



CPA Australia

Review of certain aspects of self assessment

Submission

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Introduction

1. As Australia's largest professional body, with over 100,000 members, CPA Australia welcomes the opportunity to provide input into the current review of certain aspects of the income tax self assessment regime.
2. A major problem with the current tax system is the complexity of the law (which appears in part to be a response to self assessment) and the associated heavy compliance costs arising as a result. This imposes a heavy burden on practitioners and their clients, particularly those small and medium enterprises (SMEs) that generally do not have adequate resources to cope with the current system.
3. An adequate response to this situation would, of course, have to address wider issues which are outside the scope of this review. We simply mention this point here for the record so that there is no misunderstanding of the task that is still outstanding.
4. CPA Australia also acknowledges the Government's commitment to community involvement in developing a better tax system for Australia in accordance with the consultation model announced by the Treasurer in May 2003.
5. In the interests of furthering the tax reform debate, this submission will be made available to the general public via our web site at www.cpaaustralia.com.au.
6. CPA Australia would like to acknowledge the contribution made by the members of its Taxation Centre of Excellence and the Board Tax Practice Committee, especially Peter Dowling, Steve Allan and Maguy Nakhil, in the preparation of this submission
7. The format for our responses follows the format used in the Treasury discussion paper.

2. Rulings and other Tax Office Advice

2.A Is Tax Office advice sufficiently accessible?

8. The main problem in this area at present relates to private binding rulings (PBRs). In response to the Sherman Report in 2000, the ATO now publishes suitably edited PBRs on a register located on its website, but this is done primarily for integrity purposes. The recipient of a PBR can access that PBR on the register because the recipient is given a PBR number by the ATO for this purpose. However, the lack of a more general search facility for other taxpayers means that it is not practically possible for them to access the register to use PBRs as a guide to how the tax law might apply to their own situation.
9. The ATO's approach in this area is inconsistent with the recommendation in the Sherman Report on 'Publication of Private Rulings' and also with the Commissioner's initial response to the recommendation. While the Commissioner noted that publication of PBRs could give them a status that they do not have in the sense of being seen as generally binding forms of advice, he stated that greater weight would be given to transparency and that the PBRs should be published in future.
10. In the event, the ATO's failure to implement its earlier promise to provide wider taxpayer access to PBRs has been partially ameliorated by the development of a separate product known as ATO Interpretive Decisions (ATOIDs). However, there is still some concern that ATOIDs do not cover as wide an area as PBRs and also that they are not binding on the ATO.
11. In the last few years, the ATO has published a range of additional information/advice type products (overviews, guides, fact sheets, etc), particularly to assist individuals and small business taxpayers to obtain a better understanding of their obligations, although in some cases medium and large businesses and their advisers have been assisted in this way (such as through the release of the consolidation reference manuals). This development is welcomed by CPA Australia, but further clarification is required from the ATO of the relationship of such products with the ATO's main rulings products (ie. PBRs and public rulings), the extent to which the advice/information in such products is binding and any penalty/interest implications of not following such products.

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

12. The ATO needs to appropriately clarify the extent to which Part IVA may apply to a particular arrangement wherever possible. Such clarification clearly needs to go beyond merely noting that Part IVA may apply. This approach is clearly necessary in a self-assessment environment to provide appropriate certainty to taxpayers. It is also relevant to assist tax practitioners from a professional indemnity standpoint. There is also a need for the ATO to issue a general ruling on the Part IVA provisions, particularly in the light of relevant court cases in this area.

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

13. The ATO is now managing the issue of PBRs better than in the past but undue delays are still common, particularly in the GST area where timeliness is more important given that GST is a transactions based tax. For example, the ATO has a 21 day response time specified in the Taxpayers' Charter for meeting GST PBR requests but if the ATO requires additional information to finalise its response then the 21 day period starts again from the date of this request. This continual reset of the 'clock' can enable the ATO to claim that it is meeting Taxpayers' Charter standards notwithstanding that taxpayers may be dissatisfied with the outcome.
14. The provision of accurate and timely advice to taxpayers by the ATO is essential for the effective functioning of the self-assessment system. The ATO needs to be vigilant in ensuring that taxpayers are fully aware of the information required to be provided to enable a PBR to be issued since taxpayers are generally reluctant to deny the ATO more time for fear of getting an adverse ruling as a result. It is noted that the initiatives recently undertaken by the ATO in this area (for example, see measures advised to the National Tax Liaison Group (NTLG) at its 25 September 2003 meeting) are a step in the right direction but this needs to be maintained and also extended to other forms of ATO advice including lower level queries coming through the ATO's telephone services.
15. Moves to facilitate taxpayer access to the PBR register (refer above) could reduce the need for some taxpayers to seek PBRs and thus serve to reduce delays. Proposed reviews by the Inspector-General of Taxation (IGT) into various aspects of the rulings system (including delays in the issue public rulings) could also be of benefit to taxpayers.

