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**Review of Aspects of Income Tax Self Assessment  
Submission by Taxpayers Australia Inc**

The following submission has been prepared by Taxpayers Australia Inc in response to the Discussion Paper, March 2004, prepared by The Treasury in respect of its Review of Aspects of Income Tax Self Assessment.

The Association welcomes the opportunity to contribute to the discussion and development of changes to improve the operation of the Self Assessment system.

The structure of this submission will follow the chapters in the abovementioned Discussion paper and will seek to address the questions posed by Treasury.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter McDonald', written in a cursive style.

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Review of Aspects of Self Assessment

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## **Chapter 2                    Rulings and other Tax Office advice**

### **2.A    Is Tax Office advice sufficiently accessible?**

As a general rule the presentation of the ATO's Public Rulings and Determinations on its website provides sufficient access for those taxpayers that have access to the internet. For those that do not have access to the internet then there is no readily available access to the ATO's interpretation of the law other than through the publications of CCH, ATP and the other publications of the professional bodies and other organizations such as Taxpayers Australia.

It should be expected that registered tax agents would be (or should be) aware of ATO interpretations and would convey that information to their clients. That would account for approx 75% to 80% of all taxpayers. However given the amount of information that is currently generated from the ATO and other professional publishers the information overload that currently exists suggests that this strategy is not fool proof.

There is a gap for the remaining self preparers. At best they receive their information through TaxPack and other publications issued by the ATO. Unfortunately, TaxPack is not designed to provide forward advice to taxpayers. It is a return preparation guide that is issued at the end of a financial year and not during.

The other ATO publications are not readily available in all branch Tax Offices and even if they are not all taxpayer frequent branch office on a sufficiently regular basis to obtain the necessary details for ongoing compliance with both new and ongoing tax laws. Further there is no guarantee that the publications are up to date nor that the full range is available. For those that seek out the ATO's website there is an inherent difficulty in that the latest views can only ever be obtained provided you constantly search the site to find any updates, changes or withdrawals

The difficulty for self preparers is that they do not know what they do not know.

A further difficulty arises through the publication of ATO Interpretative decisions (ATOIDs). These are sanitized versions of Private Rulings which are not binding on the ATO but are useful indication of the ATO's interpretation on a particular matter. These are similarly found on the ATO website but are not readily searchable which limits their usefulness to internet connected taxpayers. They are not published anywhere other than the website and so taxpayers without internet connections have no access.

In more recent times the ATO has expanded its publicly available information eg Practice Statements. Essentially these are internal instructions to staff but they also provide taxpayers with guidance on the ATO administrative practice. They are only available on the website.

There is a further issue to be considered. There may be ATO information readily available, but to be useful the taxpayer and/or adviser must be able to comprehend it.

The use of legalise and technical terms is confusing enough to registered advisers it is incomprehensible to ordinary taxpayers. For example, the ATO produces information to assist taxpayers to determine whether or not they are a resident or not. This is a difficult issue with which trained tax agents have difficulty. Further the ATO refuses to give a Private Ruling on the issues as it involves a consideration of facts and not just an interpretation of the law.

## **2.B Should the Tax Office indicate whether Part IVA applies to a particular arrangements as a matter of course or only on request?**

In all Public Rulings and Determinations the issue of Part IVA should be clearly addressed. Self Assessment relies on certainty of the tax outcome to enable a taxpayer to comply with the law. Under the current approach there is no certainty as the ATO rarely considers the impact of the anti avoidance rules. This is inefficient and leaves taxpayers and their advisers with uncertainty as to how the ATO will apply the law. For Self Assessment to work efficiently for both taxpayers and the ATO there must be safe harbours that encourage compliance without the need for costly disputation. Taxpayers who disagree with the ATO's position would still have the right to object and have their position tested, while the balance of taxpayers could proceed in the safe understanding that their tax outcome is certain.

