercising their functions or powers. The IGT is obliged to consult annually with the ANAO and Ombudsman under the *Inspector-General of Taxation Act 2003* in developing his work program, while the ANAO and Ombudsman meet as a matter of good practice. All three agencies also consult with the ATO on their proposed work programs.

Opportunities for sharing information obtained in the course of a review or audit are limited by the legislation applicable to each agency. The relevant provisions are:

- Section 36 of the *Auditor-General Act 1997*—Confidentiality of information;
- Section 35 of the *Ombudsman Act 1976*—Officers to observe confidentiality (noting that the Act also allows the Ombudsman to disclose information in the broader public interest); and
- Division 4 of the *Inspector-General of Taxation Act 2003*—Handling sensitive or confidential information.

Within the boundaries of the legislative framework, consultation occurs between the agencies. A recent example involving all three external scrutineers related to the reviews of 'Project Wickenby', a multi-agency taskforce led by the ATO to investigate internationally promoted schemes to avoid or evade Australian taxes and launder money. Other examples of cooperation include liaison between the IGT and the ANAO whilst conducting assessments of the ATO's administration of Small to Medium Enterprise taxpayers and between the IGT and the Ombudsman whilst the IGT was reviewing the ATO's Change Program.

The agencies will seek ways to enhance their consultative processes in the context of the Committee's recommendation. In particular, there is an opportunity to improve planning by adding a three way component to the annual consultative arrangement, and take a more holistic perspective during this process.

Roles and responsibilities of the external scrutineer agencies

As noted in the JCPAA report, each of the scrutiny bodies has a mandate to consider different aspects of the work of the ATO:

- The Auditor-General undertakes, in addition to financial statement audits, a range of performance audits that examine the efficiency and effectiveness of public administration;
- The Commonwealth Ombudsman is also the Taxation Ombudsman and can investigate the fairness of actions and procedures of the ATO in response to complaints from taxpayers in relation to tax administration or of their own motion; and
- The Inspector-General of Taxation reviews systemic issues in tax administration and makes recommendations for improvement.

To a large extent, these roles are complementary in that together they provide Parliament and the public with appropriate assurance that tax systems are administered in a fair, effective and efficient way.

Auditor-General

The Auditor-General is an independent officer of the Parliament, supported by the ANAO to provide the Parliament with independent assessments of selected areas of public administration, and assurance about public sector financial reporting, administration and accountability. In addition to financial statement audits and assurance reviews, the Auditor-General is responsible, under s.15 of the *Auditor-General Act 1997*, for conducting performance audits of Australian Government public sector agencies, including the ATO, and under s.18 for the review or examination of particular aspects of the operations of the whole or part of the Commonwealth public sector (i.e. cross-agency performance audits) which may include the ATO. The objectives of this work include promoting performance improvement and accountability of the administration of Australian Government programs and entities. The ANAO does not exercise management functions or have an executive role.

The ANAO has extensive powers of access to Commonwealth documents and information, and its work is governed by the *Auditor-General Act 1997* and the standards applied by the auditing profession in Australia. In accordance with these standards, performance audit, financial statement audit and assurance review reports are undertaken to provide a reasonable level of assurance. Confidentiality of information is mandated under s.36 of the *Auditor-General Act 1997*, and this provision effectively prohibits ANAO staff from sharing information during the conduct of audits.

The Auditor-General has absolute discretion in the exercise of his functions or powers, including the selection of topics for performance audits and the manner in which they are to be conducted. When developing the annual Audit Work Program, the Auditor-General must, under s.10 of the *Auditor-General Act 1997*, have regard to the audit priorities of Parliament, as determined by the JCPAA under the *Public Accounts and Audit Committee Act 1951*, and any reports made by the JCPAA under the same Act.

The ANAO therefore adopts a consultative approach to developing its forward audit program, taking account of the advice of the JCPAA, as well as the views of client entities and other stakeholders. The program aims to provide a broad coverage of areas of public

administration and is underpinned by a risk-based methodology. The ANAO's consultation process is designed to ensure that its audit services not only meet the needs of Parliament but also assist entities to improve public administration.

The Ombudsman

The *Commonwealth Ombudsman* office was established by the *Ombudsman Act 1976* (the Ombudsman Act). Under s.4(3) of the Ombudsman Act the Commonwealth Ombudsman may be designated as the Taxation Ombudsman when dealing with matters relating to the ATO. The Taxation Ombudsman considers and investigates complaints about the administrative actions of the ATO, or can conduct an 'own motion' investigation, at their discretion. In particular, through complaint investigation, the Ombudsman seeks to identify and respond to systemic issues in taxation administration.

The Ombudsman has a range of powers including being able to compel an agency to produce documents and examine witnesses under oath. Investigations are conducted in private, and most are conducted with minimal formality and on a cooperative basis.

Following an investigation, the Ombudsman will consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong. Through its investigations the Ombudsman seeks to improve government administration. The Ombudsman can make recommendations to agencies and can report on an investigation.

The Ombudsman seeks to work with all agencies, including the ATO, to improve their administrative systems and complaint handling processes on an ongoing basis.

Inspector-General of Taxation

The IGT is an independent statutory officer whose function is to review systems established by the ATO or the tax laws, insofar as they are administrative in nature, and make recommendations to Government for improvement. The overall aim is to improve the administration of the tax laws for the benefit of all taxpayers. However, the IGT believes there is room for improvement in the ATO governance and scrutiny arrangements, and his views are set out in his submission to Federal Government's 2011 Tax Forum (refer to paragraph 1.148–1.149 of the JCPAA Report)

The *Inspector-General of Taxation Act 2003* sets out the functions and powers of the IGT. The IGT is appointed by the Governor-General and, effectively, is an arm of the Executive, reporting directly to Government, although accountable to Parliament as an independent statutory officer. The IGT does not deal with individual taxpayer matters, as these are handled by the Taxation Ombudsman.

In developing his work program, the IGT consults with a wide range of stakeholders, including taxpayers, tax practitioners and their representative bodies, the ATO, as well as the Auditor-General and Ombudsman.

While the IGT has discretion in setting his work program, the Government may direct or request the IGT to conduct a review. Additionally, the Commissioner of Taxation and either or both Houses of Parliament or a Committee thereof may also request the IGT to conduct a review. Overall, the IGT endeavours to review concerns with systemic tax administration issues, while ensuring the IGT's resources are directed to those areas of

most benefit to taxpayers overall. The IGT has strong powers to compel production of documents by tax officials and to take evidence from tax officials where this proves necessary. This ensures that systemic tax administration issues can be rigorously pursued and examined. The IGT also seeks to identify relevant material to inform the consideration on systemic issues and to avoid duplication.

Although the IGT can make recommendations for improvement, the IGT cannot direct the Commissioner of Taxation, other than to require the Commissioner to disclose information for a review. This means the statutory independence of the Commissioner is retained.

Before finalising reports on his reviews, the IGT must provide the Commissioner with reasonable opportunity to make submissions on any criticisms in his reports. Following this process, the IGT reports directly to Government. All reports are subsequently required to be made public by the Government within 25 Parliamentary sitting days.