

The Auditor-General
Audit Report No.3 2001–2002
Performance Audit

The Australian Taxation Office's Administration of Taxation Rulings

Australian Taxation Office

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Canberra ACT
17 July 2001

Dear Madam President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Australian Taxation Office in accordance with the authority contained in the *Auditor-General Act 1997*. I present this report of this audit, and the accompanying brochure, to the Parliament. The report is titled *The Australian Taxation Office's Administration of Taxation Rulings*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—
<http://www.anao.gov.au>

Yours sincerely



P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Abbreviations/Glossary

AAT	Administrative Appeals Tribunal
ANTS	A New Tax System (ATO project)
ATO	Australian Taxation Office
ATR	Australian Tax Reports
BSL	Business and service line
CASES	LB&I case management system
CICADA	Case Information and Control for Advising Disputes and Appeals
Commissioner	Commissioner of Taxation
CRS	Case Reporting System
CWMS	Correspondence Work-flow and Management System
DWMS	Duplicate Work-flow Management System
GST	Goods and Services Tax
GSTD	Goods and Services Tax taxation determination
GSTR	Goods and Services Tax taxation ruling
GSTUCA	GST business line time recording system
INB	Individuals Non-Business business line
INBUCA	INB business line time recording system
ISO IT	International Standard on Quality Systems Information Technology
IT taxation ruling	Income Taxation series of taxation rulings (pre 1992)
ITAA	<i>Income Tax Assessment Act 1936</i>
ITAM	Income Tax Advice Manual
JCPA	Joint Committee of Public Accounts (the JCPA became the JCPAA in 1998)
JCPAA	Joint Committee of Public Accounts and Audit
LB&I	Large Business and International business line
MT taxation rulings	Miscellaneous Taxation series of taxation rulings (pre 1992)

OCTC	Office of the Chief Tax Counsel
PBR	Private Binding Ruling
PoA	Provision of Advice (ATO project)
PR	Product ruling
precedential	a decision embodying the Commissioner's interpretation of the 'tax law' serving as an authoritative rule or model for relying on similar cases in the future
SB	Small Business business line
SIGNUM	a database that is used to record all significant issues that arise from PBRs and other sources within the ATO
SPR	Superannuation business line
TAA	<i>Taxation Administration Act 1953</i>
TD	Taxation determination
TR	Taxation ruling
TRU	Taxation Rulings Unit

Summary and Recommendations

Summary

Background to the audit

1. The outcome the Australian Taxation Office (ATO) seeks to achieve is effectively managed and shaped systems that support and fund services for Australians and give effect to social and economic policy through the tax system.¹ The principal responsibility of the ATO is the administration of the Australian taxation law (the taxation law). As part of these administrative responsibilities, the ATO collected revenue totalling \$168 billion in 1999–2000.²

2. A significant element of the ATO's administration of the taxation law is the provision of interpretative advice on taxation issues to taxpayers. The provision of taxation advice is particularly important given Australia's self-assessment taxation system, which relies heavily upon taxpayers having a good understanding of the taxation law in order to fulfil their taxation obligations. A key mechanism used by the ATO to disseminate the Commissioner of Taxation's (the Commissioner's) interpretative advice on the Australian taxation law is taxation rulings.

3. Taxation rulings³ were first introduced by the ATO in 1982. The taxation rulings system was refined further in 1992,⁴ when the then Government introduced legislation to make the Australian self-assessment taxation system fairer and more certain.⁵ A major feature of this legislation was that it allowed the ATO to give certain parts of the advice it was already giving, in a legally binding form (that is public rulings and private rulings) and enabled private rulings to be reviewable by the Administrative Appeals Tribunal or the courts. Since that time, the ATO has created a number of other categories of taxation rulings to aid the provision of interpretative taxation advice to taxpayers.

¹ The ATO administers the excise levy, the higher education contribution scheme and supports the provision of retirement income.

² Commissioner of Taxation, *Annual Report 1999–2000*, p. 141 for the total operating revenue figure (of which \$151 billion is taxation revenue).

³ A definition of 'taxation rulings' is included in Figure 1, Chapter 1 of this report. For a detailed discussion of the background and history of taxation rulings, see Appendix 1.

⁴ P. Baldwin, Minister for Higher Education and Employment Services and Minister Assisting the Treasurer, Second Reading Speech *Taxation Laws Amendment (Self-Assessment) Bill 1992* House of Representatives Hansard Reports 26 May 1992.

