



Commonwealth
OMBUDSMAN



TAXATION OMBUDSMAN



ACTIVITIES



2008



TAXATION
OMBUDSMAN

ACTIVITIES

2008

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CONTENTS

| | |
|---|-----------|
| Introduction | 1 |
| Chapter 1—Overview | 3 |
| Chapter 2—How the Taxation Ombudsman helped people | 5 |
| Chapter 3—Most frequent complaints | 8 |
| Lodgement and processing | 8 |
| Debt collection | 10 |
| External debt collection agencies | 10 |
| Debt waiver or write-off | 11 |
| Insolvency | 12 |
| Superannuation | 13 |
| Taxpayer information | 15 |
| Tax file number compromise | 15 |
| Chapter 4—Promoting good tax administration | 17 |
| Own motion investigations | 17 |
| Re-raising written-off debts | 17 |
| Administration of decision-making under the CDDA scheme | 18 |
| Unannounced access powers of the ATO | 18 |
| Superannuation guarantee internal review | 18 |
| Administrative deficiency | 19 |
| Taxpayer information | 20 |
| Direct debit processes | 22 |
| Complexity of taxation legislation | 22 |
| Unreasonable delay | 22 |
| Outreach | 22 |
| Chapter 5—Outlook | 23 |
| Taxation environment | 23 |
| Regulation of tax practitioners | 23 |
| Inspector-General of Taxation | 24 |
| Forward work program | 24 |

ABBREVIATIONS

| | |
|-------------|---|
| ABN | Australian Business Number |
| ATO | Australian Taxation Office |
| BAS | Business Activity Statement |
| CDDA | Compensation for Detriment caused by Defective Administration |
| GIC | General Interest Charge |
| PAYG | Pay As You Go |
| TFN | Tax File Number |

INTRODUCTION

The Commonwealth Ombudsman has over thirty years experience in investigating complaints about the administrative actions and decisions of the Australian Taxation Office (ATO). In 1995 the *Ombudsman Act 1976* was amended to give the Ombudsman the additional title of Taxation Ombudsman. The amendments were made in response to recommendations of the Joint Committee of Public Accounts to give a special focus to the office's handling of complaints about the ATO.

Fair and accountable public administration is a fundamental aspect of a free and democratic society. The right to complain about government to an independent agency is an expression of the individual's democratic rights in relation to government. The exercise of this right helps address the inequality of power, resources and information between individuals and government.

As the only external complaint handling agency to which taxpayers can bring complaints about the ATO, the Taxation Ombudsman is well suited to play monitoring and administrative auditing roles as well as a complaint management role. Our regular contact with taxpayers about problems they are experiencing with the taxation system provides information which can assist in improving taxation administration. A Senior Assistant Ombudsman and a specialist tax team assist me in fulfilling my role as Taxation Ombudsman.



Prof. John McMillan,
Taxation Ombudsman.

The *Taxation Ombudsman Activities* report provides a valuable opportunity to highlight the issues with taxation administration that have been raised during 2008. The majority of complaints were about debt collection, superannuation, taxpayer information, audit, and lodgement and processing of taxation forms. The number of complaints we received continued to decline. However the increasingly complex complaints we investigate often feature entrenched views or difficult issues which were not able to be resolved directly between the taxpayer and the ATO.

The Taxation Ombudsman has worked with the ATO in the development and support of its complaint management system. We continue to build our relationship with the ATO and meet regularly to discuss complaint handling practices and potential systemic problems. This year we also participated in the ATO's new People Committee, which looks at best practice in key people issues.

We will continue to work with other complementary external oversight bodies—the Inspector-General of Taxation and the Australian National Audit Office—to improve tax administration. We aim to minimise overlap by focusing on the perspectives that are unique to the Taxation Ombudsman, such as our understanding of the impact that tax administration can have on individuals.

Prof. John McMillan

Commonwealth and Taxation Ombudsman

CHAPTER 1

OVERVIEW

In 2008 the Ombudsman's office received 1154 complaints about the ATO, compared with 1249 in 2007. As shown in Figure 1¹, this continues the steady downward trend in complaints since 2001 when complaints were at a record high. The current number of complaints is similar to that of the early years of the establishment of the Taxation Ombudsman and the more stable years in the late 1980s and early 1990s.

During the year we finalised 1129 complaints, of which we investigated about 19%, compared to about 11% in 2007. The increase is largely due to a change in our method of recording investigations.²

We transferred approximately 18% of complaints to ATO Complaints under the assisted transfer process that was introduced last year. In early 2009 we

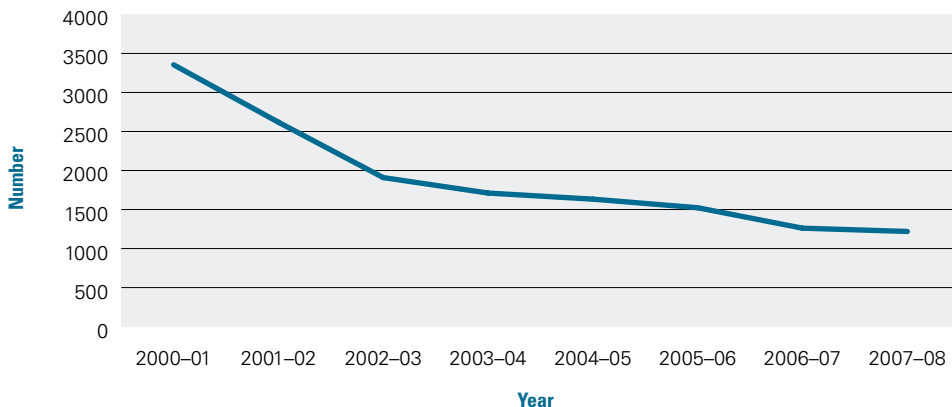
will review this process with a view to the development of a model which we may use for other agencies.

Issues raised in complaints involved a range of taxation activities and products including:

- lodgement and processing (27%)
- debt collection (20%)
- superannuation (11%)
- taxpayer information (6%)
- audit (5%).

Our main role is to resolve individual complaints. An equally important role is to use individual complaints to identify systemic problems with taxation administration and to promote good administrative practices within the ATO.

