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21 May 2004

Mr Paul McCullough
General Manager
Review of Self Assessment
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr McCullough

The Treasury Review of Aspects of Income Tax Self Assessment

Thank you for the opportunity to make further submission on the Treasury review of the tax self-assessment system and on your March 2004 Discussion Paper. I have found the best approach to provide answers to the questions contained in the Discussion Paper, including general comments as appropriate (see attached).

The key issues dealt with in my submission relate to ATO advice and the important role that discretions can play in ensuring that tax administration is fair to both individual taxpayers and the broader community. The submission is largely based on our experience in dealing with complaints about the ATO, although I have also addressed some questions as raising matters of general principle. Where the subject of a question falls outside the range of our experience or views we have offered no comment.

If you or your staff have any questions about the submission, please do not hesitate to contact the Special Tax Adviser, Mr Philip Moss, on (02) 6276 0129. I look forward to the report on your conclusions.

Yours sincerely

Prof John McMillan
Commonwealth and Taxation Ombudsman

The Treasury Review of Aspects of Income Tax Self Assessment

Submission by the Taxation Ombudsman

May 2004

2 Rulings and other Tax Office advice

2A Is Tax Office advice sufficiently accessible?

There does not appear to be much evidence to support the notion that, generally speaking, taxpayers have difficulty obtaining advice from the ATO. Indeed, the six million telephone inquiries and one million visits to ATO assistance centres in 2002-03 suggest that the ATO is quite accessible in this sense.

Although the Discussion Paper does not include the number of Private Binding Rulings (PBRs) sought each year, the small number of PBRs issued each year also suggests that other forms of ATO advice are generally adequate for most taxpayers. It might be argued that the small numbers of PBRs could suggest that taxpayers are unaware of the ruling system. However, given that 75% of taxpayers use tax agents (who are surely aware of the system), and that large businesses appear not to use the system (presumably preferring to rely upon their own advisers), it would seem the currently small number of PBRs accurately reflects taxpayers' need for rulings.

Our complaint statistics would also support the view that ATO advice is generally accessible – both in the sense of being obtainable and generally understood. Of the 1346 tax complaints handled in the nine months to the end of March 2004, 368 (27%) related to some aspect of ATO advice. We investigated 59 (16%) of the 368 ATO advice complaints and only identified 11 cases (18%, or 3% of the total ATO advice complaints) that disclosed some form of agency error or deficiency. This rate of defective administration is on par with the general rate of ATO defective administration for the period (17%), but lower than the normal rate for defective administration across all Australian Government agencies (29% last financial year). One hundred and thirty two (36%) of the ATO advice complaints handled in the nine months to March 2004 directly involved access/obtainability issues and 71 (19%) directly involved issues going to the clarity, consistency and completeness of ATO advice.[1]

In our experience, the greatest obstacle to taxpayers obtaining and understanding ATO advice is the complexity of tax law in its application to individual taxpayer affairs. As the Discussion Paper rightly notes (at p. 22), the ATO must balance the need to provide clear and understandable advice with the obligation to provide legally correct advice in all circumstances. This

[1] Please note, figures are subject to ongoing revision, but provide an indicative account.

is often very dependent on the information provided by the taxpayer to the ATO, and this is not always enough for the ATO to provide legally correct advice. In certain circumstances, particularly where a taxpayer is seeking oral advice about the application of the tax law to his or her own affairs, it may therefore be more appropriate for the ATO to provide no advice – or perhaps to advise the taxpayer of other means/sources of obtaining the advice (for example, from general ATO publications, through the ruling system, or through a tax professional). The tax treatment of Eligible Termination Payments (ETPs) is a good example of an area where complexity of the law complicates the task of ATO advice-giving, particularly when you note that many taxpayers will only ever have to deal with an ETP once in their lifetimes.

2B *Should Tax Office advice indicate whether Part IVA applies to a particular arrangement as a matter of course, or only on request?*

This is clearly a matter best addressed on a case-by-case basis. As the application of Part IVA to a taxpayer's circumstances might well depend upon information not available to the individual taxpayer, it is not surprising that the ATO is sometimes reluctant to rule on the application of Part IVA. However, there may be scope for the ATO to more explicitly advise taxpayers that a ruling does not address Part IVA and of the possible consequences (i.e. of the possibility of subsequent amendment).