## **2.C Do taxpayers and their advisers currently encounter delays in obtaining Tax Office advice? If so, what strategies might allow the Tax Office to provide advice on a more timely basis?**

The Association is not aware of any systemic delays in providing timely advice from the ATO. From time to time isolated instances are reported but after investigation the delay is usually the result of the complexity of the arrangement or the ATO's request for more information.

The Association is aware of claims of delay that have been made from other sources. The reason for the delay would appear to be similarly based (eg complicated transactions, big end of town etc).

Some suggested strategies would include –

- Allocation of more resources;
- A single request for all required additional information. We are informed that where delays occur it is often caused by multiple requests for additional information from the ATO.
- A Statutory timeframe within which the decision must be provided to the taxpayer (Say 4 months). The taxpayer would be required to provide all information upfront. The decision would be made on that basis. Because the ATO suffers no detriment if a decision is delayed, the decision should be deemed to be in the taxpayer's favour. This would avoid unnecessary delays unless the ATO and taxpayer were agreeable.

Taxpayers Australia Inc  
Submission  
Review of Aspects of Self Assessment

**2.D Are there significant problems with the accuracy of Tax Office advice? If so how should they be addressed?**

The Association is not aware of significant problems with accuracy. There have been instances where we disagree on the ATO's interpretation. There is no evidence of which we are aware which would suggest that a systemic problem exists.

The introduction of the Tax Rulings panel, which was established by the ATO, has assisted in that process.

The introduction of a statutory panel, (such as Senate Select Committee or something similar) to consider contentious Rulings and take public submissions might provide the transparency and review mechanism for Rulings where there is disagreement between the ATO and taxpayers and their advisers. It would also provide the added advantage of forcing Parliament to be aware of the application and interpretation of the tax laws that have been passed.

Oral advice is a particularly difficult area as it can be extremely variable. For taxpayers who get to speak to specialist tax officers or specialist areas within the ATO eg Centres of Excellence, the advice can be of the highest quality. However other advice can be at the other end of the spectrum and can be just plain wrong

**2.E Is there evidence of pro-revenue bias in Tax Office advice? What measures would improve confidence in objectivity of Tax Office advice? Would an independent evaluation assist?**

The Association is aware of the perception that some Rulings have a pro-revenue bias. This is usually associated with those Rulings where there is disagreement as to the interpretation of the tax law.

Regardless of whether there is any evidence of a systemic bias there is a perception. Because it is important that Rulings are accurate and independent and open process of evaluating Rulings can only assist in diminishing the perception that there is a revenue bias (see also comments in 2.D).

**2.F How should Tax Office advice be framed to assist taxpayers – by explaining contending views of the law, or by setting out how the Tax Office intends to apply it? Does this impact on the way that advice is expressed?**

Currently the ATO outlines contending interpretations of the law and the Association believes that to be a positive approach. Where Rulings need to be improved is in the language and explanation.



The language of Rulings is framed in legalise which makes it impossible for ordinary taxpayers to comprehend and apply the Ruling without resorting to a tax expert. Rulings should identify the relevant sections but they should also explain the nature and extent of the law and the practical effect of the Ruling. That would achieve several outcomes. It would identify how the ATO intends to apply the law and it would provide meaningful guidance to taxpayers and their advisers.

Further, the explanations and examples under current Rulings do not form part of the binding Ruling. That does not make sense. Rulings are provided as part of Self Assessment to provide taxpayers with certainty on the application of the law. They are binding on the ATO if the Ruling is favourable to the taxpayer, but a taxpayer is effectively forced to follow a Ruling because by not doing so they are exposed to significant penalties.