⁵ In introducing these rulings the Government recognised that by binding the Commissioner legally to the advice he issues in his taxation rulings, taxpayers could expect a greater measure of 'certainty' and 'fairness' in the administration of the taxation law. See P. Baldwin, Second Reading Speech *Taxation Laws Amendment (Self-Assessment) Bill 1992*, op. cit.

4. The current taxation rulings system comprises the following elements:

- Public rulings (which include taxation rulings and taxation determinations, product rulings, class rulings⁶ and Goods and Services Tax (GST) public rulings);
- Private rulings (which include private rulings and GST private rulings);
- Oral rulings;⁷ and
- Taxation rulings which include rulings published before 1 July 1992, published rulings on procedural, administrative or tax collection matters and rulings on liability issues under a law other than ‘a tax law’⁸ within Part IVAAA of the *Taxation Administration Act 1953* (TAA).

5. In the calendar year 2000, the ATO issued 133⁹ public rulings, 102¹⁰ product rulings and 89 779¹¹ private rulings.¹²

6. Through the public disclosure of the methodology and reasoning behind the ATO’s interpretation of the tax law, the ATO’s accountability to the public regarding its decisions on taxation liability was increased. This increased accountability was designed to provide taxpayers with a higher level of certainty that the ATO’s decision making is consistent between taxpayers and over time.

⁶ Class rulings were introduced in 2001. At the time of the audit no class rulings had been issued by the ATO.

⁷ Oral rulings were introduced in mid 2000. At the time of the audit very few oral rulings had been issued by the ATO.

⁸ A ‘tax law’ is defined in s. 14ZAAA of the *Taxation Administration Act 1953* as being:
(a) an income tax law; or
(b) a fringe benefits tax law.

⁹ Figure taken from the ATO public rulings program. Figure includes all public rulings except GST public rulings which are not GST taxation rulings (GSTRs) and GST taxation determinations (GSTDs).

¹⁰ Figure taken from the ATO public rulings program.

¹¹ Figure taken from ATO case management systems. Figure includes the following numbers of PBRs from the following business lines: GST 84 287, INB 2 847, SB 1 067, Superannuation 2, LB&I 1576.

¹² The ATO collects all public rulings and product rulings data by calendar year. For comparative purposes, we obtained private rulings data on a similar basis.

7. Taxation rulings is an area of considerable activity and change. Aspects of the taxation rulings systems have been subject to both internal and external reviews since their introduction. Some of these reviews (including a recent major review of the private rulings system, the Sherman review,¹³ conducted during the course of the audit) have had a significant effect on the shape and scope of the rulings systems and may lead to changes in the future. The ANAO took into consideration the recommendations of the Sherman report and the ATO's implementation of its recommendations. The Provision of Advice (PoA) project being undertaken by the ATO is a major, and long term, overhaul of the processes and information technology (IT) systems for private rulings. It is designed to improve ATO control over the provision of advice to taxpayers and the integrity and quality of advice provided. We report the findings from our audit work and refer, where relevant, to changes since we completed our audit work. The ATO advises that it has already introduced significant reforms to private rulings processes and systems as a result of the PoA project. The overall effectiveness of the PoA project will necessarily take time to become fully apparent.

8. The audit also took account of the ATO's current operating environment which has been shaped by the demands of preparing for, and implementing, tax reform. Tax reform creates new demands on the ATO's provision of technical advice, both within and outside the ATO. The demands on its administrative systems, people and technology increase the challenges and effort involved in meeting these demands.

Audit objective and methodology

9. Taxation rulings are of fundamental significance to the good functioning of the tax system. Taxpayers require a good understanding of the taxation law to fulfil their taxation obligations if the self-assessment system is to deliver the required efficiency benefits for taxpayers and the ATO.¹⁴

¹³ The review was prompted by the intense public and Parliamentary interest which followed the laying of charges against a former senior executive of the ATO involved in providing private rulings, and media criticism of aspects of the private rulings system.

¹⁴ For taxpayers, the benefits of self-assessment come, for example, in not having to submit, with taxation returns, full details of their tax affairs; for the ATO, the benefits derive from not having to make a tax assessment for each taxpayer on the basis of the documentation submitted.