2C *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?*

As noted above (2A), 132 (36%) of the 368 tax advice complaints handled in the nine months to the end of March 2004 involved issues of access to advice, many of which related to delay. The issue of delay is also noted in the Discussion Paper (note (a) of Table 2.1), which states that only 37% of all PBR applications from individuals are finalised within 28 days. Although the ATO performance standard suggests that, where the 28 day standard is not met, the ATO will negotiate an extension of time, in our experience this does not always happen as often and as quickly as it should. Similarly, we have seen cases where the ATO has apparently failed to keep taxpayers adequately informed of the progress of the preparation of advice (as sometimes required by law, as in the case of PBRs (s14ZAO of *Taxation Administration Act 1953* (TAA53)). In any case, there is currently little a taxpayer can do in such circumstances but wait.

Again, the complexity of tax law in its application to individual taxpayer affairs would appear to be the primary obstacle to the timely provision of advice. Nevertheless, additional (or reallocated) resources would enable the ATO to generally ensure the provision of more timely advice.

The idea of the default negative ruling would appear to have many benefits (in much the same way s14ZYA TAA53 operates with respect to objections). It would trigger taxpayer appeal rights and may of itself provide necessary impetus for the ATO to reach a decision (in that the ATO may decide that it is more cost effective to provide the ruling than to deal with any objection and subsequent litigation). The Discussion Paper suggests that this approach

"may not assist those taxpayers who prefer to wait longer for a substantive ruling". However, like s14ZYA TAA53, the trigger for a default negative ruling could rest with the taxpayer.

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

From the perspective of this office, there are issues around the accuracy of ATO advice. For example, of the 368 tax advice complaints handled in the nine months to the end of March 2004, 91 (25%) concerned incorrect advice and a further 35 (10%) concerned conflicting or inconsistent advice. However, it is not clear that these problems are "significant" or systemic.

As already noted above, the complexity of tax law, particularly in its application to individual taxpayer affairs, and the often inadequate information provided by the taxpayer would appear to be the primary cause behind the ATO's provision of incorrect or inconsistent advice. Additional (or reallocated) resources would clearly enable the ATO to generally ensure the provision of more accurate advice, including better connection between current ATO systems, more client-focussed systems, and a system that is committed to both accuracy and timeliness. For example, in a 1997 report (*Oral Advice – Clients Beware*), the Ombudsman noted that:

> it is crucial to ensure that, in more complicated transactions, or enquiries involving ... information in program areas recognised by the agency as being more complex ..., the 'right' person gets back to the client, rather than the operator providing incomplete or ambiguous information in order to alleviate the pressure on the call centre and/or regional office staff. This means encouraging a philosophy of 'ring back' rather than 'ring around' - where an operator who cannot deal with an enquiry makes it their responsibility to get the information (or the person who has it) back to the client.
>
> This office accepts that there is an additional cost with double handling of calls, and that current thinking on call centre service suggests that, wherever possible, a call should be handled at the point of first receipt. However, the costs of double handling must be balanced against the high costs of review, appeal and complaints to external bodies such as this office in relation to incorrect or incomplete advice.
>
> Although arranging a 'call back' means the answer may not be as immediate as the client would like, our experience suggests that clients would generally prefer to be given correct advice tailored to their needs, than incorrect or insufficient information provided on the spot.[2]

In his 2003 report into ATO complaint handling,[3] the Ombudsman welcomed the Commissioner of Taxation's commitment to the "one plus one" policy –

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[2] See http://www.ombudsman.gov.au/publications_information/Special_Reports/oral_advice.pdf, 4.18-4.20. It should be noted that the *Oral Advice* report focussed on the provision of advice by agencies responsible for the major income support programs. To some extent, the beneficial emphasis of those agencies distinguish them from the ATO, which is fundamentally a collection agency. Nevertheless, the ATO's provision of accurate and unambiguous advice is essential to the fair and effective collection of tax within a self-assessment system, and so the general principles enunciated in the Ombudsman's *Oral Advice* report are just as relevant. As the tax system is increasingly used to deliver government services (the Savings Bonus for older Australians, the Baby Bonus, Family Tax Benefit), the *Oral Advice* report has perhaps even more direct relevance for the provision of such advice.

[3] See http://www.ombudsman.gov.au/publications_information/Special_Reports/ato_complainthandling_2003july.pdf.

that is, where a tax officer cannot resolve a taxpayer's inquiry in the first instance, rather than simply passing them on to anybody else, the officer should make contact with other tax officers on behalf of the complainant until he or she can identify the person who can respond to the inquiry. Such a policy should instil in tax officers a sense of individual and collective commitment to effective service delivery. We understand that this approach has been absorbed into the current ATO Change program (based on the ideals of providing an "easier, cheaper and more personalised" service to taxpayers).