The explanation and any examples should form part of the Ruling. To do so provides a safe harbour for taxpayers and promotes voluntary compliance. As Rulings currently stand the taxpayer could use an example or explanation and find they are not protected. Effectively a Ruling needs to both explain contending views and to set out how the ATO intends to apply it

## **2.G How might the Tax Office clarify the circumstances in which general advice can be relied upon?**

The issue is not about clarifying when advice can be relied upon. The issue is that a taxpayer should be able to rely on all advice (see 2.H)

The ATO owes a duty of care to ensure that any advice it provides is accurate and can be relied upon by the taxpayer receiving that advice. The Tax Office has both field officers and Advice lines as well as written publications that provide advice. Taxpayers have an expectation and right to receive accurate advice that can be relied upon. If the ATO is going to provide advice then it must get it right and it must guarantee that advice. The current debate is really about the ATO's concern that its training and quality control process are inadequate.

It should be mandatory for tax officers to provide their name when giving advice and to record the name of the taxpayer and the nature of the advice given. If the ATO cannot guarantee advice then it should not be providing advice or alternatively it should refer (or provide) taxpayers with copies of written advice or publications that satisfy the enquiry.

## **2.H Is there value in making more Tax Office advice legally binding? What additional safeguards would be required?**

All ATO advice should be binding. That applies to verbal and written advice. If the ATO is not confident in the advice it is giving or that the facts of the case, as presented by the taxpayer, are correct then no advice should be proffered. In the case where the ATO declines to provide advice then the ATO should be required to refer the taxpayer to alternate sources of information that can assist in determining the tax position.

Safeguards could include -

- All publications should contain a Commissioner's guarantee and, if necessary, a sunset clause;
- ATO advice lines should have scripted answers that provide advice of the ATO's position;
- Copies of the scripted advice should be forwarded to taxpayers as a matter of course and record of the advice provided;
- A notation should be made to the taxpayers file as to the nature of the advice.

## **2.I Should taxpayers be penalized for not following PBRs when self assessing their income tax liabilities?**

A PBR is but one of the sources of information that is available to a taxpayer in determining the correct treatment of a transaction. A PBR is meant to be binding on the ATO where it is favourable to the taxpayer. Under the current system it is binding on the taxpayer, in practice, as the ATO applies a penalty and it is the taxpayer who must prove that the position they adopted is the correct position (ie a reverse ownership of proof).

To protect their positions under the current system taxpayers are forced into one of two approaches. They can choose not to request a PBR and await the outcome of a future audit, or they can apply the reasoning in the PBR and then object against the assessment. Taxpayers who apply for a PBR are disadvantaged in comparison with those that choose not to apply unless the ruling is favourable or accords with their interpretation of the tax law.

A better approach might be to allow taxpayers who have sought a PBR to choose whether or not they will apply the PBR. Those that choose to apply the PBR have a safe harbour and those that choose not to apply the PBR would be required to demonstrate reasonable care (and/or a reasonably arguable position) in respect of the decision they have made. That position could be outlined in the return and would form the basis of a risk assessment by the ATO.

## **2.J If no penalty was applied would direct appeals against PBRs still be required?**

There would be no need for direct appeals against a PBR if the method outlined in 2.I was adopted.

This would eliminate one of the difficulties associated with appeals against PBRs. Under the current system the taxpayer cannot introduce additional or extraneous evidence to support their position on appeal. This means that the Court must determine the issue based solely on the information provided to the ATO in the PBR request. As a practical consideration it is neither in the ATO nor the taxpayer's interest to present (obtain) every conceivable piece of documentary evidence in considering a PBR. In a court case the opposite is the case and taxpayers who have limited their evidence are at a disadvantage.

The Association has been subjected to this very disadvantage in a recent dispute with the ATO and withdrew from a PBR appeal.

The methodology presented in 2.I eliminates this problem and effectively allows the issue to be dealt with as an objection and appeal against an assessment wherein any and all evidence can be presented.

## **2.K If appeals are retained, how could the process be improved?**

Appeals are expensive and protracted. All appeals could be dealt with as part of the Small Claims Tribunal (SCT). Alternatively, low value appeals could be directed to the SCT with the remainder directed to the Federal Court.

The evidentiary problem outlined in 2.J would need to be corrected.