10. The objective of the audit was to:

- a) report to Parliament on the operation of the ATO's administration of taxation rulings (public, private and oral rulings¹⁵); and
- b) where appropriate, make recommendations for improvements, having regard to considerations of:
 - efficiency and effectiveness of the ATO's administration of the rulings system, particularly in relation to the achievement of the objectives set by Parliament for the rulings system;¹⁶
 - the ATO's systems' capacity to deliver consistency¹⁷ and fairness¹⁸ for taxpayers; and
 - good corporate governance, including the control framework.

Overall conclusion

11. The administration of taxation rulings presents a number of challenges for the ATO because it combines two sets of quite different requirements. One is to deal effectively with technical, including legal and accounting, issues in the taxation system. The other is to deal with the operational and managerial imperatives of a diverse organisation operating in a complex and changing environment to meet community expectations and commercial timeframes.

12. In terms of the ATO's administration of the taxation ruling systems, we found that the taxation rulings systems are quite different in nature and the administrative processes used by the ATO also differ markedly. The processes for the production of **public** rulings of high technical quality operate effectively overall but the collection, analysis

¹⁵ We looked broadly at oral rulings but could not review them in detail because, as noted earlier, at the time of the audit few of these rulings had been issued.

¹⁶ As noted previously, the Minister noted in the Second Reading Speech on the *Taxation Laws Amendment (Self-Assessment) Bill 1992* that the measures were intended to improve the certainty and fairness of the taxation system. The Speech and the Bill referred to provisions allowing taxpayers to object to private rulings and to have the matter reviewed by an independent tribunal or court as making the system fairer. Improved certainty for taxpayers was to follow from, among other things, allowing the ATO to give parts of the advice it was already providing to taxpayers, in a legally binding form.

¹⁷ Consistency is linked to certainty. We view certainty to relate to notions of assurance for taxpayers, completeness of knowledge or information and predictability.

¹⁸ Fairness in tax administration requires the ATO to balance ensuring that tax legislation is compiled with and treating taxpayers equitably. We require fair treatment to taxpayers as relating to appropriate treatment to taxpayers and be linked with the notions of equal treatment to taxpayers in equal circumstances and different treatment to taxpayers in different circumstances, consistency of treatment over time and consistency of treatment between ATO regions. In the Taxpayers' Charter, the ATO undertakes, among other things, to treat taxpayers fairly and reasonably. For information on what this means in terms of the behaviour of ATO staff, see The Taxpayer's Charter Explanatory booklet, *Treating you fairly and reasonably*.

and use of performance information could be enhanced in some areas. The administrative processes for **private** rulings have operated poorly in many respects. Our assessment for **private** rulings confirmed the findings of administrative inefficiencies noted in reports prepared for the ATO over a number of years, while recognising that steps have been, and are being, taken to address these, particularly in recent times. It was not possible to review the administration of **oral** rulings in detail because, at the time of the audit, few of these rulings had been issued.

13. The ATO does not have the appropriate mechanisms in place to allow it to report fully on the efficiency and effectiveness of its administration of the taxation rulings systems in achieving its objectives. That said, taxation rulings perform a vital role in assuring taxpayers by enhancing the information available to them and thereby enhancing taxpayers' certainty about taxation administration. Without taxation rulings systems, taxpayers would face a less certain, and probably more costly, environment in meeting their tax obligations.

14. As noted, the ATO has been improving the administration of its private rulings system and continues to do so. The PoA project, in particular, has instituted much needed improvements to the administration of the private rulings system (and particularly to the integrity of the private rulings system). However, the challenge will be to actually put these initiatives in place as comprehensively and expeditiously as the ATO intends.

15. The ATO has invested a large amount of resources in a comprehensive public rulings system which includes control measures that promote the production of public rulings of high technical quality. However, there is further scope to improve the collection, analysis and use of performance information relevant to public rulings.

16. The overall management of the public and private rulings systems continues to be an area requiring careful ATO attention.

17. The quality (and reliability) of the systems that operate for public and private rulings bear directly on the systems' capacity to deliver fair treatment to taxpayers and maintain consistency over time, and across ATO regions. So too, do the legal and institutional frameworks that shape them. We conclude, overall, that the mechanisms in place for **public** rulings substantially provide for consistent and fair treatment for taxpayers. This positive assessment for public rulings contrasts with the situation for **private** rulings where, at the time of the audit, the lack of integration of systems and inadequate systems controls undermine certainty, fairness and consistency of treatment for taxpayers. Although, the ATO is taking steps to address these deficiencies as part of the PoA project, as indicated in paragraph 14, the ultimate test is in the results.