FIGURE 1 Australian Taxation Office complaint trends, 2000–01 to 2007–08



1 Figure 1 shows complaints received per financial year.

2 Most of the complaints we investigate have already been through the ATO complaint handling system. As a first stage of investigation we seek information about the outcome of the ATO complaint handling. In previous years this first stage was not recorded as an investigation, but this year and in future years it will be included as an investigation in our reports.

We use a variety of mechanisms to promote good administrative practice, including:

- *Liaison.*
We meet regularly with the ATO to exchange information, receive briefings and discuss trends and problems as they arise.
- *Recording administrative deficiency.*
In 2008 we recorded administrative deficiency in 7% of the cases we investigated. The recording of administrative deficiency draws the agency's attention to matters of concern, and in some cases provides recommendations on how the ATO can improve its procedures. This year we established a register for these recommendations. Monitoring of this register will become part of our liaison and reporting process in 2009.
- *Own motion investigations.*
Where a number of complaints present similar underlying issues warranting more intensive investigation, the Ombudsman may undertake an own motion investigation. In 2008 we completed an own motion investigation into the ATO's re-raising of written-off tax debts.

- *Informal reviews.*

We finalised a review into the ATO's administration of superannuation guarantee. The review focused on the timeliness in collecting unpaid superannuation guarantee and the information provided to employees about the collection of unpaid superannuation guarantee.

As Taxation Ombudsman we also manage complaints about the various state-based Tax Agents' Boards. We receive a relatively small number of complaints relating to tax agents, tax practitioners and the actions taken by the Tax Agents' Boards. In 2008, we received sixteen complaints about Tax Agents' Boards. These complaints were generally about three issues:

- delay by a Tax Agents' Board in processing an agent's registration
- dissatisfaction with action taken by a Tax Agents' Board in relation to a complaint about the actions of a tax agent
- the conduct of a tax agent.

CHAPTER 2

HOW THE TAXATION OMBUDSMAN HELPED PEOPLE

As the only external complaint handling agency for taxpayers with complaints about the ATO, our main function is to resolve complaints from individuals. Although the ATO has a well established and largely effective internal complaint handling system, taxpayers can sometimes find that their interaction with the ATO is stressful.

At times, communication between the taxpayer and the ATO breaks down and the taxpayer may lose confidence in the ATO. Our office provides a valuable independent and impartial perspective for complainants in these circumstances.

Complaints also provide us with valuable insights into the operation of the tax system and help us identify any systemic issues, as discussed further in chapter 4.

When a person first approaches us, we usually suggest they complain initially to the ATO. We do this for a number of reasons:

- It gives the ATO an opportunity to address the taxpayer's concerns and can provide a more direct outcome to the taxpayer without the need for the involvement of a third party, strengthening the relationship between the ATO and the taxpayer.
- Complaints provide the ATO with feedback about how its systems are operating and help in identifying any systemic problems.

If a taxpayer has not complained directly to the ATO we offer to refer their complaint directly to the ATO's complaint handling system. We refer to this process as an 'assisted transfer'. We introduced the assisted transfer process in 2007 and it has continued successfully. In 2008 we

transferred 213 complaints to the ATO. We will be evaluating the assisted transfer process in 2009.

Many complaints are resolved without the need for investigation. Taxpayers sometimes simply need assistance to navigate through the complexities of the tax system or to receive assurance that the ATO is acting appropriately. In 2008 the latter was a particular concern to taxpayers whose debts were referred to an outsourced debt collector. We discuss this in greater detail in chapter 3.

Our practice of referral and transfer of complaints to the ATO means that most of our investigations arise where complainants are not satisfied that the ATO has addressed a matter adequately.

This dissatisfaction can occur for several reasons including:

- the ATO has not addressed all of the complainant's issues
- the ATO has not provided an adequate explanation
- the complainant does not believe they have received a fair hearing
- entrenched views have interfered with communication
- the complexity of taxation legislation creates a communication gulf between the ATO officer who understands it and the taxpayer who does not.

We aim to resolve complaints by providing a practical remedy to the taxpayer. In 2008, about 65% of the complaints we investigated were resolved in one or more of the following ways: by the ATO offering an apology to the complainant; the ATO or

this office providing a better explanation to the complainant; or the ATO expediting their processes, providing some form of financial remedy or undertaking to reconsider its original decision.

Table 1 shows how we resolved the complaints we investigated.³

The case studies in this chapter provide some insight into the types of complaints we received and how we resolved them. Chapter 3 discusses some of the most frequent issues in complaints we received in 2008.

The three case studies *Getting heard*, *Cutting through red tape*, and *Debt reduced* illustrate how the Taxation Ombudsman can assist both the ATO and the complainant to resolve a longstanding problem. By focusing on a practical remedy for the complainant, our involvement can often help clarify the issues and, in some circumstances, help defuse tension in the relationship between the taxpayer and the ATO.

A number of the complaints we receive simply require a better or different explanation of what the ATO is asking of the taxpayer. This is illustrated in the case study *Missing assessment*.

TABLE 1 Taxation complaints—remedies provided (finalised cases 2008)

| Type of remedy | Percentage of remedies |
|--------------------------------------|------------------------|
| Action expedited | 13% |
| Apology | 11% |
| ATO undertook to reconsider decision | 5% |
| Better explanation provided | 43% |
| Debt waived or reduced | 4% |
| Decision changed | 4% |
| Other financial remedy | 9% |
| Other non-financial remedy | 12% |

GETTING HEARD

CASE STUDY

Mr A, the trustee of a superannuation fund, complained to us in May 2008 about continued demands from the ATO for payment. Mr A advised us that he had been trying to sort out his problem with the ATO for over twelve months. He had contacted the ATO in March 2007, November 2007, December 2007 and January 2008 but had been unable to resolve his problem.

As a result of our investigation, the ATO reviewed the relevant accounts and found that the fund was not liable to pay any further amount and that the demands for payment were incorrect. The ATO advised Mr A of this. We recommended to the ATO that it review its procedures used in reconciling accounts, especially when a taxpayer continues to question the correctness of those accounts, and that they apologise to Mr A.

The ATO agreed with our recommendations.

³ In 35% of the cases investigated there was no remedy. This included those complaints where we found that the ATO action was appropriate.

