

30 August 2019

Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir or Madam

Inquiry into the performance of the Inspector-General of Taxation (IGT)

The Taxation Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to make submissions to the Senate Economics Legislation Committee on the performance of the IGT.

This submission responds to the scope of inquiry the Senate Economics Legislation Committee outlined as follows:

- a. whether the accountability framework the IGT operates within needs to be amended or strengthened;
- b. how the IGT conducts its investigations into the Australian Taxation Office (**ATO**);
- c. what safeguards exist to ensure the independence of the IGT;
- d. the complaints management policies and practices of the IGT;
- e. the protections afforded to whistleblowers who disclose information to the IGT; and
- f. any related matters.

The Committee has set out its submissions below.

The Committee refers in its submissions below to its submission to the House of Representatives Standing Committee on Economics dated 11 March 2016 in response to its Inquiry into the External Scrutiny of the Australian Taxation Office (**ATO**). A copy of that submission is provided attached as an Appendix and is referred to throughout this submission as the **2016 Submission**.

Outline of submission

The Committee makes the following submissions:

1. A new reporting line

The current reporting line of the IGT to the Treasurer should be revisited.

The Committee supports the view of the previous IGT, as documented in his interview with *The Australian Financial Review* on 23 September 2018 just prior to his departure on November 6.

The prior IGT recommended that the IGT should be taken out of the treasury portfolio, given that both the ATO and Treasury sit within the treasury portfolio. The more suitable place for the IGT to report is, as recommended by the prior IGT, directly to Parliament, similar to the Auditor General and the Commonwealth Ombudsman.

It is inappropriate for the body with the role of reviewing the ATO's systems, administration of the tax laws and individual taxpayer complaints to report to the same body as does the ATO. We recommend that the IGT report to Parliament.

2. An increase in funding

We refer to our comments on resourcing the IGT in the 2016 Submission and again recommend that the resources and funds applied to the IGT be revisited.

In his 2018 interview as noted above, the then outgoing IGT highlighted the work that the office had undertaken with a small budget and team, but that there was both an increased demand on the IGT office's time and more work to be done.

Since that interview, the ATO has been provided with even more resourcing (with the Australian Federal Budget 2019-2020 announcing an additional \$1b of funding for the ATO over 4 years) which would impact on the IGT to ATO ratio outlined in our 2016 Submission to embarrassing levels.

Further, the IGT's funding should be revisited having regard to the additional key role and responsibility that has been placed upon the IGT under the proposed Tax Debt Transparency measures contained in the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019* and the *Draft Taxation Administration (Tax Debt Information Disclosure) Declaration 2019*.

3. Expand the role to make the IGT the sole scrutineer

We reiterate the comments made in the 2016 Submission that the IGT has been an instrumental body in the review of the administration of the tax laws since its establishment in 2003, the Committee supported the recommendation of the Board of Taxation and decision of Parliament to establish the IGT and continues to support its role and work.

As noted, the work of the IGT has led to improvements in:

- ATO management of disputes with taxpayers;
- ATO development of its views and changes of views; and
- ATO compliance practices affecting small, medium and large taxpayers.

The overwhelming majority of the IGT's recommendations have been historically accepted in full or in part, as evidenced by its recent *PAYG instalment review* with all 7 recommendations being accepted either in full or in part.

However, there is more work to be done.

In our 2016 Submission, the Committee recommended that the *Inspector-General of Taxation Act 2003* (Cth) (**IGT Act**) should be reviewed to consider whether amendments could be made to facilitate the IGT becoming the one body for scrutiny of the ATO, amalgamating the roles of various scrutineers into the one body. The Committee continues to endorse this recommendation.

4. A discussion on extending whistleblower protections

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) (**Whistleblower Act**) recently introduced legislative amendments that provide protections for those making a disclosure in relation to a taxpayer's tax affairs.

A considerable amount of time was taken by Treasury in consulting on these measures, in which the Committee was involved. That said, on reflection there does not appear to be an obvious extension that was made in these recent amendments to allow protections for a whistleblower in relation to a disclosure made to the IGT.

The Committee considers that it may be appropriate to consider either amending section 14ZZT or the definition of eligible recipient in section 14ZZV of the *Taxation Administration Act 1953* (Cth) to extend protection to disclosure to the IGT. The Committee raises this, not with a definitive view, but as an item for consideration and consultation.

A key aspect in determining who should be included in the list of acceptable recipients for taxation information was whether they had protections in place around the information provided by the whistleblower. Given the information management provisions in the IGT Act, there is a sufficient level of security and confidentiality around any taxpayer information in the possession of the IGT.

The question would be whether opening these laws up to include the IGT are important or helpful to the IGT performing its function.

We consider that this might be a matter open to discuss further.

Whilst this would be in complete contrast to the Committee's submission, we note that if there were to be any proposal as a result of this inquiry to water down the IGT's role, resources or activities, the Committee notes that this is likely to be met with strong resistance across the taxpayer community and the Committee would be very keen to be involved in further discussions on such proposals.

Should the Senate Economics Legislation Committee wish to discuss these views with the Committee, discussions can be initiated by contacting the Chair of the Committee, Clint Harding on (02) 9226 7236 or via email charding@abl.com.au.

Yours Sincerely,



Rebecca Maslen-Stannage
Chair, Business Law Section