18. In looking at good corporate governance practice, including a robust controls framework, our emphasis for this audit was on the ATO's administrative systems for taxation rulings. We conclude that the ATO's corporate governance arrangements in respect of public and private rulings can be improved to achieve greater efficiency and effectiveness. By the ATO managing the taxation rulings systems more actively, such as with enhanced attention to the time, cost and quality aspects of rulings, it would be better placed to provide the assurance and performance requirements that should derive from its well-established and robust corporate governance framework.

Key Findings

Environmental factors

The taxation rulings environment and administrative systems

19. The ATO's taxation rulings environment has been influenced by the demands of tax reform, creating new and additional demands on the ATO's provision of technical advice and adding to other external pressures to examine and modify its administrative processes for rulings. The latter pressures include those to expand and change the taxation rulings systems (for example, the introduction of oral rulings and class rulings, the possible broadening of the scope of the taxation rulings systems to allow the Commissioner to give rulings on procedural, administrative or collection matters, and the possible introduction of user charging in some circumstances).

20. The nature and scope of the different types of taxation rulings differ considerably from one another, although their underlying objectives are the same. For example, the administration of public and private rulings in the ATO is conducted quite separately and the administrative processes that support them are markedly different.

21. It was not possible to compare directly Australia's systems of taxation rulings with those in place in (quite different) tax administrations overseas, but in doing our work the international comparisons provide some instructive points of analysis. We note that the ATO has moved to create a more open and transparent system of taxation rulings. Illustrative of this are the introduction of panels in the 1990s (with members external to the ATO) to assist in preparing public rulings and the publication of private rulings in 2001.

Implementation of Report 326 of the Joint Committee of Public Accounts

22. In 1993, the then Joint Committee of Public Accounts completed its major review of the tax system, which included an examination of the income tax rulings system. As part of the audit, we reviewed the ATO's implementation of the relevant recommendations of the Committee's 1993 report *An Assessment of Tax* dealing with taxation rulings. We found that, with three exceptions, the relevant recommendations have been implemented. The relevant recommendations were those that the Government and the ATO supported and which the ATO committed itself in 1994 to implement. The three partially-implemented recommendations relate to access to summaries of private binding rulings and reviews of the continuing validity of private rulings.

23. We found that some of the changes in administrative policy that have occurred in rulings since the Committee's report, have resulted in the reconsideration, and in some cases acceptance of, recommendations made by the Committee, for example regarding public access to private rulings.

Public rulings

24. We sought to assess whether the ATO's administration of the public rulings system was efficient and whether it meets the objectives for which it was established.

25. For administrative purposes, the ATO divided its public rulings into three main categories (series). These are income tax and fringe benefits tax public rulings (Taxation Ruling (TR) and Taxation Determination (TD) series), GST public rulings (GST taxation ruling (GSTR) and GST taxation determination (GSTD) series) and product rulings (PR series).

26. Overall the ATO has a well-developed public rulings system, which draws on the expertise of ATO staff with detailed knowledge of taxation law, industry and community group experts, academics and the general public. The public rulings system incorporates control measures that allow the ATO to produce, overall, public rulings of high technical quality. While there were supportive comments from stakeholders about public rulings, an area of concern for some was the time taken to produce some types of public rulings. Although concerns with the timely production of public rulings inhibits their usefulness, we found that the public rulings system, overall, provides taxpayers with increased certainty regarding the Commissioner's application of the tax law.

27. However, notwithstanding the meetings of the National Tax Liaison Group (NTLG),¹⁹ which has significant input into the identification of public rulings topics and which discusses topical matters relevant to the ATO, and various professional bodies, the ATO does not use a documented process to determine the priority of competing TR, TD, GSTR and GSTD public rulings topics to ensure that the most important topics are processed and issued first, for greater operational efficiency. Such a process would provide additional certainty for taxpayers that the topics selected and addressed are the most important and that the public rulings process is operating efficiently.

¹⁹ The National Tax Liaison Group is an ATO consultative group which has a cross-section of representation from tax and professional associations.

28. The ATO does not formally review the processes used to produce income tax, FBT and GST public rulings. Periodic reviews of the timeliness, relevance, logic and clarity of expression of these rulings would be beneficial and contribute to continuous improvement in the public rulings system by highlighting ways in which the production process can be improved.