CUTTING THROUGH RED TAPE**CASE STUDY**

Mr B approached us after receiving his 2007 notice of assessment and having his tax refund withheld. The notice of assessment showed an amount owing as 'other amounts payable'. Mr B advised us that the ATO had told him that this debt related to a partnership superannuation guarantee charge debt from 2001. Mr B advised us that he was a partner for a period of three months in the 2001–02 financial year, and that he had provided the ATO with a copy of the partnership dissolution. However the ATO was insisting he was responsible for the entire debt regardless of when he left the partnership. As a result Mr B was unwilling to lodge his 2008 tax return.

The ATO initially advised us that all that could be done for Mr B was for him to apply for an extension of time to lodge an objection to the superannuation guarantee assessment, and that he could have an extension of time to lodge his tax return. After further investigation, we asked the ATO to reconsider its decision and that someone talk to Mr B to try to resolve the situation. The ATO did this and agreed that Mr B would only need to pay the amount of the superannuation guarantee for the period when he was part of the partnership.

Mr B was happy with this result but expressed disappointment that it had been so hard to resolve the problem.

DEBT REDUCED**CASE STUDY**

Mr C complained to us about an outstanding pay as you go (PAYG) instalment debt. Mr C had been contacted by one of the ATO's outsourced debt collection agencies about payment of the debt. According to Mr C he did not have a PAYG instalment debt because his primary income since 2000 had been Centrelink benefits.

As a result of our investigation, the ATO identified that it had failed to properly remove Mr C from the PAYG instalment system after he had advised that he would not be lodging income tax returns because he did not receive sufficient income. Mr C was actually entitled to a refund of over \$3000.

The ATO apologised to Mr C and paid the refund to his bank account.

MISSING ASSESSMENT**CASE STUDY**

Mrs D approached us because she had not received her 2007 income tax assessment even though it was over eleven months since she had lodged it with the ATO. Mrs D advised us that she had sent a letter of complaint to the ATO but had not had a response.

When we investigated Mrs D's complaint, the ATO advised that Mrs D's return was incomplete and had been returned to her to complete. It appeared that Mrs D had misunderstood what was required, and that the ATO had overlooked her letter of complaint.

We wrote to Mrs D and explained what she needed to do, and provided her with the name of an ATO complaints officer to contact for further information. The ATO apologised to Mrs D for the delay in responding to her correspondence.

CHAPTER 3

MOST FREQUENT COMPLAINTS

The most frequent complaints we received in 2008 were about the lodgement and processing of forms, aspects of the administration of superannuation guarantee and debt collection. Table 2 illustrates that, although these top three topics for taxation complaints have remained the same for the last three years, their proportion (as a percentage of total complaints) has changed. Complaints about lodgement and processing and debt collection have steadily grown while complaints about superannuation have reduced by about half.

We deal with many complaints where taxpayers misunderstand ATO processes or legislative requirements. Often these are resolved simply by providing a more complete explanation. The case study *Providing a better explanation* shows how a more thoughtful explanation in the first instance may have prevented a complaint.

The ATO carries out the majority of its taxation administration reliably and without cause for complaint. When errors are discovered we

usually find the ATO will readily rectify the situation, as shown in the case study *Incorrect assessment corrected*.

LODGETMENT AND PROCESSING

Over a quarter of the complaints we received during the year were about lodgement and processing issues. We investigated about 40% of those complaints. The majority concerned income tax assessments, refunds and credits, and activity statements.⁴ We dealt with a variety of issues in this area including the application of taxation law to lump sum payments, incorrect information submitted by tax agents, processing delays and taxpayer difficulties with PAYG payments.

Complaints relating to activity statements arose where taxpayers had automatically entered into the PAYG instalment system⁵, where they had difficulty reconciling the activity statements from different tax accounts, or where partnerships had dissolved and tax liabilities were not resolved.

TABLE 2 Taxation complaints—top three complaint topics, 2006 to 2008

| Topic | Percentage of complaints | | |
|--------------------------|--------------------------|------|------|
| | 2006 | 2007 | 2008 |
| Lodgement and processing | 14% | 25% | 27% |
| Debt collection | 12% | 14% | 20% |
| Superannuation | 21% | 16% | 11% |

4 *The Commissioner of Taxation Annual Report 2007–08* (page 40) reports that the ATO processed more than 76 million forms and other transactions in 2007–08, so this level of complaint is not surprising.

5 The ATO will generally notify taxpayers that they are required to pay PAYG instalments if the taxpayer's:

- last income tax return showed \$2000 or more gross investment and business income (excluding any capital gains)
- last income tax assessment resulted in a tax bill of more than \$500 (disregarding any voluntary payments or PAYG instalment credits that were applied)
- notional tax is more than \$250.

Many complaints were made about delays in processing refunds. The ATO has standard timeframes for processing tax returns. Routine checks are included in the automated processing systems and, if these are triggered, processing may take longer. The ATO provides a hotline for taxpayers to ring to check on the

progress of their assessment. In some cases we identified delays caused by administrative drift or lack of information and the ATO expedited matters as a result. In other cases there was a legitimate cause for delay but a better explanation for the complainant was helpful.

PROVIDING A BETTER EXPLANATION

CASE STUDY

Ms E approached the Ombudsman in frustration because she believed that the ATO had miscalculated her tax for the second time. She said she was unable 'to find anyone at the ATO who would rectify the mistake'. She considered her tax return a simple one as her only source of income was from fully franked dividends.

Our investigation showed Ms E's tax assessment for the previous year had been amended from a debt of \$150,000 to a debt of \$15,000. The amendments were made because Ms E had incorrectly completed her tax returns. The ATO did not adequately explain to Ms E how the error occurred and so she made the same mistake in her return the following year.

We provided Ms E with a clear explanation of how the error had occurred.

INCORRECT ASSESSMENT CORRECTED

CASE STUDY

Mr F lodged his tax return including a PAYG payment summary issued by his employer. Mr F had been a director of the company providing his wages but he had ceased to be a director during the year. The ATO undertook a wages and salary audit and noted a discrepancy between the payment summary lodged by Mr F and that of his employer.

It appeared that the employer had incorrectly included a superannuation contribution of \$24,000 as gross income on the payment summary. Mr F contacted his employer who sent an amended payment summary statement to the ATO.

However the ATO issued a notice of assessment including the disputed amount, with a penalty of over \$2500 and a tax liability of some \$2000 rather than an expected refund of \$10,000.