TaxPack (and its supplements) should also be acknowledged as providing a comprehensive starting point for most individual taxpayers. Generally speaking, if *TaxPack* cannot meet a taxpayer's need for advice, it can be assumed that his or her affairs are sufficiently complicated as to warrant seeking more personalised advice (either through a tax professional or via the ruling system). This office provides annual feedback to the ATO on *TaxPack*, as well as providing suggestions if and when they arise from the investigation of specific complaints. For example, earlier this year we identified an ambiguity in relation to travel claims that the ATO has agreed to address in future editions.

It is also currently possible to manage the effect of incorrect or inconsistent advice through the Commissioner of Taxation's discretions (in relation to remission of penalties and General Interest Charge (GIC), and the power to enter into reasonable payment arrangements for outstanding primary tax debts arising from incorrect or inconsistent advice), through complaints to the ATO or to the Taxation Ombudsman, and via the Compensation for Detriment caused by Defective Administration scheme (CDDA) where a taxpayer has suffered financial detriment (for example compliance costs, the cost of alternative advice, the cost of litigation) after acting on inconsistent or incorrect ATO advice.

A greater problem is the difficulty taxpayers may have in establishing that the ATO has given incorrect or inconsistent advice, due to the general tendency of the ATO not to record certain types of advice (especially oral advice). In her 1997 report on *Oral Advice*, the then Ombudsman noted that, "practices for recording oral advice given to clients have not kept pace with new service delivery mechanisms, and this means it can be very difficult for clients to obtain redress for incorrect advice".[4] The report went on to outline what was considered the minimum practical level for recording oral advice:

> We recognise that Commonwealth agencies are not in a position to record the detail of every call, or all advice given. However, improved recording practices need not require a 'one size fits all' approach. Experience suggests that there are areas where the recording of advice has, in the past, been insufficient, and where the risk to the agency and the client is high enough to suggest that improved record keeping would be a sensible management strategy.

[4] *Oral Advice*, 1.6.

Risk based recording
Traditional recording practices have meant that a call is more likely to be recorded if a specific question is asked, the call is likely to relate in a change to the rate of payment, and the call relates to an existing client. However, applying a risk management approach suggests that:

- certain minimum recording standards are set (which would apply to most transactions); and
- a more complete record should be made if the consequences of failing to keep a proper record are likely to be high for the agency ...and/or the client ...

Minimum recording standards
The Attorney-General's Department has advised me that, from a legal perspective, the minimum details which should be recorded where oral advice is provided are:

- the name or identifier of the officer giving advice, and if possible, the name of the person to whom the advice was given;
- the date and time the advice was given;
- the question asked (AGS considers this crucial for determining questions such as whether the agency ought to have known that the client was intending to rely on the advice given, and whether the enquiry was 'serious'); and
- the response given and whether there was any qualification of the response ...

This office has done no comprehensive examination of the provision and recording of oral advice by Australian Government agencies since 1997, however oral advice continues to be a major issue for this office (as our Annual Reports since 1997 highlight). The Ombudsman is currently considering a new own motion investigation into the provision of oral advice across all agencies, which would clearly include the ATO as one of the key advice-giving agencies.

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

On the basis of the information contained in the Discussion Paper – namely that more than two thirds of the PBRs issued are either wholly or partially favourable to the applicant – it does not appear that there is a pro-revenue bias in Tax Office advice. The contrary argument advanced by practitioners – that they only request rulings when they are confident that the ruling will be favourable – may suggest that such practitioners, *where there is a risk that the ATO would take a negative view of proposed tax arrangements*, are prepared to pass on that risk – as well as the risk of additional penalties for possible recklessness – to their clients rather than seek the certainty of a PBR. In an adversarial environment (as tax matters often are), it is perhaps unrealistic to expect that all taxpayers and practitioners will view ATO advice objectively.

The Discussion Paper notes that ATO interpretations are guided, *inter alia*, by underlying policy considerations. Presumably, these are often of a pro-revenue nature, given that collection and protection of the revenue is the ATO's primary function.