29. Public rulings have been identified as a vital source of information for providing greater certainty to tax professionals. However, there are problems with particular aspects of the legal framework that create difficulties in ensuring clarity of public rulings, such as difficulties in making challenges to public rulings (including because of the practical and procedural difficulties in using the mechanism of a private ruling for this purpose). We recognise that possible changes in the legal framework for public rulings to improve the clarity of public rulings are matters for consideration by Government.

30. Improvements are also needed in the processes of producing public rulings to enhance their certainty and clarity. The production and management of public rulings would be improved by enhancing procedures relating to the use of public rulings panels to increase their efficiency and effectiveness, including procedures to assess panels' performance.

31. The clarity of the content of public rulings is mixed. Overall, and not unexpectedly, the views of the courts and tribunals on the content of public rulings and/or of the operation of the public rulings system are diverse. However, these decisions and the perceptions of some other stakeholders we consulted, do lend weight to the ATO's own goal to strive for continuous improvement in the quality of the rulings (including the content of public rulings) it produces from the rulings systems it administers. This observation regarding the quality of public rulings is in the context of our acknowledging that the ATO has implemented control measures that allow it to produce, overall, public rulings of high technical quality.

Private rulings

32. We sought to assess the administrative systems the ATO uses to produce and manage private rulings and the impact these systems have on the ATO's ability to produce timely rulings of high quality.

33. The administration of public and private rulings in the ATO is conducted quite separately. As well, the administrative processes that support them are also quite different. We found that the administration of private rulings involves highly dispersed processes and disparate, as well as fragmented, IT systems. We also found that the production process does not have integrated systems and lacks adequate controls. The IT systems are a key weakness in the production and management of private rulings and the poor performance of these disparate systems has had a detrimental impact on the controls over the processes and the subsequent management of private rulings.

34. The main weaknesses in the production and management of private rulings are as follows:

- There are many information systems involved in the production of private rulings which lack integration.
- The ATO also has limited controls over data quality making the analysis and examination of private ruling information difficult.
- Only in early 2001 did the ATO introduce a search engine for business service lines to allow case officers to perform free text searches on private rulings that have been issued (for research purposes). Prior to that, the ATO had a 'key word' search facility on two of its technical advice databases. Compared to current technology, the search facility was basic and did not allow users to obtain technical information in a timely and efficient manner.
- The IT systems do not generate adequate, timely or useful information for management to make informed decisions.

35. The problems and difficulties faced by the ATO in the production of private rulings have been longstanding, having been identified in numerous reports since 1996. The ATO has taken a number of steps over the years in response to those reports leading to, for example, the implementation of an IT system to draft private rulings and share information about private rulings in 1996; formalised quality assurance review processes in 1997; and measures to minimise duplicate keying by ATO staff, in 1999. The ATO is taking further steps to address these matters as part of the PoA project in 2001.

36. The ANAO fully supports the PoA project and the long-term commitment to integrate the provision of advice (including private rulings) with other areas in the ATO. These initiatives should address many of our concerns about private rulings, particularly regarding integration, usefulness and reliability of IT systems, performance information and data quality.

37. The challenge will be to put the PoA initiative in place as comprehensively and as expeditiously as intended and also to maintain systems' reliability, stability and response times.

Corporate governance

38. We sought to assess aspects of the ATO's corporate governance framework in administering the taxation rulings systems, focussing on controls and management processes.

Process controls

39. We found that the ATO's performance with regard to corporate governance arrangements was mixed. Although the ATO has advised that its PoA project has remedied many of the pressing problems we highlight in the private rulings system, the ATO still has other process control matters to address. Although the technical proficiency of staff involved in private and public rulings receives considerable attention, the following process controls still require attention:

- The key manuals for private and public rulings are not up to date (although the ATO has issued a number of Practice Statements to keep instructions current). These deficiencies impair the ATO's efforts to obtain optimal processing efficiency and, by increasing the potential for error or oversight, may adversely affect the integrity of the system and quality of rulings.
- The IT systems supporting private rulings and product rulings prior to issue, contain sensitive taxpayer information. Currently all these systems are located on the ATO's TAXLAN, contrary to the ATO's Information Security Guide and its data security policy which aim to ensure that sensitive taxpayer data is properly managed and protected.
- The ATO's fraud control planning approach is sound. Improvements in the reporting and management scrutiny of fraud risk in private rulings could better support integrity and accountability aspects of corporate governance and the management of the private rulings systems.
- The Taxpayers' Charter timeliness standard of finalising private ruling applications within 28 days of receiving all information, with scope to negotiate an extended deadline if necessary, is a limited standard by which to assess timeliness performance. There may be merit in the ATO reviewing the target and supplementing the Taxpayers' Charter with a standard reflecting the total elapsed time taken to issue private rulings.