## **2.L Should the Tax Office be permitted to charge for certain advice?**

NO. The ATO has a statutory obligation to administer the tax law. It also has an administrative responsibility under the Taxpayers Charter to inform taxpayers. By allowing the ATO to charge for advice it undermines the impartiality of the ATO and will result in better advice and more timely advice for those who can afford it.

The delays in providing advice are a resource issue that the ATO must manage within the resources allocated to it by the Government. Charging only results in a masking of internal management difficulties.



## **2.M How could the Tax Office use more cost effective channels for the delivery of binding advice to taxpayers or through practitioners?**

The most cost effective channel for delivery is the internet. The problem is that not all taxpayers are connected and as a consequence there are many taxpayers who are not aware of the information that is available

Some suggested channels include –

- Better use of employer and employee associations to target information in like industries.
- Inclusion of targeted booklets and/or details of their availability through industry partnerships (eg shareholders could be directed to the availability of information on capital gains etc)
- Prepackaged returns to taxpayers with booklets on issues affecting the taxpayer
- Better targeting of information rather than information overload
- Confirmation of verbal advice (eg scripted answers, information booklets etc)

## **Chapter 3 review and amendment of assessments**

### **3.A Should the period for an amendment increasing the liability of an individual not in business, and/or a very small business be reduced to, say, two years?**

- Should the eligibility of a very small business be based on whether it has chosen to be a Simplified Tax System taxpayer?
- What exclusions from a two year period would be appropriate?

Reducing the amendment period for both increasing liability and decreasing liability to 2 years would provide certainty to the majority of taxpayers. In the event that an assessment is adjusted then the quantum of penalties would be greatly reduced from the potential liabilities that can arise under the current system.

It would also force the ATO to focus on the best use of its resources and to develop risk strategies to target taxpayers in a more timely manner. Similarly, it would force taxpayers to self amend their assessments in a more timely manner and create revenue certainty for the Government.

Eligibility should NOT be based on whether a business has elected to be an STS taxpayer. There are many and varied reasons why a small business would not contemplate being an STS taxpayer. Eligibility should be available to all small businesses regardless of the method under which they are assessed.

According to the Government information published when STS was legislated approximately 95% of all businesses would fall in the under \$1 million turnover and should qualify for the reduced amendment period. However, the ATO categories any

Taxpayers Australia Inc  
Submission  
Review of Aspects of Self Assessment

business taxpayer with a turnover of under \$2 million as a Micro business and any business with a turnover of between \$2 million and \$100 million as a Medium business.

There is a huge difference between a business around \$2 million turnover and one with a turnover of greater than say \$50 million.

For the purpose of simplifying the Self Assessment system a better threshold would be around \$5 million turnover. This would apply to a much higher number and would treat all small businesses in the same manner.

The thresholds will need to be adjusted annually to ensure that the maximum number of taxpayers remain in this category. Non adjustment will result in the devaluing of the threshold over time.

While it cannot be avoided, there will always be problems with businesses with turnovers that are close to the threshold having to deal with changes in the amendment time cycle. Consequently, there should be a discretion available that enables a person to continue to have a lower amendment period until such time as they are notified otherwise by the ATO.

The only exclusion from the reduced time period for individuals and small business should be cases involving fraud and evasion.

### **3.B Should the amendment period for medium and large businesses and other complex cases remain as four years?**

If a \$5 million threshold is applied then the remaining Medium business taxpayers could remain subject to a reduced 3 year period and Large business taxpayers could remain subject to a 4 year period. This would enable the ATO to better concentrate its resources and would benefit the greatest number of taxpayers.

### **3.C Should the amendment period for arrangements conferring unintended tax benefits (including arrangements covered by Part IVA) be reduced from six years to, say, four years? Should taxpayers be required to disclose certain tax planning arrangements more fully in returns?**

Apart from fraud and evasion there should be no additional amendment period for unintended tax consequences. As a trade-off and to allow the ATO to be better informed and to target its risk assessment the Association would accept greater disclosure in returns.