When we investigated the ATO acknowledged that the case officer did not refer to the amended statement from the employer or contact the employer for verification. The ATO issued Mr F an amended assessment and remitted all penalties.

DEBT COLLECTION

In 2008 debt collection accounted for about 20% of tax complaints, second only to complaints about lodgement and processing.

The most common debt complaint issues were:

- payment arrangements (25%)
- actions of external debt collection agencies (13%)
- debt waiver or write-off (11%)
- insolvency action (8%).

Other debt complaint issues included the use of garnishee notices, director penalty notices, legal action, applications for release from debt and the ATO offsetting refunds against debts.

In most cases the appropriate outcome was the provision of a better explanation. In some cases our investigations identified mistakes that had been made which led to the ATO deciding to reduce the outstanding amount, as the case study *Resolving incorrect debt records* shows.

Our standard approach to complaints about tax debts is that, even if the debt is disputed, we advise the taxpayer to pay the debt if they are able to, or to contact the ATO to try to agree a payment arrangement. This approach prevents the taxpayer from facing recovery action by the ATO or incurring interest charges on the debt.

The ATO's debt collection activities are conducted in accordance with its Compliance Program, which is published

annually. This program is based on a compliance model aimed at encouraging and rewarding voluntary compliance and applying the full force of the law only where people seek to abuse the system. The ATO's strategy is to promote early engagement with taxpayers with tax debts.

External debt collection agencies

In 2007–08 the ATO was allocated an additional \$42 million over four years to establish and pay for the services of a panel of external collection agencies to assist with the collection of debt, including tax debts over two years old and employer superannuation guarantee charge debts. The ATO commenced referring selected debts to external collection agencies from October 2007. This change generated a number of complaints about the referral of debts to such agencies or their actions in seeking to recover funds on the ATO's behalf, and accounted for about 13% of debt collection complaints.

Complainants raised concerns that they were not aware that they had a debt or that the ATO could refer it to an external debt collection agency. Many thought there had been a mistake: if they owed a debt why had the ATO not asked them to pay before referring the debt to an external collection agency? Many were worried that the collection activity could have an adverse impact on their credit rating or that the ATO's action might be a breach of their privacy.

We reviewed the ATO's policies and procedures for referring debts to external

RESOLVING INCORRECT DEBT RECORDS

CASE STUDY

Ms G complained that she was being asked to pay tax on income from her ex-partner's business despite court orders showing that she was to have no further part in the business. Ms G provided this information to an ATO auditor but he failed to update ATO records correctly, resulting in continued action to recover the debt from Ms G.

As a result of our investigation, the ATO corrected the situation so that Ms G would no longer be pursued or contacted in relation to her ex-partner's tax liabilities.

EXPLAINING REFERRAL OF DEBTS

CASE STUDY

Ms H complained that she had received a 'letter of demand' from an external debt collection agency which referred to a tax debt of \$189 from 2006. Ms H had not received any advice about this debt previously. She paid the amount straight away but was upset that the ATO had not contacted her about the debt earlier, including when she lodged her tax returns. She was also concerned about the impact of debt outsourcing on her credit rating and privacy.

As Ms H's financial circumstances had changed she had ceased needing to make PAYG instalment payments. Ms H thought that she had paid all instalments due. The ATO provided evidence of the debt still being outstanding but it appeared that the notice about the instalment may have been sent to her previous address.

Our investigation confirmed that Ms H's debt related to her PAYG instalment account. On advice from the ATO, we advised Ms H that her credit rating would not be affected and that provision has been made for appropriate privacy and security arrangements.

debt collection agencies. While it is understandable that people are concerned about their credit rating and privacy, outsourced debt collection arrangements include privacy and security safeguards and do not impact on taxpayers' credit ratings. We confirmed that ATO correspondence to taxpayers advises them of the privacy and security safeguards and that their credit rating is not affected. The ATO correspondence also advises taxpayers that the referral of debts to external collection agencies reflects a government policy decision. The case study *Explaining referral of debts* shows how we were able to clarify the reason for a debt and address a person's concerns.

Debt waiver or write-off

Debt waiver has previously been a common complaint issue for the office. Complaints this year also highlighted concerns about the ATO's management of debts through the use of its discretion to write off debts.⁶

The term 'write-off' causes confusion for some taxpayers. Unlike the commercial meaning of the term, write-off reflects a

decision not to pursue a debt for a period of time and can be reversed if and when the ATO considers that the person's circumstances have changed. The decision to reverse a debt write-off is referred to as debt re-raise.

In some cases we investigated, complainants said that they were not aware that they had a debt that had been written off and which could be re-raised. The trigger for a debt being re-raised was receiving an income tax assessment of over \$500 credit. In some cases taxpayers were asked to pay general interest charge (GIC), a daily compounding penalty interest rate, applied back to the write-off date. In others, the GIC amount was remitted automatically. In one complaint, the ATO re-raised debts dating back over 25 years and written off over 12 years earlier, and charged interest for the period since the debts were written off, as the case study *25-year-old debt re-raised* shows.

As a result of these complaints, the Ombudsman's office conducted an own motion investigation into the ATO's administration of re-raised tax debts. This is discussed in more detail in chapter 4.

⁶ Where the Tax Commissioner (or his or her delegate) makes a decision that there is justification for not pursuing a debt, the debt effectively becomes dormant. This is commonly referred to as a debt 'write-off'. A debt to the Commonwealth can also be waived (s 34 of the *Financial Management and Accountability Act 1997*). A debt that is waived cannot be reinstated and is extinguished for all time.

25-YEAR-OLD DEBT RE-RAISED**CASE STUDY**

Ms J, a disability pensioner for over 27 years, returned to part-time work in 2005–06. In 2006–07 her tax return yielded a credit of over \$800 from an income of about \$6000. Instead of receiving this amount, the credit was offset against a debt of just over \$2000 and an additional \$4000 in GIC.

Ms J complained that she did not think she had a debt. The ATO advised that the original debt related to her 1981, 1982 and 1985 income tax assessments and a late payment penalty. Ms J wanted to know why the ATO had not contacted her about the debt before then, especially when she received a tax refund of \$153 the year before.

The ATO advised that Ms J's debt had been written off as not economical to pursue in 1994 (without notifying her) and that the ATO's policy was not to re-raise debts where the refund was less than \$500. The ATO subsequently remitted the GIC and the late payment penalty imposed. The ATO was not able to provide copies of the notices of assessment related to the original debts or microfiche records of the original account postings to substantiate the debt. The ATO advised that it was legally able to recover the debt even though it could not supply copies of the original notices of assessment.