The Discussion Paper rightly acknowledges the often subjective nature of concerns about lack of objectivity, but suggests that an independent systemic evaluation of ATO advice might help to allay public concerns about ATO objectivity. It is not clear that these concerns are sufficiently widespread as to warrant such an evaluation. However, it should also be noted that the Ombudsman continues to offer taxpayers and practitioners the possibility of independent evaluation of ATO advice by way of investigation of complaints about ATO bias on a case-by-case basis.

2F *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?*

Framing advice as a commentary on contending views of the law is liable to confuse taxpayers as to the ATO position or expose the ATO to claims that it is incorrectly or unfairly setting out the contending positions (to favour its own). The better option is always to simply express its own interpretation of the law and how it intends to apply it, and to emphasise to taxpayers that they can seek independent advice if they do not accept or understand the ATO position.

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

See 2H below.

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

The Discussion Paper does not make clear why there is a need to make more general ATO advice legally binding (2.4.4). It is stated that this would make more ATO advice "reliable", but it is not clear that ATO general advice is currently unreliable. That ATO advice may be non-binding does not mean that it cannot be relied upon; it merely means that the taxpayer can rely upon it to the extent that it is correct and remains unchanged. As the Discussion Paper notes, this is usually the case.

The Discussion Paper's focus (at 2.4.4) on the value of legally binding advice appears to ignore the availability of administrative remedies for incorrect, ambiguous or subsequently altered advice, whether binding or non-binding. In essence, it is not possible for the ATO (or any other agency for that matter) to simply "walk away" from advice it has given. As already noted above (2D), it is currently possible to challenge the effect of incorrect or inconsistent advice (whether binding or non-binding) through the Commissioner of Taxation's discretions (in relation to remission of penalties and General Interest Charge (GIC), and the power to enter into reasonable payment arrangements for outstanding primary tax debts arising from incorrect or inconsistent advice) and via the Compensation for Detriment caused by Defective Administration scheme (CDDA) where a taxpayer has suffered financial detriment (for example compliance costs, the cost of alternative advice, the cost of litigation) after acting on inconsistent or incorrect ATO advice.

In our experience, for most taxpayers and in most cases, general ATO advice is adequate and reliable. The cases where it is not are generally clear, and in such cases the formal ruling system exists to provide more specific advice as necessary. Where the taxpayer chooses to rely on his or her own interpretation of general advice (or that of an adviser), it would not seem unreasonable that he or she should carry the risk in relation to that reliance.

There appears to be an implied suggestion in the Discussion Paper that, where a taxpayer acts on incorrect, incomplete or ambiguous ATO non-binding advice that on correction results in a tax shortfall, there is some justification for that shortfall being forgiven. This would certainly be the effect of making much currently non-binding advice binding on the Commissioner. However, as a matter of public policy, it is difficult to see why individual taxpayers should generally receive a benefit (effectively a tax "windfall") as a result of an administrative error. As a general principle, the aim should be to return a taxpayer to the position he or she would have been in had the error not been made. Essentially, it is difficult to say that the taxpayer has suffered any loss or detriment as a result of the error; in most cases, it will merely have deferred the taxpayer's legal liability until such time as the error is corrected. If additional detriment has been suffered (penalties or GIC, business costs or the cost of additional advice), there may be an adequate administrative remedy through remission or under CDDA.

Any final report might benefit from some more concrete examples within this section.

2I Should taxpayers be penalised for not following PBRs when self assessing their income tax liabilities?

See 2K below.

2J If no penalty applied, would direct appeals against PBRs still be required?

See 2K below.

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

Appeal against a PBR may allow a taxpayer to provide further information to the ATO in support of his or her position (as part of the objection process) or enable the taxpayer to obtain certainty about the correct legal position, and so may be of benefit, notwithstanding the absence/threat of any penalties.

The Federal Court has a "fast track" procedure for the hearing of appeals against PBRs that should adequately address taxpayer concerns about delay (O 52B of the *Federal Court Rules*). Similarly, the court's power at hearing to give whatever directions it thinks proper (O 52A r 13; O 52B r 3) should provide taxpayers with adequate capacity to seek and/or provide further particulars about the arrangements. In any case, it is incumbent on the applicant to provide as much information to the ATO as her or she can in relation to the initial request for a ruling.

Given the above, it does not seem unreasonable to penalise a person who clearly and deliberately ignores advice specific to them, by which they have

specifically sought to establish the Commissioner's legal position and which, if beneficial to them, they would use to bind the Commissioner even if the position was subsequently found to be incorrect or inappropriate. It is not clear why oral rulings are not similarly binding on both parties, except that perhaps, like Public Rulings, they tend to operate more on a class basis than on a taxpayer specific basis (and hence it may not be unreasonable for the taxpayer to distance him or herself from the application of the ruling). If this were not the case, there may be scope to align oral rulings with PBRs.