Further the ATO should be required to outline the types of transactions and elements that it is focusing on

**3.D Is there benefit in the idea of the Tax Office providing early notice to those taxpayers that it has decided to audit?**

- **What should be a suitable notification period?**
- **What exclusions from the notification regime would be appropriate?**
- **Would this idea still be beneficial if taxpayers had to disclose more information?**

There are benefits in an early notification process that would include a positive incentive to get returns correct. It also provides taxpayers with sufficient notice to enable them to prepare their records. That in itself might promote better record keeping on a long term and more consistent basis.

The down side is that other taxpayers will be aware that they are not to be investigated and so the opposite outcome might occur. On the balance of probabilities, it is the Association view that the majority of taxpayers are seeking to do the right thing and benefits would accrue to taxpayers and the ATO alike in such a process over time.

The Association would not see the advance notification and greater disclosure to be mutually exclusive. It would be desirable to have both and to have both advance notification cases as well as cases selected based on risk profile.

What is essential in any system is that once a taxpayer has successfully completed an audit their risk profile should be adjusted accordingly and, in the normal course of events, they should not be further targeted in the near future.

**3.E Should pre-assessment agreements be extended to a wider range of cases?**

YES

**3.F Should a taxpayer who lodges a nil liability be subject to the same time limits as apply in amending an assessment?**

YES

Under the current system a taxpayer with a nil liability can have a greater exposure over a longer period of time than a taxpayer with a taxable income as low as \$1. That is inequitable. A nil liability should be treated as an assessment and the appropriate amendment time thresholds should apply.

A similar problem confronted the Association in its dispute with the ATO. Due to carry forward tax losses the Association was prevented from having its case determined on appeal.



**3.G What amendment periods should apply to cases that currently have an unlimited period?**

The Association's view is that any case involving fraud or evasion should retain an unlimited amendment period.

Further the concessionally extended periods currently in s.170 should also be maintained (eg s.59-30 re: income repaid by an employee)

**3.H Should taxpayers have a remedy where the Tax Office delays unreasonably in issuing an amendment assessment after it has all the relevant information?**

YES

There is no justification for unreasonable delays where the relevant information is available. The issue of what is reasonable would need to be dealt with independently, but could also a maximum period of 28 days. This is particularly important as the Association is aware that taxpayers enquiring about delays in credit amendments have been informed that they are a low priority.

One option would be to have the issue dealt with under maladministration. To work properly the rules for maladministration would need to be amended to account for the opportunity cost of the taxpayer being without the funds they are entitled to.

Another option would be to require the ATO to include an uplift factor (equivalent to the current 7% uplift factor for outstanding amounts) in the calculation of any interest payable to the taxpayer.

**3.I Should the period for an amendment reducing a taxpayer's liability be the same as for increasing liability, or be set at a fixed period?**

Taxpayers are required to pay the correct amount of tax. Equally the ATO is required to collect the correct amount of tax. In the interest of a balanced system neither party should have any further or special rights that are not available to the other party.

The Association would favour the same time thresholds for increases and decreases in liability.

## Chapter 4 Penalties

### **4.A What (if any) clarification of the terms ‘reasonable care’ and ‘reasonably arguable position’ is needed?**

Reasonable care is not defined. That is the problem. On the presumption that the Self Assessment rules are to be amended to make the system work better, there is a need to codify the interpretation of reasonable care. The ideal would be to have the definition included within the legislative framework. That might prove difficult considering that the definition would differ depending on the attributes of the taxpayer and their classification.

In the event that such an outcome cannot be achieved legislatively then the ATO would need to set out its interpretation of how the test applies to individuals and businesses in the various categories. In other words a safe harbour would need to be established and published so that taxpayers would know that if they satisfy certain conditions that they would satisfy the reasonable care test.