Insolvency

We regularly receive complaints from taxpayers who are undischarged or recently discharged bankrupts. Commonly, complaints range over a variety of issues that relate to the perceived role or conduct of the ATO during the bankruptcy period. In 2008 some 8% of our debt complaints related to bankruptcy.

We have observed that complainants are often unsure of the bankruptcy process

and how it relates to their particular circumstances. This often indicates a difficult relationship with their trustee coupled with a belief that the ATO has significant input into the actions of the trustee. A more detailed explanation of the role of the trustee and the ATO gives the taxpayer enough information to engage more meaningfully with the ATO and trustee in addressing their concerns, as the case study *Understanding the discharge process* illustrates.

UNDERSTANDING THE DISCHARGE PROCESS**CASE STUDY**

Ms K complained that, despite being discharged from bankruptcy, the trustee of her estate was still pursuing an outstanding tax debt. Ms K complained that she had settled her tax debt directly with the ATO and was unsure why her trustee was still pursuing the debt.

Our investigation into the ATO's actions also involved liaising with the Insolvency and Trustee Service Australia. We established that Ms K had not settled the tax debt with the ATO. Even though Ms K had been through the bankruptcy process and had attempted to deal with these issues for a number of years, she was still unsure of bankruptcy procedures and how they applied in her circumstances.

We were able to assist Ms K by explaining to her that under certain circumstances her trustee could continue to hold an interest over her estate even though she was discharged from bankruptcy. This situation created some confusion for Ms K. Although she was no longer personally liable for the debt, her estate was still liable, which was why her trustee was still able to hold an interest over her estate. In explaining this to Ms K we were also able to provide her with a more detailed explanation of the role of the trustee, the bankruptcy process and the ATO's role as an unsecured creditor.

TABLE 3 Superannuation complaints, 2007 to 2008

| Complaint topic | Percentage of complaints received | |
|--|-----------------------------------|------|
| | 2007 | 2008 |
| Eligible termination payment | 5% | 10% |
| Superannuation co-contribution | 12% | 12% |
| Superannuation guarantee (employee complaint) | 46% | 39% |
| Superannuation guarantee charge (employer complaint) | 28% | 24% |
| Superannuation surcharge | 9% | 16% |

Complaints of this nature may increase in the coming year if the current financial situation causes more businesses to become insolvent.

SUPERANNUATION

In 2008 superannuation was the third most common complaint topic. Table 3 shows the changes in the nature of complaints we receive. The biggest changes are a drop in complaints about superannuation guarantee from both employees and employers and an increase in complaints about superannuation surcharge.

The decrease in the superannuation guarantee complaint numbers probably reflects improved processes the ATO has put in place as a result of additional funding provided in the May 2007 budget. It also probably reflects changes to the superannuation guarantee late payment offset, introduced in June 2008. Previously employers who paid their superannuation guarantee to the superannuation fund more than one month late were also required to pay the same amount to the ATO. They were unable to offset the payment they made to the fund against their superannuation guarantee charge assessment. From June 2008 employers have been able to do this, eliminating the superannuation guarantee 'double payment' problem.

In recent years one of the main concerns raised in complaints by employees about superannuation guarantee has been delay in ATO actions and lack of information from the ATO about progress in collecting unpaid superannuation guarantee. The ATO introduced a new suite of letters to provide regular updates to employees about the ATO's progress in obtaining unpaid superannuation guarantee. Unfortunately the ATO experienced systems problems with these letters throughout 2008. We continued to receive a number of complaints from employees that they had not received advice from the ATO about the collection of the guarantee. The case study *No contact in seven months* shows one such example.

The ATO systems problems also mean that employees do not receive advice from the ATO when the employer debt has been established but no further action can be taken, or the debt has been collected.

The ATO has advised this office that it is addressing system errors which have prevented the letters issuing.

Until the ATO resolves its systems problems and improves the timeliness of its investigations and associated advice to employees, we expect to continue to receive complaints about lack of communication.

NO CONTACT IN SEVEN MONTHS**CASE STUDY**

Mr L complained to us in September 2008 because he had not received any information from the ATO about its progress in recovering his unpaid superannuation guarantee.

When we contacted the ATO, we were advised that Mr L first complained about his unpaid superannuation guarantee in July 2007. The ATO sent him a letter acknowledging his complaint and providing a general outline of the process. This letter also advised Mr L that the next step in the process was that within two to four months the ATO would start investigating his employer. In February 2008 the ATO sent Mr L a letter advising that they had started the investigation. The letter advised Mr L that investigations can sometimes take up to twelve months but that if an investigation took more than four months, the ATO would contact him again to provide him with an update. It did not.

As a result of our contact with the ATO, we were able to advise Mr L that the ATO's investigation was continuing.

SUPERANNUATION SURCHARGE MISUNDERSTANDING**CASE STUDY**

Mr M complained to us that he had received an overdue payment reminder from the ATO in relation to a superannuation surcharge assessment. Mr M believed that the surcharge debt had been paid out of funds held by his previous superannuation fund.

When we investigated Mr M's complaint we found that the original superannuation surcharge assessment notice had been issued to Mr M's superannuation fund in February 1998. Unfortunately this was after Mr M had withdrawn his money from the fund. The fund paid Mr M's surcharge in 1999. In 2005 the fund lodged an assessment variation advice advising that it ceased holding Mr M's funds in 1998. As a result of this advice, in 2006 the fund received a refund of the original surcharge debt it had paid and in 2007 the ATO issued an assessment to Mr M for the original surcharge amount.

The ATO advised us that assessment variation advices are generally required to be sent to the ATO no later than seven days after the due date for payment of the assessment. They were unable to provide an explanation for the apparent delay of six years in the lodgement of this advice.

Given the difficult economic circumstances already being experienced by some businesses, unpaid superannuation guarantee will continue to be a vulnerable area of tax administration and we expect to see more complaints about this in 2009.

In 2008 we completed an informal review of the ATO's administration of the superannuation guarantee. This review is discussed in more detail in chapter 4.