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

16. Generally speaking, we are quite satisfied with the accuracy of ATO advice in rulings and fact sheets, etc. There are occasions, of course, where we do not agree as, for example, is the case with the ATO's views on the application of the Part IVA provisions to personal services businesses (PSBs), but we note the agreement with the ATO to resolve the relevant issues in this area via appropriate test cases in the courts. The same level of confidence does not exist, however, in respect to less formal and/or lower level advice provided by the ATO via its call centres, etc where tax agents are often reluctant to rely on such advice. This problem is often aggravated by the failure of ATO call centre staff to properly identify themselves, notwithstanding ATO policy that they do so.

2.E 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 exist?

17. Many may identify the loss rate of the ATO in the courts on major contentious issues as evidence of an unwelcome pro-revenue bias. However, we make two points on this matter:

- for the integrity of the system, taxpayers should understand that there is a need to protect the revenue and a bias is to be expected;
- we do not see a need for any independent evaluation of ATO advice beyond that which already exists via external representation on rulings panels and the various appeals mechanisms, etc at this stage.

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

18. ATO rulings should be as succinct as possible in order to assist taxpayers to more easily understand the ATO's position on major law interpretation issues. For this reason, we do not generally favour rulings setting out contending positions. Where anomalies arise, however, there should be a mechanism to facilitate administrative fixes (as in the recent family trust election situation) due to the lengthy delays associated with obtaining legislative amendments. If present arrangements are inadequate for this purpose then perhaps they should be extended to allow 'extra-statutory' concessions of the kind available under United Kingdom tax law.

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

19. The ATO needs to understand that when they give advice then the recipients will generally rely on it. This is usually the case regardless of whether such advice is legally binding on the ATO or not. It is imperative, therefore, that taxpayers and their advisers are fully aware of any adverse implications that might arise from following non-legally binding ATO advice. For example, where taxpayers are potentially exposed to additional primary tax and interest in such situations, the GIC charged should be limited to the benchmark rate (ie. excluding the 7% margin) as occurred in the recent case of the ATO's consolidation reference manuals.
20. This approach should also be followed in relation to ATO phone advice. The integrity of such advice could be enhanced by taping the advice given to the recipient and assigning a reference number to it consistent with the practice currently being followed in some large private sector call centres.

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

21. The current boundary between legally binding ATO advice and other advice is generally reasonable subject to the change proposed above in respect to minimising the adverse consequences for taxpayers in following non-legally binding advice. In this event, such advice could be regarded as effectively being administratively binding on the ATO. However, there is a strong case for ATO Interpretative Decisions (ATOIDs) to be legally binding on the ATO given that they are required to be followed by ATO officers and are based on prior PBRs issued by the ATO.

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

22. Given that PBRs are legally binding on the ATO and the recipient is fully aware of the ATO's position on the issue at hand, it is appropriate that the present position in relation to the application of penalties/interest to taxpayers who fail to follow a PBR be maintained.

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

23. See response to 2.I.

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

24. The process could be improved by adopting the RBT proposal for allowing the taxpayer to provide new facts or evidence to the Commissioner after the issue of a PBR but prior to judicial review. This approach would enable taxpayers to clarify their position so that all necessary information is presented to support the case for review of the ATO's decision.

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

25. We do not support the concept of the ATO charging for the provision of certain advice (such as PBRs) since the volume of ruling requests simply reflects the complexity of the existing law. Moreover, taxpayers already incur significant costs in applying for PBRs, all of which is on top of their primary tax obligations, not to mention the plethora of interest and penalty amounts that may also arise.

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

26. The question of a wider role for tax practitioners in providing advice on behalf of the ATO should be deferred pending finalisation of the current review of the legislative framework for tax agents. Any move in this direction could raise complex issues and perhaps further exacerbate the confusion among many taxpayers as to the precise role of agents. In the meantime, as noted above, the best approach may be for the ATO to improve the delivery and integrity of its existing non-binding advice via its call centres, emails and FAQs, etc on its website.

3. Review and Amendment Of Assessments

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

Should the eligibility of a very small business be based on whether it has chosen to be a Simplified Tax System (STS) taxpayer?