Management of rulings

40. The ATO discharges well some elements of corporate governance bearing on the good management of taxation rulings, for example the consultation with stakeholders and input from management. However, the key challenge for the ATO is to manage the public and private rulings systems more actively. For example, the ATO cannot identify the parameters of what is being managed, such as:

- the broad revenue or compliance effect of the rulings systems (e.g. the revenue attributable to private rulings and product rulings);
- the resources that are being used or the resources needed for the service, taking account of the time, cost and quality aspects of the service; and
- the potential revenue effect of significant private and public rulings.

41. The management of taxation rulings would be improved by the ATO taking a holistic approach to gather and report performance information by developing appropriate performance standards and monitoring the results taking account of the trade-offs between timeliness, cost, quality and quantity. Although recognising that the primary task of taxation rulings is to provide taxpayers with the Commissioner's interpretation of the taxation law, the management of taxation rulings would also be enhanced by the ATO undertaking meaningful analyses of the extent and scope of the private rulings system and the potential revenue effect of all significant private and public rulings.

42. Some ATO business lines undertake some documented analysis of the compliance risk associated with rulings, as part of their risk management activities. The compliance risk management of rulings would be improved by the ATO undertaking transparent and structured approaches to identifying, assessing, prioritising and treating compliance risks for private and public rulings after they have been issued.

Integration and interdependencies

43. Good corporate governance in the administration of taxation rulings requires the ATO to take account of the wider context of ATO tax administration, including the necessary linkages and interdependencies with its other activities, such as the intelligence gathering and analysis, tax return processing and compliance management activities. These linkages must continue to be supported and fully used if the rulings systems are to be managed and used effectively in the context of taxation administration.

Relationship between our key findings and recommendations

44. The ATO has recognised some of the pressing problems in the administration and/or management of the taxation rulings systems. During the audit it demonstrated its commitment to take remedial action and to seek improvements with initiatives and programs, for example, focussing on IT systems for private and product rulings, production and review processes for private and product rulings and staff technical expertise. These measures will result in improved administration in taxation rulings over time. We have taken this receptive environment of taxation rulings administration into account in constructing our recommendations.

Recommendations

Set out below are the ANAO's recommendations with report paragraph references and the ATO's abbreviated responses. More detailed responses and any ANAO comments are shown in the body of the report. The ANAO considers that priority should be given to recommendation Numbers 1, 5, 9 and 10.

Recommendation No.1
Para. 2.18

The ANAO recommends that the ATO more clearly articulate the approach it uses to prioritise public rulings, and document how it has applied that approach to determine the priority of topics identified for its public rulings program.

ATO response: Agreed.

Recommendation No.2
Para. 3.83

The ANAO recommends that, to improve the certainty of public rulings, the ATO consider:

- enhanced processes in the operation of the public rulings panels to increase their efficiency and effectiveness; and
- ways to further improve the content or expression of public rulings to improve their clarity.

ATO response: Agreed.

Recommendation No.3
Para. 4.39

The ANAO recommends that the ATO regularly monitor and report to senior management: private rulings information technology system response times and system down-times and failure rates, so that problems with the private rulings case management systems and the Case Reporting System can be quickly identified and corrected.

ATO response: Agreed.

**Recommendation No.4
Para. 5.28** The ANAO recommends that the ATO ensure that the ATO Advice Manual, which it intends to introduce as the consolidated source of procedural guidance for staff on the provision of interpretative advice, is easily accessible to staff and is able to be readily modified and updated.

ATO response: Agreed.

**Recommendation No.5
Para. 5.50** To support the ATO's continuous improvement in the process of producing public rulings, the ANAO recommends that the ATO assess periodically, the timeliness, relevance, logic and clarity of expression of its income tax, FBT and GST public rulings, after they have been issued.

ATO response: Agreed.

**Recommendation No.6
Para. 5.65** The ANAO recommends that, to improve the security of taxpayer data relating to private rulings and product rulings prior to issue, the ATO align its taxpayer data security practice for private and product rulings with its policy requirements to protect information according to its degree of sensitivity.

ATO response: Agreed.