The increase in complaints about the superannuation surcharge appears to be

largely caused by people accessing their superannuation and realising their fund has not paid the superannuation surcharge. The problems appear to stem from timing issues and the ability of superannuation funds to lodge assessment variation advices at any time. When the ATO receives these advices, it refunds the surcharge to the fund and issues an amended surcharge assessment to the taxpayer. This is illustrated in the case study *Superannuation surcharge misunderstanding*.

TAXPAYER INFORMATION

Taxpayers rightly expect the ATO to exercise proper care in managing personal information. The ATO's response to information security and compromise was an emerging area of complaint in 2008, with cases involving tax file numbers (TFN), Australian Business Numbers (ABN) and the updating of contact details.

Problems raised about ATO actions included:

- mistaken identity issues where taxpayers with similar details are incorrectly linked through data-matching activities
- concern about the ATO's investigation of the cause of TFN compromise and suspected fraud—people complained that not enough was done or they felt as if they had to prove their innocence
- delays in the ATO responding to information provided about mistaken identity
- attitude to tax file compromise or information breach—some taxpayers felt that the ATO did not seem to regard the situation as important
- concern about the adequacy of ATO security arrangements

- the time taken for the ATO to provide a replacement TFN, leading to a delayed tax refund
- contact details updated on one set of accounts but not on another.

The case study *Incorrect date of birth* illustrates how a simple error can cause difficulties and frustration for taxpayers.

Tax file number compromise

Cases involving TFN compromise and suspected fraud are complex. By their nature they require the ATO to distinguish between legitimate taxpayers and fraudulent parties, and to make difficult decisions about the most effective allocation of resources to investigations.

TFN compromise can be distressing, as illustrated by the case study *Compromised TFN*. Income tax returns cannot be lodged until a new TFN is issued and, as TFNs are often lodged with other agencies, those agencies must also be notified. In one complaint an unresolved TFN compromise meant the complainant was unable to negotiate related debt issues with Centrelink.

INCORRECT DATE OF BIRTH

CASE STUDY

Ms N rang the ATO for some information about her tax affairs. The ATO, correctly, asked Ms N for proof of identity. As part of this proof of identity checking, Ms N was required to provide her date of birth. The date of birth Ms N provided did not match the date of birth on the ATO's records.

Ms N contacted this office after trying, unsuccessfully, to correct her date of birth details. Ms N had been asked by the ATO to send written advice to correct her date of birth but she felt she should not need to do this because she had lodged many returns with her correct date of birth.

When we investigated, the ATO advised us that they found that the error had occurred in the previous year. The ATO agreed that, based on how the error occurred and information contained in her returns, it would correct their records without Ms N needing to supply any additional information.

COMPROMISED TFN**CASE STUDY**

Mrs O was contacted by the ATO and told she had omitted income from a pension payment and a bank account on her 2006 tax return.

Mrs O found she had to provide evidence that she was not the recipient of this income. She contacted the pension provider and established that she had not received any benefit from it.

Mrs O engaged the assistance of a solicitor and this resulted in the issue of a new TFN for Mrs O on the basis that her TFN was compromised. Mrs O was angry at the inconvenience of having a new TFN and had found her experience with the ATO intimidating and bewildering.

When we investigated, the ATO advised that it had mistakenly attributed to Mrs O the income of another taxpayer with the same maiden name as Mrs O. Despite Mrs O pointing out the difference in their dates of birth and that her age made her ineligible for the pension in question, she was unable to resolve this matter in her contacts with the ATO.

The ATO apologised to Mrs O and paid her compensation for her solicitor's fees under the Compensation for Detriment caused by Defective Administration (CDDA) scheme.

CHAPTER 4

PROMOTING GOOD TAX ADMINISTRATION

A key objective of the Taxation Ombudsman is to promote good tax administration that is accountable, lawful, fair, transparent and responsive. We pursue this objective in a variety of ways:

- identifying systemic problems from analysis of the complaints we receive and undertaking own motion investigations or reviews
- recording administrative deficiency—at an agency level this process formally draws attention to administrative problems identified in individual complaints
- providing recommendations and working jointly with the ATO to devise remedial strategies for systemic problems
- outreach activities, including the promotion of best practice principles and support for developing Ombudsman offices in our region, as regards oversight of tax administration.

We meet regularly with the ATO to discuss complaint handling and potential systemic problems. Throughout 2008 we also presented at ATO conferences, explaining our role and promoting good complaint handling practices to ATO staff.

OWN MOTION INVESTIGATIONS

Part of our role as Taxation Ombudsman is to use the complaints we receive to identify potentially systemic problems in tax administration. When we identify these issues, we can undertake an informal review or initiate an own motion investigation.

As the ATO and this office also regularly exchange information about complaints—the number, subject matter,

time taken to resolve complaints and systemic issues identified as part of complaint management—we can also suggest an issue be added to the ATO's systemic register.

In 2008 we commenced work on three own motion investigations:

- the ATO's processes and practices for re-raising debt
- the operation by several agencies of the CDDA scheme
- the ATO's use of its unannounced access powers.

We also finalised an informal review of aspects of the superannuation guarantee.

Re-raising written-off tax debts

We initiated this investigation as a result of complaints about re-raised tax debts. In these cases complainants said that they were not aware that a written-off debt was recorded against them and could be re-raised. The trigger for a debt being re-raised was receiving an income tax assessment of over \$500 credit. In some cases taxpayers were asked to pay GIC, applied back to the write-off date. In others, the GIC amount was remitted automatically.

Our investigation identified a number of areas where the ATO could improve its practices, and in particular:

- improving communication with taxpayers
- more comprehensive recording of reasons for decisions
- ensuring that the criteria used for deciding to re-raise debts are clearly related to whether the debt is economical

to pursue and whether it is efficient, effective and ethical to do so

- monitoring the impact of the ATO's bulk write-off process to ensure it is operating appropriately.

The ATO agreed or partially agreed to all the recommendations in our report.

We published the report in March 2009 and it is available on our website www.ombudsman.gov.au.

Administration of decision-making under the CDDA scheme

Each year the Ombudsman's office receives more than 200 complaints about the way in which agencies deal with claims for compensation, including CDDA claims. The office may also recommend that compensation be paid through the scheme. We focused this investigation on the approach and practices of the agencies which deliver services and deal with significant numbers of compensation claims, namely Centrelink, the Child Support Agency and the ATO.