It should also be incumbent on the ATO to detail in its decisions on what grounds it has determined that the taxpayer has not exercised reasonable care. There should be objective tests that apply and the ATO should outline where and how the taxpayer failed those tests.

For those taxpayers that use the services of a registered tax agent there is a double jeopardy in the current law. The taxpayer him/herself might have exercised reasonable care if they had self prepared, but they can still be at risk if the tax agent has not exercised reasonable care. The actions of the taxpayer and the tax agent should be separated. There should be separate penalties or sanctions applied. The Review of Standards for the Tax Profession, which was a co-operative initiative of the tax profession and the ATO, provided the mechanism for such a system to operate.

The ‘reasonably arguable position’ has similar problems

### **4.B What is the effect of the penalty for failing to follow a Tax Office private ruling? Do taxpayers only request PBRs when they are confident of a favourable ruling?**

There are many reasons why taxpayers request a PBR. Some relate to uncertainty about the operation of the law, in which case the PBR provides the guidance to the taxpayer to comply. Others relate to a confirmation about the operation of the law. In this case the operation of the law is settled but the taxpayers derives comfort from the confirmation. In other situations the taxpayer needs a PBR to satisfy the requirements of other internal and external stakeholders. A final category might be those taxpayers seeking a favourable ruling (ie where the ATO gets the law wrong).

Not following a PBR only results in a penalty when the taxpayer's interpretation is wrong and the PBR is found to be correct. It is the Association's understanding that the majority of taxpayers would follow a PBR and then seek to object against an unfavourable PBR. This strategy protects the taxpayer from potential penalty but still enables them to arrive at the correct tax position in the most cost effective manner.

From the Association's experience very few taxpayers appeal against an unfavourable PBR due to the evidentiary difficulties and the cost of appealing to the Federal Court . They either accept the ATO's position or adopt the strategy outlined above.

The penalty fulfills no useful purpose other than to force taxpayers to adopt the strategies outlined above which has a huge reverse workflow impact on both the ATO and on taxpayers and their advisers.

**4.C If the penalty for failing to follow a Tax Office private ruling were to be removed, what other changes would be appropriate?**

See comments in 2.I and 2.J

**4.D What further guidance on grounds for remission of penalties is required?**

Penalties should be based on the offence committed and the circumstances of the taxpayer. Under the current rules there is a formula approach to imposition of penalties with further remission based on representation from the taxpayer or their adviser. Such an approach cannot take into account the circumstances of the taxpayer and cannot be applied in an objective manner. It also results in the type of anger that has resulted from the ATO's position and ultimate backdown on penalties that were imposed on those taxpayers targeted as being involved in mass marketed schemes

The ATO should be required to seek information from the taxpayer that specifically relates to their endeavours to take reasonable care (and/or a reasonably arguable position). The ATO should be required to specifically address the taxpayers claims and to detail the reasons for the size of the penalty and the reasons why there has or has not been any remission.





## **Chapter 5            The General Interest Charge**

**5.A    Should the GIC be set at a level to provide a positive incentive to encourage taxpayers to take steps to ensure they assess correctly?    Or should this be dealt with exclusively under the penalty regime?**

Under the current system there are three penalties –

- The tax outstanding;
- The culpability; and
- General Interest Charge (which includes an uplift factor of 7% plus interest compounding on a daily basis).

The combined effect of all three penalties is that the overall monetary penalty on a taxpayer with a tax shortfall can be massive.    The resultant cost to the taxpayer can be disproportionate to the tax shortfall.

Based on feedback from members of the Association the interaction of the penalties does not provide an incentive to comply.    Rather it provides a huge disincentive especially where there is considerable time lag involved.

It was always the Association's understanding that the GIC was meant to compensate the Government for the time component that it has been denied its revenue and to ensure the Government was not used as a source of credit.    The compounding nature of the GIC coupled with the uplift factor creates a situation where the funds flowing to the Government is considerably in excess of this objective.    The GIC is a penalty in itself and worse it is a penalty that is imposed on a penalty that is imposed on yet another penalty.