**Recommendation No.7
Para. 5.73** The ANAO recommends that:

- the fraud risks identified in the ATO Fraud Control Plan are amended, where necessary, to take account of the changes made to private rulings systems, including changes resulting from the Provision of Advice project; and
- for better management and accountability of the private rulings system, all relevant ATO business and service lines expand their internal reporting regimes for private rulings to include relevant fraud risks and other process control matters, identified either in the ATO Fraud Control Plan, or other fraud risk assessment mechanisms.

ATO response: Agreed.

**Recommendation
No.8
Para. 5.90**

The ANAO recommends that:

- for improved performance monitoring and enhanced public credibility of the process, the ATO review the Taxpayers' Charter standards in respect of responses to private rulings requests; and
- for improved internal performance monitoring of private rulings, consider supplementing existing internal performance standards (for example, the timing standard that includes the negotiated extension of the deadline) with a standard reflecting the total elapsed time taken to issue private rulings.

ATO response: Agreed.

**Recommendation
No.9
Para. 5.100**

The ANAO recommends that, to improve the management of the public rulings system, including product rulings, the ATO take a holistic approach to its performance information and reporting regime for the production of public rulings by developing appropriate standards and monitoring performance, taking due account of the trade-offs between: timeliness; cost; quantity; and quality.

ATO response: Agreed.

**Recommendation
No.10
Para. 5.106**

The ANAO recommends that, to improve the management of the private rulings systems, the ATO take a holistic approach to its performance information and reporting regime for the production of private rulings by developing appropriate standards and monitoring performance, taking due account of the trade-offs between: timeliness; cost; quantity; and quality.

ATO response: Agreed.

Recommendation No.11
Para. 5.115

The ANAO recommends that, for better management of the taxation rulings systems, the ATO analyse the impact of taxation rulings on the Australian taxation system, including the potential revenue effect of significant private and public rulings.

ATO response: Agreed.

Recommendation No.12
Para. 5.122

The ANAO recommends that, for improved compliance management of rulings, the ATO apply documented and structured approaches to identify, assess, prioritise and treat identified compliance risks for private and public rulings, including product rulings, after issue.

ATO response: Agreed.

Audit Findings and Conclusions

1. Audit Overview

This chapter establishes the background to the audit, gives a brief overview of the operating environment in which the Australian Taxation Office's rulings system is administered and sets out the audit approach, objective and methodology.

Background

Australian Taxation Office

1.1 The outcome the Australian Taxation Office (ATO) seeks to achieve is effectively managed and shaped systems that support and fund services for Australians and give effect to social and economic policy through the tax system.²⁰ The principal responsibility of the ATO is the administration of the Australian taxation law (the taxation law). As part of these administrative responsibilities the ATO collected revenue totalling \$168 billion in 1999–2000.²¹

1.2 A significant element of the ATO's administration of the taxation law is the provision of interpretative advice on taxation issues to taxpayers. The provision of taxation advice is particularly important given Australia's self-assessment taxation system, which relies heavily upon taxpayers having a good understanding of the taxation law in order to fulfil their taxation obligations. A key mechanism used by the ATO to disseminate the Commissioner of Taxation's (the Commissioner's) interpretative advice on the Australian taxation law is taxation rulings.

²⁰ The ATO administers the excise levy, the higher education contribution scheme and supports the provision of retirement income.

²¹ Commissioner of Taxation, *Annual Report 1999–2000*, see p. 141 for the total operating revenue figure (of which \$151 billion is taxation revenue).

Taxation rulings

1.3 A formal taxation rulings²² system was first introduced by the ATO in December 1982 when the Commissioner was required to fulfil legislative obligations²³ to make available for public scrutiny, copies of documents used by his staff to hand down decisions on his intended application of the taxation law. Although taxation rulings represent the Commissioner's view on the application of the taxation law, they do not 'supplant the terms of law' or 'have an effect of an estoppel against the operations of the law.'²⁴

1.4 Through the public disclosure of the methodology and reasoning behind the ATO's interpretation of the tax law, the ATO's accountability to the public regarding its decisions on taxation liability was increased. This increased accountability was designed to provide taxpayers with a higher level of certainty that the ATO's decision making is consistent between taxpayers and consistent over time.