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

See 2M below.

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

A free rulings and advice system is clearly a great benefit to the Australian taxpaying community and ideally should be retained if possible. It is not clear from the Discussion Paper that the problems with the more formal ruling and advice system warrant dramatic change or any considerable increase in resources. If there is to be any adjustment of resources, it should be towards the provision of informal advice (to predominantly ensure the adequate recording of such advice).

3 Review and amendment of assessments

3A *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?*

Although the Discussion Paper provides strong arguments in favour of a reduction of the amendment period to two years for very small businesses and most individual taxpayers – effectively an extension of the current system for Simplified Tax System (STS) taxpayers and Shorter Period of Review (SPOR) taxpayers – it is not clear that the four-year amendment period is a significant problem for most taxpayers. Anecdotal evidence would suggest that many taxpayers (and presumably all tax agents) are aware of their obligations to maintain tax records for a period of time (generally five years), suggesting they are also aware that the Commissioner can review their affairs for some considerable time after an assessment has issued. *TaxPack* and other ATO advice now also makes clear the nature and consequences of any such review – namely that the ATO can identify not just undeclared income, but also subsequently disallow deductions previously accepted, and can raise liabilities which can include interest and penalties. A further argument against changing the current system is that too many different review periods for different classes of taxpayers in different circumstances can itself lead to problems (see 3C below).

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

There appears to be no compelling reason as to why these entities should receive a reduced period of review.

3C *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?*

This may be a logical decision if the ordinary period for amendment is reduced to two years, although there may be benefits in reducing the amendment period to four years even if the current four year amendment period stands. Certainly one effect of the decision in *Vincent* v *Commissioner of Taxation* [2002] FCA 656 is that a taxpayer may currently be able to argue that the Commissioner is time-barred from applying Part IVA after four years on the grounds that he or she was not lawfully entitled to claim the deduction under the ordinary provisions – an extraordinary defence against anti-avoidance. There would also be considerable benefit in having the amendment periods aligned; it would enable a clear and concise message to be conveyed about precisely how long the ATO has to review a and amend taxpayers' affairs.

Despite the example provided in the Discussion Paper (the US tax shelter provisions), it does not seem that the requirement to disclose certain tax planning arrangements more fully in returns would be practical; certainly it is difficult to see how the recent mass-marketed scheme cases could have been identified in this way.

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

The ATO now regularly publishes its compliance plan, which identifies areas of interest for the coming year. In any case, it is not clear that there is any significant public concern or problem with uncertainty caused by a four year amendment period. Taxpayers concerned by uncertainty are free to use the ruling system to seek greater certainty. That they do not suggests that they are comfortable with a degree of uncertainty (see 2A above).

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

This issue is not one upon which this office can provide any useful comment.

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

The situation whereby amendment by the Commissioner is not time limited in the case of a nil liability appears to be a legislative anomaly. In any case, the Discussion Paper makes a strong case for this change on equity grounds.

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

This issue is not one upon which this office can provide any useful comment.

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

As the Discussion Paper notes (at p. 41), it will not always be clear when the ATO has all the relevant information and when a delay is unreasonable. However, adequate administrative remedies already exist through the

Commissioner of Taxation's discretions (in relation to remission of General Interest Charge (GIC), and the power to enter into reasonable payment arrangements for outstanding primary tax debts arising from incorrect or inconsistent advice), through complaint to the ATO or the Taxation Ombudsman, and via the Compensation for Detriment caused by Defective Administration scheme (CDDA) where a taxpayer has suffered financial detriment (for example, the cost of advice, the cost of litigation, other related business expenses) after any unreasonable delay.

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

As noted above (3C), there is probably some benefit in aligning all general periods for amendment, whether they increase or decrease a liability. Such an approach is equitable and easy to explain.

3J Would it be better to implement some of the possible changes raised in this Chapter (for example, early notification of compliance activity) by changing administrative procedures, rather than by changes to the law?

There are clearly practical benefits in implementing reform through changed administrative procedures rather than legislative change, where that is possible and where the change is clearly beneficial to all. Where the change may have clear revenue implications then it may be better to change the law.

4 Penalties

4A What (if any) clarification of the terms "reasonable care" and "reasonably arguable position" is needed?