What exclusions from a two year period would be appropriate?

27. Our view is that the 2 year amendment period (currently restricted to Shorter Period of Review or SPOR taxpayers) should be generally extended to a non-business individual and a small business eligible for the STS (ie. average annual turnover less than \$1m). Exclusions could apply where fraud/evasion is involved and also for private company shareholders and trust beneficiaries.
28. For other small businesses (annual turnover less than \$20m), a 3 year amendment period should apply. This period should also apply to private company shareholders and trust beneficiaries unless the primary entity falls into the medium/large business category.

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

29. Yes.

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

30. We believe that a four year review period should be sufficient in these cases, subject to taxpayers being required to disclose details of certain specified or reportable transactions involving significant revenue risk in their annual tax return. For example, such transactions could include those which fall within areas previously identified by the ATO in a Taxpayer Alert.

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

What would be a suitable notification period?

What exclusions from the notification regime would be appropriate?

Would this idea still be beneficial if taxpayers had to disclose more information?

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31. Yes – the notification period should be six months for taxpayers with a two year review period and one year for those with a three year review period. In the case of a four year review period, the notification period should be two years.
32. Exclusions from the notification regime should apply in the case of fraud or evasion.
33. We believe that current disclosure requirements in returns under a self-assessment regime are adequate and do not support the introduction of more onerous requirements in this context.

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

34. In view of the resource implications for taxpayers, pre-assessment agreements should continue to be confined to predominantly larger taxpayers, but it may be appropriate to extend the agreements to a wider range of transactions involving these taxpayers such as the application of losses or R&D expenditure.

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

35. Yes – the current unlimited period for review of loss and nil liability returns is anomalous and should be rectified.

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

36. An unlimited review period should be confined to fraud and evasion cases (appropriately defined) but not in those cases where it is clearly anomalous such as with the substantiation provisions where a four year review period should apply (the record keeping period should also be aligned with the review period).

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

37. We believe that this issue can be more appropriately addressed via the introduction of a shorter review period (eg. 2 years) for smaller taxpayers and also the audit notification regime as discussed in more detail above.

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

38. We favour the same period for both types of amendments as under the existing law.

3.J 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?

39. In situations where an amendment to the law is not required to give effect to a change (such as in respect to the proposed new audit notification regime), it would be more appropriate to implement the change administratively with the details specified in an ATO Practice Statement.

4. Penalties

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

40. We doubt whether the terms referred to in the above question can be usefully clarified beyond the explanations already provided in the relevant EM and by the courts as noted in the Discussion Paper (pp. 47-48). In any event, it would seem preferable to leave any further clarification of these terms to the courts.

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

41. The effect of the penalty is generally to discourage taxpayers from applying for a PBR unless they are reasonably confident of obtaining a favourable ruling.

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

42. If this penalty was removed then consideration should be given to the following changes as discussed in the Discussion Paper (and also in the final report by the '*Review of Business Taxation*'):
- the taxpayer could be liable for a penalty for failing to take reasonable care or, for a large item, not having a reasonably arguable position;
 - a requirement for taxpayers to indicate in their returns whether or not they have complied with a PBR;
 - allowing the ATO to charge for selected private rulings for medium/large businesses in limited circumstances (eg. where significant amounts of tax and substantial ATO resources are required and where the ability of the taxpayer to pay the charge is clear); and
 - that the IGT be given responsibility for monitoring the application of the charging regime to ensure that the policy of imposing fees was appropriate.

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

43. The ATO should also be required to have regard to its compliance model (such as taking into account the taxpayer's past compliance history) in determining the application of penalties to taxpayers.

5. The General Interest Charge (GIC)

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

44. We submit that the primary purpose of the GIC should be restricted to encouraging taxpayers to pay their existing and known tax liabilities on time rather than having what appears to be an ancillary function of providing an incentive to taxpayers to assess correctly. The latter function should be largely covered under the shortfall penalty regime. However, GIC should still apply in a shortfall situation based on the above criteria because tax will be paid at a later date than should have been the case had the taxpayer assessed correctly.

