

Submission Regarding the Scrutiny Arrangements Applicable to the ATO

I. Introduction

The Rule of Law Institute of Australia thanks the House Standing Committee on Tax and Revenue for the opportunity to make a submission regarding the scrutiny arrangements that apply to the Australian Taxation Office (ATO).

The Institute is an independent, non-partisan, not-for-profit body formed to promote and uphold the rule of law in Australia.

The Patron of the Institute is The Honourable James Spigelman AC QC, and the Governing Committee includes Richard McHugh SC, Professor Geoffrey de Q. Walker, David Lowy AM, Nicholas Cowdery AM QC, Professor Martin Krygier, and Hugh Morgan AC.

The objectives of the Institute include promoting good governance in Australia by the rule of law, and encouraging transparency and accountability in State and Federal government.

II. Categories of Scrutiny

The Institute notes that the ATO is subject to three general categories of scrutiny:

- a. Parliamentary scrutiny;
- b. Government-wide scrutiny; and
- c. Agency-specific scrutiny.

Parliamentary scrutiny is scrutiny from Parliament, through mechanisms like Senate estimates hearings and parliamentary committees, such as the House Standing Committee on Tax and Revenue, and the Joint Committee of Public Accounts and Audit.

Government-wide scrutiny is scrutiny that applies to agencies and departments across the federal government, through mechanisms like the Australian National Audit Office, the Commonwealth Ombudsman, and the Office of the Australian Information Commissioner.

Agency-specific scrutiny is scrutiny that applies solely to the ATO, through mechanisms like the Inspector-General of Taxation.



III. Parliamentary Scrutiny

The Institute regards the structure and organisation of parliamentary scrutiny mechanisms as fundamentally a matter for Parliament to decide.

These mechanisms represent the foundation of democratic control of government, and play an important role in improving the transparency and accountability of government. Accordingly, concerns over their impact on the efficiency of an agency ought not to be overly persuasive. No doubt agencies would have more time to spend on “core work” if they were never called before parliamentary committees. However, parliamentary scrutiny ought never to be considered as ‘interfering’ with the real work of an agency; agencies should be subject to as much or as little parliamentary scrutiny as Parliament sees fit.

The Institute notes that, as the third-largest federal government agency or department,¹ and a highly visible presence in most Australians’ lives, the ATO is a suitable candidate for consistent parliamentary scrutiny.

The Institute further notes that the ATO is subject to regular scrutiny from the House Standing Committee on Tax and Revenue, and the Joint Committee of Public Accounts and Audit, and appears before the estimates hearings of the Senate Economics Committee. This does not appear to be an overly burdensome roster.

The Institute considers that this parliamentary scrutiny should remain.

IV. Government-wide Scrutiny

The ATO is also part of government-wide scrutiny arrangements, including oversight from the Commonwealth Ombudsman, the Australian National Audit Office, and the Office of the Australian Information Commissioner.

The Institute notes the transfer of the complaints function from the Ombudsman to the Inspector-General of Taxation in May 2015, which removed the ATO from an otherwise government-wide scrutiny mechanism, and replaced it with an agency-specific one. However, the Institute also notes that the Ombudsman’s role regarding public interest disclosures and freedom of information will continue to apply to the ATO. The Institute considers this to be a good example of a transfer of scrutiny from one level to another (government-wide to agency-specific), which nevertheless maintains the same net level of scrutiny.

The Institute considers that this government-wide scrutiny should remain.

1 After the Department of Defence, and the Department of Human Services



V. Agency-specific scrutiny

The Institute notes that the only external agency-specific scrutiny mechanism to which the ATO is exposed is the Inspector-General of Taxation.

The Inspector-General of Taxation has two key functions: responding to complaints about the ATO (since May 2015), and reviewing the ATO's administration of Australia's tax laws. Since its inception in 2003, the Inspector-General has built up considerable expertise and the appropriate staffing profile for fulfilling these two functions.

The Institute considers that having an appropriately expert scrutiny mechanism – like the Inspector-General – is of crucial importance in an area of such complexity as Australian tax law.

The Institute recommends that the oversight role of the Inspector-General of Taxation not be weakened or undermined in any way, in the name of “removing inefficiency or duplication” or “reducing the cost to government”.

Recommendation

The Institute recommends retaining the current oversight jurisdiction of the Inspector-General of Taxation.

VI. Conclusion

The Institute considers that any changes to the current scrutiny arrangements ought not to have the effect of substantially lessening the level of external scrutiny to which the ATO is exposed.

The Institute also considers that any application of the ‘earned autonomy principle’ to the ATO ought not to have the effect of substantially lessening the level of external scrutiny to which the ATO is exposed.

The Institute suggests that, as the third-largest federal government agency or department, and a highly visible presence in most Australians' lives, the ATO is a suitable candidate for consistent and rigorous scrutiny.

The Institute suggests that concerns about inefficiencies, duplication, and red-tape costs associated with the ATO might be better dealt with by reform of the ATO's internal governance arrangements – including the proliferation of advisory panels – rather than by undermining the current arrangements for external scrutiny.