The aim of the investigation was to:

- gauge the level of support for the CDDA scheme within agencies
- highlight the important role that the CDDA scheme plays in providing a remedy for those adversely affected by defective administration
- highlight the Ombudsman's role in supporting the CDDA scheme and in dealing with complaints about agency decision-making in CDDA cases
- provide guidance on the elements of a good system for processing CDDA claims
- identify any systemic problems in the handling of claims and the structure and content of the scheme itself.

Our report will be published by June 2009.

Unannounced access powers of the ATO

While the Taxation Ombudsman receives very few complaints in relation to the ATO's use of its unannounced access powers, the purpose of this investigation is to foster good public administration by providing independent oversight of the use of a coercive power.

This view was supported by the Senate Standing Committee on the Scrutiny of Bills which formed the view that the 'external scrutiny of the operations of the ATO should occur as a matter of course'.⁷ The Committee considered the Commonwealth Ombudsman well placed to provide this scrutiny.

This report of this investigation will be available in 2009–10.

Superannuation guarantee internal review

The Taxation Ombudsman commenced a review of the administration of the superannuation guarantee in July 2006. Before we finalised our report, in the May 2007 budget the Government announced changes to aspects of the administration of superannuation and provided additional funding to address the ATO's backlog in actioning employee notifications and collecting the superannuation guarantee charge. As a result of the budget initiatives, we considered our report was no longer pertinent and revised the review's scope.

The revised scope concentrated on the two main sources of employee complaints to us about superannuation guarantee:

- delay in collecting unpaid superannuation guarantee
- insufficient information provided about the collection of unpaid superannuation guarantee.

Table 4 shows the ATO's performance against its target timeframes for completing employee notifications.

⁷ Senate Standing Committee on the Scrutiny of Bills, *Twelfth Report—Entry, Search and Seizure Provisions in Commonwealth Legislation*, 4 December 2006.

TABLE 4 ATO targets for completion of employee notifications, 2007–08

| Target timeframes | 2007–08 achievement |
|---|---------------------|
| 100% of new employee notifications commenced within 28 days | 16% |
| 50% of employee notifications have compliance action (excluding debt collection) completed within 4 months | 75% |
| 90% of employee notifications have compliance action (excluding debt collection) completed within 12 months | 90% |

In its response to our review, the ATO advised that by 1 October 2009 they plan to be actioning all employee complaints within 28 days of receipt. The ATO also advised that it has commenced a project to review the process for collecting unpaid superannuation guarantee to identify efficiencies and improvements.

While the ATO is able to provide performance information about its active compliance activities, it is unable to provide performance information on the final outcome of employee complaints, for example:

- whether the superannuation was recovered in full
- the percentage of the amount owed that the employee received
- the number of employees who receive nothing.

The ATO advised us that this shortcoming in the current system will be addressed with the implementation of the ATO's Change Program.

The Commissioner of Taxation agreed in principle with our recommendations that the ATO:

- continue reviewing the processes and resources used to increase the timeliness of follow-up and finalisation of employee notifications
- pending the full implementation of the change program, review its business processes to ensure that employees

receive advice when no further action is being taken

- ensure its new systems are able to provide management and client information for the end-to-end process, and in particular the collection of unpaid superannuation guarantee.

The Commissioner also advised that the ATO is committed to investigating all employee complaints about lack of payment or insufficient payment of superannuation guarantee.

We will continue to monitor this area of taxation administration and will ask the ATO for regular updates.

ADMINISTRATIVE DEFICIENCY

The Ombudsman's office has adopted a formal policy for recording administrative deficiency in finalising a complaint investigation. The policy is explained in a fact sheet, *Administrative Deficiency*, available on our website.

Recording administrative deficiency draws agency attention to a matter of concern arising from the investigation, with a view to improving administration. Often complainants are concerned beyond the immediate resolution of their individual problem and wish to be assured that attention is paid to the broader factors that gave rise to the problem and their complaint.

Some of the recommendations we made to the ATO in relation to findings of administrative deficiency included that the ATO should:

- remind staff of the need for correct proof of identity checks when providing TFNs over the phone
- remind staff of the need for correct proof of identity checks when updating taxpayer details
- review the policy and procedures for providing information to outsourced debt collection agencies
- review the complaint handling procedures between the ATO and the outsourced providers
- review direct debit arrangements to prevent continued debiting of a taxpayer's bank account when the taxpayer's tax account is zero or in credit.

This year we implemented a process of asking the ATO to report to us every six months on the implementation of our recommendations. The first of these reports was completed in late March 2009.

Taxpayer information

An administrative error can cause distress to an individual taxpayer, especially when the ATO is pursuing payment of a debt for which the person is not responsible. We recorded administrative deficiency in some cases where the resolution of the situation was made difficult for the taxpayer and pointed to a lack of thoroughness by the ATO in managing taxpayer information. Three examples follow in the case studies *TFN incorrectly updated*, *Mistaken identity*, and *Proof of identity checking failed*.

TFN INCORRECTLY UPDATED

CASE STUDY

Mr P complained to our office that he had received letters of demand for payment of a debt from an external debt collection agency acting for the ATO. He did not believe that the debt was his and found the date of birth provided against the TFN was not his. Mr P had contacted both the ATO and the debt collection agency in several unsuccessful attempts to resolve the matter.

Our investigation revealed that the ATO had incorrectly updated another TFN with Mr P's address. The incorrectly updated TFN belonged to a third party with the same name and with the tax liability which had been attributed to Mr P.

The ATO review process failed to identify discrepancies during the process of updating the TFN. Information was not confirmed with the taxpayer or their representative prior to changing information on ATO systems. Unfortunately, the matter was compounded by the ATO's failure to action or respond to correspondence from Mr P about this matter.

We made the following recommendations:

- staff should be reminded about the need for correct proof of identity checks when updating TFNs
- the ATO should review the policies and practices for checking information supplied to debt collection agencies
- responsive complaint handling procedures between the ATO and its outsourced providers should be developed.

The ATO agreed with our recommendations.

MISTAKEN IDENTITY**CASE STUDY**

Mr Q complained that the ATO was pursuing him for debts which belonged to a third party of the same name. The correspondence the ATO sent to Mr Q included the ABN and copies of the other party's running balance accounts.

Although Mr Q informed the ATO of its mistake he continued to receive correspondence intended for the other taxpayer for several months.