The GIC on overpayments and underpayments should be identical.    All penalties should be dealt with specifically as penalties under the penalty regime.    There should also be a limit on the amount of the overall penalty payable.    Under the current regime the penalty is dependent on the time taken by the ATO to raise the debit amendment.    Further as the GIC is compounding the penalty component can quickly exceed the amount of the tax shortfall and the culpability penalty.

**5.B    Is the rate of the GIC excessive against this principle?**

YES

If the full rate of GIC were to apply it should be limited to serial offenders who attempt to use the Government as a cheap source of credit.



**5.C Are the approaches in this Chapter suitable to address identified concerns with the GIC? If so, by what mechanism should approaches be implemented? Are there cases where full GIC should continue to apply to shortfalls?**

The approaches proposed do not address the real issue. The penalty regime and the interest regime should be separate. Once that approach is adopted then there is no need for caps and remission of uplift factors. Any remission to take into consideration the circumstances of the taxpayer etc would be applied to the penalty component. The approaches proposed do not proffer a simple system. It is as complex as the current system and requires considerable decision making to achieve the desired outcome.

Adoption of the Association's suggested approach would require fewer decisions making points and would achieve a similar outcome. If needed the notion of caps etc could be incorporated in respect of those cases where the audit takes an inordinate period of time to complete. It also provides the advantage of eliminating much of the angst in the current system (ie the rate of GIC and the remission powers of the ATO).

**5.D What priority should be given to simplicity in considering any changes to the current GIC regime? Should different market segments be treated differently for GIC purposes? Is it feasible to move away from a single comprehensive system?**

See comments in 5.A, 5.B and 5.C

**5.E Should remission of the GIC be initiated by the Tax Office in more circumstances? If so, what criteria should be used?**

See comments in 5.A, 5.B and 5.C

**5.F Should the benefit from tax deductibility of the GIC be standardized, to eliminate the impact of varying tax rates? If so, how should this be achieved?**

NO

If a taxpayer is to be assessed on the amount of any interest paid on overpayments then in the interest of tax neutrality they should be entitled to a tax deduction based on the rate of tax applicable to their circumstances.

## **Chapter 6            Other Issues**

### **6.A    Should the Tax Office undertake earlier examination of any categories of return (or specific items)?    If so, what taxpayers or specific items and why?**

Such an issue falls under the category of risk assessment. This is a function that can only be determined by the ATO based on the perceived risks for that income year. For that reason the Association does not consider it to be its role nor does it have the intelligence information available to the ATO to identify cases that should be targeted for earlier examination.

As part of the proposed review of Self Assessment the Association does recognize the need for the ATO to undertake earlier examination as it attempts to use its resources effectively in carrying out its role to collect the revenue.

### **6.B    What further steps would promote taxpayer awareness of their obligations under self assessment?    Could, for example, notices of assessment be better labelled?**

Self Assessment is a difficult concept for ordinary taxpayers to understand especially as they are required to complete a return and have it assessed by the Tax Office to determine their entitlement to a refund or an amount payable. From a taxpayers perspective very little has ostensibly changed from the pre-self assessment environment. What has changed is the law and how the ATO operates internally.

For corporate taxpayers the concept of Self Assessment is understood simply because they are required to forward any additional payment together with their return. They truly do operate under a full self assessment system. Individuals and other taxpayer do not.

Therein lies the problem with explaining self assessment especially for individuals as it is virtually impossible to determine the final tax position because the ATO needs to calculate many entitlements to tax offsets etc.

To improve awareness the Association proffers the following suggestions –

- Personalised income tax returns which would include an explanation of self assessment;
- Information should be included on the Notices of Assessment that informs taxpayer that the Tax Office can review the assessment within a specified period of time;

**6.C In what circumstances is there a need for a Public Tax Advocate or greater use of alternative dispute resolution?**

There are already several avenues, both internal to the ATO and external, open to taxpayers where there is a dispute. The Association has difficulty in seeing how a new position would assist.