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

45. The amount of GIC arising in a tax shortfall situation may be excessive, although this problem would be ameliorated to some extent if the shorter review periods proposed above were to be implemented. In addition, the GIC rate applicable in this situation should be set at the benchmark rate. Once the ATO had issued an assessment then GIC would then apply in the normal way.
46. In non-shortfall cases, the current GIC rate is clearly excessive for large low-risk businesses and also for many SMEs. This problem is difficult to address given the wide diversity in the circumstances of different taxpayers and the need to avoid undue complexity in this area which might arise if different rates were adopted for different classes of taxpayers. Against this background, we believe that a more appropriate GIC rate would be obtained if the current 7% margin on the base rate (linked to the RBA's bank bill rate series) was reduced to 4% and the claiming of GIC as a deduction be restricted to businesses.
47. To the extent that GIC could still be considered excessive for some taxpayers (eg. large businesses and some SMEs) in some situations, then this might best be dealt with by ensuring that the ATO has sufficient powers to remit the excess GIC in such circumstances.

5.C Are the approaches identified in this 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?

48. The above proposed changes (see 5.B) appear to be broadly consistent with the various approaches identified in the Discussion Paper, as well being more closely aligned to practices in other comparable countries (as outlined in your Table 5.1). Implementation of these changes would involve appropriate amendments to the GIC provisions. Full GIC would only apply to tax shortfalls following the issue of an assessment by the ATO (ie. only from the time the taxpayer has an existing and known tax liability).

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

49. We believe that simplicity should be given a high priority in respect to the design of tax administration arrangements generally and including in the GIC area in order to avoid imposing undue compliance costs on SME taxpayers. The major problem involved in having different GIC arrangements for different market segments would be the difficulties involved in appropriately defining the different segments and the inevitable complexity involved in having a range of separate GIC regimes, particularly where a taxpayer moves from one segment to another in the same income year or even in different years.

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

50. If the above proposed changes are implemented (particularly the reduction in GIC margin from 7% to 4%), then the need for remission of GIC would be confined to the situation (as noted above) where the GIC might still be regarded as being excessive. As this is more likely to arise in circumstances involving large (or perhaps medium) businesses, we would not see the need for any significant expansion in ATO initiated GIC remissions at this stage, although it is something that could be monitored by the Inspector-General of Taxation going forward.

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

51. In our proposed changes above, we have argued that removal of the current specific deduction for GIC should ensure more appropriate treatment of different classes of taxpayers, particularly the treatment of business vis-à-vis individual taxpayers, while at the same time avoiding the need for excessive complexity in this area. Any move to an offset arrangement is, in our view, likely to introduce more complexity without any attendant advantages. For example, the offset proposal canvassed in the Discussion Paper (at paragraph 5.4.5) would clearly be quite adverse to large business while also appearing to give unwarranted advantages to individual (and particularly high income) taxpayers in some circumstances.

6. Other Issues

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

52. Earlier examination of income tax returns can involve both pre- and post-assessment reviews. In this regard, we understand that such reviews would be final reviews in the sense that the ATO would only be able to re-open assessments for such taxpayers in limited circumstances (eg. fraud or evasion) and would thus be significantly different from the pre-assessment checking currently done by the ATO of large refunds paid to individuals and a wide range of businesses.
53. While there may be a case for some pre-assessment reviews, such an approach is clearly limited under a self-assessment regime (as noted in the Discussion Paper) as it would effectively be a return to the former assessment system. Such an approach could be appropriate for individual taxpayers with relatively simple returns and perhaps a limited understanding of self-assessment but it should be combined with increased education of both taxpayers and their advisers. A more effective approach in our view would involve the introduction of wider third-party reporting and/or withholding arrangements together with other appropriate changes which could ultimately facilitate removal of the need for such taxpayers to lodge an annual 'I' return (as canvassed in our recent Discussion Paper on 'Reforming Australia's personal tax system – a model for the future').
54. Pre-assessment examination of returns by other taxpayers falling into the categories referred to in paragraph 6.1 of the Discussion Paper could also be appropriate. This could ensure that potential problems with such returns are fixed at an early date for the benefit of both the taxpayers concerned (eg. thru reduced interest/penalties) and the revenue.
55. In cases where the primary role of such examinations is not revenue protection, it may be desirable for such examinations to be only done at the taxpayer's request.
56. Early post-assessment of returns is clearly desirable for the reasons discussed in relation to Chapter 3 of the Discussion Paper and would appear to be best facilitated by the introduction of the shorter periods of review that we have proposed earlier (see above).

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

57. The introduction of earlier examination of returns and shorter periods of review (particularly for individual taxpayers) should assist in dealing with problems arising from the lack of understanding of self assessment by some taxpayers. The ATO should also continue with its education efforts in this area, particularly for new taxpayers. If this is not sufficient, consideration may need to be given to an appropriate renaming of the notice served on some taxpayers after lodgement of their annual returns with an assessment only being issued once a taxpayer's liability has been finalised (such as after an earlier examination of a taxpayer's return or an audit).