The ATO explained that the initial error occurred when the third party's address was automatically updated due to a returned mail indicator on its systems. The ATO uses available databases to locate an appropriate address, without contacting the taxpayer. This process is automated and performs up to 30,000 address updates each year.

We understand the need for automated processes in an agency dealing with such a large number of clients and transactions. However, in response to Mr Q's complaint, the details were corrected on the third party's business address without correcting the postal address and Mr Q continued to receive the other taxpayer's correspondence.

The ATO assured us that the process for updating addresses was being reviewed to ensure that Australian Electoral Commission data is located for all cases and matched to the correct client.

The ATO undertook to discuss with staff the need to ensure all actions are completed and in a timely manner.

The ATO acknowledged that the breakdown in communication and process led to an inadvertent disclosure of potentially sensitive information to the wrong party. On our recommendation, the ATO wrote to the third party to apologise and offer him the opportunity to take out a new ABN and TFN.

PROOF OF IDENTITY CHECKING FAILED**CASE STUDY**

The ATO provided Mr R's TFN number to another taxpayer with the same name when the other taxpayer rang the ATO to obtain his TFN. The officer taking the call used insufficient proof of identity checking and provided the second taxpayer with Mr R's TFN. The second taxpayer then used Mr R's TFN to lodge his tax return. When the compromise was discovered, a delay in resolving the matter occurred as the ATO undertook an investigation and failed to recognise that the compromise had occurred due to an ATO error.

The ATO accepted our recommendation to remind staff that they should not change a taxpayer's identification details without receiving confirmation from the taxpayer or their representative that the change should be made.

Direct debit processes

When a taxpayer makes a direct debit arrangement with the ATO the onus is on the taxpayer to revoke the arrangement if their circumstances change. Such changes may include the taxpayer paying the amount out in full. We investigated a complaint where the amount of debt had been paid in full by the taxpayer—who was in a payment arrangement with the ATO—but a further payment was drawn by the ATO from the taxpayer's bank account. The ATO agreed to review its direct debit arrangements to prevent continued debiting of taxpayer bank accounts when the taxpayer's tax account is zero or in credit.

Complexity of taxation legislation

Many of our complaints are remedied by a better explanation. While there are many reasons why communication between the ATO and taxpayer may break down, people are not assisted by information which is too technical for them to understand. In one case we felt the advice given by the ATO in response to a query regarding superannuation surcharge was not sufficiently clear for a reasonable person to understand.

The ATO responded by taking steps to address what it identified as a lack of staff skills in this area. It provided additional coaching, with an emphasis on the need to fully understand the taxpayer's query, and how to provide a clear, concise answer. The superannuation business line also introduced procedures requiring officers to contact taxpayers by telephone prior to providing a written response and ensuring more individual responses are provided to taxpayers.

Unreasonable delay

Complaints about processing delays are amongst the most commonly received by our office. There are many reasons why processing delays occur in relation to taxation activities. Often an explanation of these delays is all that is required. The ATO is accountable for its standards of timeliness and when we found an area of administrative deficiency related to unreasonable delay, the business line concerned responded positively. It implemented improvements to case management processes including:

- reports on all aged cases
- the allocation of complex cases to suitably experienced staff
- the establishment of stronger links with areas of greater technical expertise to assist with highly complex cases.

OUTREACH

The Ombudsman has a keen interest in the creation and maintenance of strong ombudsman and allied institutions in the Pacific region. The Pacific Plan, endorsed by the Pacific Islands Forum leaders, promotes strategies for regional cooperation and integration in approaching the challenges faced by Pacific Island countries. Activities include officer exchange and placements between offices for the sharing of skills, competencies and experience in ombudsman work.

In February officers from the office of the Ombudsman of the Cook Islands spent some time in our Canberra office as part of the regional plan to strengthen and develop ombudsman practices. The Tax Team participated in useful discussions with the visitors about a range of issues involved in handling taxation complaints.

CHAPTER 5

OUTLOOK

TAXATION ENVIRONMENT

Our office has an interest in the Government's review of Australia's tax system.

As we highlighted when we looked back at thirty years of taxation complaints in last year's *Taxation Ombudsman Activities* report, reform of the taxation system often brings the additional pressure of uncertainty. These lessons from the past have also shown that certainty about the administration of taxation law is a key expectation of the community.

Complaints also tend to increase in times of program and administrative change. These complaints can provide valuable feedback about the impact of the change and any unanticipated problems.

REGULATION OF TAX PRACTITIONERS

This office commends the aims of the new regulatory system to reform the registration and regulation of tax practitioners under the *Tax Agent Services Act 2009*. The key elements, listed below, should facilitate this:

- the establishment of a national Tax Practitioners Board to replace the existing state-based Boards
- a wider definition of 'tax practitioner' to include tax agents and their nominees as well as Business Activity Statement (BAS) service providers
- a legislated Code of Professional Conduct to govern the provision of services by tax agents and BAS service providers, under which the Board may issue written guidelines for the interpretation and application of the Code

- a wider and more flexible range of disciplinary sanctions available to the Board, including applying to the Federal Court for civil penalties for specified significant misconduct by tax practitioners, or for injunctions or orders about practitioner conduct
- 'safe harbour' protection for taxpayers from penalties for making a false or misleading statement where a taxpayer demonstrates that they have taken reasonable care over their tax affairs by engaging a registered tax practitioner and by providing the practitioner with all relevant information.

Over the years this office has developed a productive working relationship with the various Tax Agents' Boards and we look forward to working with the new national Tax Practitioners Board.



Prof. John McMillan and the Inspector-General of Taxation, Mr Ali Noroozi.

INSPECTOR-GENERAL OF TAXATION

The Inspector-General of Taxation consults with the Taxation Ombudsman about his forward work program and on his specific reviews. We look forward to expanding our consultation with the new Inspector-General of Taxation, Mr Ali Noroozi, in 2009.

FORWARD WORK PROGRAM

In 2009 we will continue to focus on complaint handling and the identification of systemic problems. In 2009 we will:

- evaluate our assisted transfer process
- finalise our investigation of the ATO's procedures and practices in its use of unannounced access powers
- publish our report on the administration of decision-making under the CDDA scheme by Centrelink, the Child Support Agency and the ATO.

In mid-2009 we will develop our forward work program for 2009–10. The program will be available on our website from July 2009.

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