One way of assisting in dispute resolution might be to limit the ability of the taxpayer or the ATO from appealing decisions by the Small Claims Tribunal

**6.D What is the impact of the Tax Office reviewing tax agent systems? Could these reviews be improved, and if so, how?**

In the past such reviews have had an adverse impact on some tax agents while it has not adversely affected others. Those impacted would have been subjected to ongoing or continuous scrutiny because the ATO formed the view that the tax agent was not preparing quality returns. This situation is prevalent with those tax agents who are/were targeted for substantiation audits. Both tax agents and the ATO recognize that reviews of a tax agents practice and quality control procedures are a necessary evil. The ATO appears to have improved its techniques to limit the impact on tax agents and likewise tax agents co-operate.

There has been an ongoing improvement in the quality of service proffered to tax agents by the ATO in recent times.

The implementation of the Review of Standards for the tax Profession would enhance that relationship.

**6.E What particular information could the Tax Office collect more efficiently? What is the optimal balance between the Tax Office giving early warning of information requirements and the need to be able to respond to issues emerging from tax returns?**

The Tax Office now collects more information under the Self Assessment regime than it ever did under the full assessment regime and also provides guidance to taxpayers in respect of issues that it considers important. The emphasis changes annually and for obvious reasons.

The Association believes that the current approach of consultation with the tax profession is soundly based and is delivering improvements on a continuous basis. Rather than being prescriptive the current approach is issue driven and achieves a result with which all stakeholders are comfortable.



**6.F What particular record keeping requirements are regarded as onerous?**

The substantiation rules can be onerous and may result in deductions being denied solely on the basis of incomplete documentation.

In keeping with the ATO's power to amend a zero assessment, then theoretically a taxpayer may be forced to keep records indefinitely.

The record keeping requirements should be identical regardless of the type of record or the type of taxation law affected.

**6.G What specific income tax lodgment deadlines are difficult to meet? Are there other circumstances in which penalties should be remitted for late lodgment?**

Most lodgment deadlines are difficult to meet. The issue of lodgment programs is a continual hot spot for tax agents and the ATO. A standing sub-committee of the ATO Tax Practitioner Forum (a sub-committee of the NTLG) meets regularly to work out ways to ease the lodgment burden of tax agents while enabling the ATO to fulfill its obligations to Government to collect the revenue and the required statistical information.

The move to the new tax system has created ongoing lodgment difficulties for tax agents

**6.H What are the most important discretions as to liability that should be removed/re-written?**

When Self Assessment was first mooted, it was generally agreed that discretions did not fit into a system wherein the taxpayer was required to work out his/her tax liability. Overtime that assumption has been found to be wanting. The Association believes that discretions that allow the Commissioner to vary the law can be useful especially where the law is prescriptive, the taxpayer has complied with the intent of the law, but there has been a lapse of mere paper work. Such discretions should remain (or should be incorporated into the tax framework) to become a feature of improvements in the tax system in the future.

Other discretions which require the ATO to determine a substantive issue should be withdrawn.

Where the taxpayer needs to rely on the discretion being exercised by the Commissioner the taxpayer cannot have any certainty, as to the status of their assessment, until such time as the discretion is exercised (if ever) or the expiry of the amendment period.





**6.I Are there any general problems that are affecting the operation of elections under the self assessment system?**

As a general rule the Commissioner has granted an extension of time in respect of most elections. Where that has occurred then the administrative practice appears to work well and taxpayers are only required to produce those elections on request from the ATO. There are other elections where they must be lodged to be effective.

It does not see to be any reason why those elections should be lodged especially as copies need to be retained by the taxpayer and auditors request to see the copies as the originals can be detached from the tax return. If those elections are critical to the ATO's assessment processing the a more efficient option would be for tax returns to have tick boxes that could indicate the existence of an election and that it is being held by the taxpayer.