There does not appear to be a need to clarify each of these terms, although we would encourage the ATO to provide taxpayers with a full and clear explanation of why penalty decisions have been made, including explanations of "reasonable care" and "reasonably arguable position" when applicable.

4B 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?

See 4C below.

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

See 2I and 2J above.

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

From our perspective, there does not appear to be any reason to vary the current guidelines on remission of penalties. However, we have raised concerns with the ATO about the quality of the explanations that taxpayers receive for some remission decisions.

5 General Interest Charge

5A 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?

As a matter of general principle, it would seem more appropriate to use a penalty regime to discourage incorrect accuracy in assessments.

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

The Discussion Paper mounts a strong argument to suggest that the rate of GIC may be excessive against this principle.

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

See 5F below.

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

See 5F below.

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

See 5F below.

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

The Discussion Paper thoroughly canvasses the issues and options around GIC. Of particular interest to this office is the inequitable impact of the tax deductibility of GIC. These issues clearly warrant further consideration and consultation quite separately from the review of self assessment.

In our experience, full or partial remission of GIC is an effective means of fairly addressing the sometimes harsh impact of tax law and administration on taxpayers. For example, the ATO has remitted GIC in cases where there has been unreasonable ATO delay in reaching a view or amending assessments (as in the case of mass-marketed schemes). However, it is not clear that there is any pressing need for the ATO to initiate more remission decisions, provided taxpayers are clearly advised of their right to seek remission and the grounds on which they can do so. Standardised application forms might assist in this regard.

6 Other issues

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

Current ATO verification checks, reviews and audits are guided by a risk-rating system that appears to be working effectively, particularly in balancing taxpayers' desire for speedy refunds, the need for certainty, and the risks to the revenue. Imbalance and perceptions of imbalance can perhaps be best addressed on a case-by-case basis, through effective internal ATO processes and via complaints to the ATO or the Taxation Ombudsman.

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

This office has been working with the ATO for several years now to promote greater taxpayer awareness of their obligations under self assessment. In particular, we have been able to encourage changes to *TaxPack* that more clearly advise taxpayers of these obligations. We also understand that the ATO has been working on ways to improve the information provided on and with Notices of Assessment. The information currently provided on the reverse side of assessment notices is certainly now more informative than it was (particularly about the options facing those taxpayers with debts). However, more can be done to simplify and clarify notices of assessment.

Given that so many taxpayers use tax agents, there may be scope to examine the extent to which agents understand the self-assessment system and how much information they convey to their clients.

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

Given that many taxpayers use tax agents, and given the existence of an independent Taxation Ombudsman and the Inspector-General of Taxation, it is difficult to see any need for a Public Tax Advocate (as in the United States of America). Where the Ombudsman does identify an ATO error or deficiency, we do advocate for effective remedies at both the individual and systemic levels. However, the Ombudsman's office has never been provided with the level of funding that was initially agreed as necessary for the Taxation Ombudsman function, and so we have never been able to fully meet the Joint Committee of Public Accounts recommendation of a Taxation Ombudsman to investigate all taxpayer complaints.

In his 2003 report into ATO complaint handling, the Ombudsman recommended that the ATO further develop Alternative Dispute Resolution as an element of, or in partnership with, ATO complaint handling.[5] This recommendation was accepted by the ATO, to be incorporated into the development of the ATO's client relationship management initiative.[6] We are

[5] See http://www.ombudsman.gov.au/publications_information/Special_Reports/ato_complainthandling_2003july.pdf, 2.14-2.15 and Recommendation 1.

[6] See http://www.ombudsman.gov.au/publications_information/Special_Reports/ato_complainthandling_2003july-ato_response.pdf.

currently following up the ATO's more recent actions on our recommendations, and can provide more information on this topic when we receive the ATO response.

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

This issue is not one upon which this office can provide any useful comment.

6E *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?*

This issue is not one upon which this office can provide any useful comment.

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

This issue is not one upon which this office can provide any useful comment.

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

In our experience, there does not appear to be any reason to vary the current guidelines on remission of late lodgement penalties. However, we have raised concerns with the ATO about the quality of the explanations that taxpayers receive for some remission decisions.

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

As noted above (2D, 2H, 3H, 4D, 5F, 6G), some discretions are important in enabling the Commissioner of Taxation to ensure the fair administration of the tax system.

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

This issue is not one upon which this office can provide any useful comment.