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

58. We do not see a need at this stage for any further changes to the tax governance structure at this stage given the current responsibilities of the Ombudsman, the Inspector-General of Taxation and the ANAO as well as the courts and other related tribunals such as the AAT and the Small Taxation Claims Tribunals which all utilise ADR processes where appropriate.
59. We note that the Taxpayer Advocate Service in the United States' tax system is an independent organisation within the IRS that helps taxpayers resolve problems with the IRS and recommends changes that will help prevent the problems. This role appears to be adequately covered under our system by the Ombudsman and the IGT as well as the ATO's own internal processes (which now involve the new relationship manager teams for tax agents and the Problem Resolution Service for taxpayers).

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

60. The up-front compliance costs imposed on practitioners by ATO reviews of tax agents' systems to verify information provided by clients might best be ameliorated in several ways. For example, consideration could be given to the potential for the ATO to have some reliance on the QA processes of the major accounting and tax professional bodies for those agents who are members of such bodies, thereby ensuring that these agents do not face effectively a doubling up of such reviews. Other options could include those canvassed in the Discussion Paper such as streamlining the review process and/or establishing guidelines to clarify the type of verification activity the ATO expects. The current tax agent regulation project may also be of assistance in clarifying the precise role and responsibilities of agents in this area which is clearly a prerequisite in determining the relevant guidelines to be applied by the ATO.

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

61. The amount of information currently being collected from taxpayers via the tax return process (eg. use of specific schedules, particularly for losses and foreign income) is already excessive in a self-assessment environment and the process urgently needs to be streamlined to reduce compliance costs on taxpayers and their advisers. We understand that this matter is currently under review by the ATO via its information collection project and that a report is expected to be provided to the ATO Tax Practitioner Forum (ATPF) in the reasonably near future.
62. Our view is that the ATO should obtain more information than it currently does from third party providers of services to taxpayers such as financial institutions and software providers. This is often referred to as using 'natural systems' rather than requiring taxpayers to extract such data from systems (eg. accounting and payroll systems) that are

ostensibly used for other purposes. There should also be an urgent review and hopefully reduction in the amount of non-compliance data required to be collected by the ATO on behalf of other government agencies such as the ABS. In this regard, we understand that the ABS has moved in recent years to obtain more of its data from the ATO (and thus via tax returns) in lieu of approaching the community directly via the use of appropriate sampling techniques.

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

63. The most onerous requirements are those specified below (and it should be noted that these requirements generally relate to information collected solely for tax rather than business management purposes):

- fringe benefits tax (FBT) records, especially those relating to employee contributions;
- motor vehicle logbooks as required by the substantiation requirements;
- capital gains tax (CGT) on share transactions;
- CGT records in general (particularly cost base adjustments).

64. It would also be desirable from a compliance cost standpoint to align the maximum time for keeping records with the relevant review periods for particular taxpayers (eg. the existing misalignment with the substantiation provisions is clearly anomalous and should be rectified as part of any general clean-up of this area).

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

65. The specific deadlines in the ATO's tax agent lodgement program (covering income tax returns, activity statements and other more specialised lodgments such as PAYG withholding annual reports and superannuation returns) are not easy for agents to meet but recent programs have been improvements on earlier years. However, some particular problems with the current program are:

- the requirement for taxpayers (eg. individuals) who choose to use a tax agent for the first time to be on an agent's client list with the ATO not later than 31 October following the year of income to obtain the benefit of the extension available to agents; and
- the requirement for the SMSF regulatory return to be lodged together with the fund's income tax return for the relevant income year.
- Remission of penalties for late lodgment should also be considered in some circumstances for taxpayers who fall behind with their lodgments (usually referred to as 'poor compliers' in a lodgement context although that label may be unfair given that it ignores the underlying reason for the taxpayer's status)

as an inducement to ensure that they remain within the system and do not drift into the cash economy for example.

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

66. We support, in principle, the removal of the remaining ATO discretions in respect to the calculation of taxable income, subject to the availability of legislative resources. In this light, a focus on those discretions which give rise to the greatest practical difficulties seems appropriate. We support the continued retention of existing administrative discretions such as those relating to granting extensions of time by the ATO, GIC and penalty remissions, etc.

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

67. The most significant problem in this area in recent times has arisen because of the 'drop dead' dates in respect to the exercise by taxpayers of certain family trust elections (FTEs) in the trust loss provisions of the income tax law. The Commissioner has now overcome this problem through the exercise of his general powers to administer the tax acts but clearly the use of such 'drop dead' dates should be avoided in future.