1.5 The taxation rulings system was refined further in 1992, when the then Government introduced legislation²⁵ to make the Australian self-assessment taxation system fairer and more certain. A major feature of this legislation was that it allowed the ATO to give certain parts of the advice it was already giving, in a legally binding form (that is public rulings and private rulings) and enabled private rulings to be reviewable by the Administrative Appeals Tribunal or the courts. Since that time, the ATO has created a number of other categories of taxation rulings to aid the provision of interpretative taxation advice to taxpayers. The diagram below outlines the categories of taxation rulings as at March 2001, within the larger context of advice provided by the ATO.²⁶

²² A definition of 'taxation rulings' is included in Figure 1, in this chapter. For a detailed discussion of the background and history of taxation rulings, see Appendix 1.

²³ Under the *Freedom of Information Act 1982*.

²⁴ IT 1, MT 2005. The *CCH Macquarie Dictionary of Law*, Revised Edition, 1996 defines estoppel as 'the prevention of a party from asserting in legal proceedings a position contrary to that which has been established by some'. In other words in the case of rulings, this means that a ruling cannot stop the operation of the law.

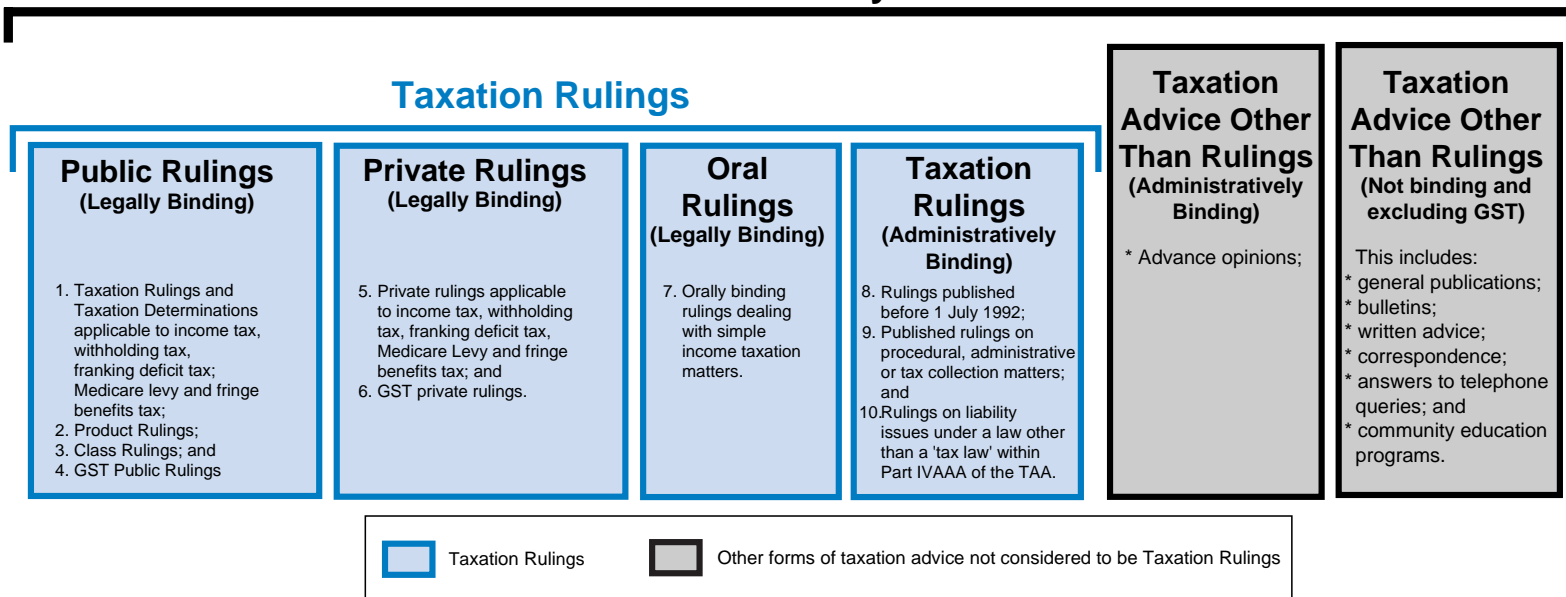
²⁵ P. Baldwin, Minister for Higher Education and Employment Services and Minister Assisting the Treasurer, Second Reading Speech *Taxation Laws Amendment (Self-Assessment) Bill 1992*, House of Representatives Hansard Reports 26 May 1992.

²⁶ Note that the diagram is a conceptual representation of the categories of taxation rulings and the larger context of advice on taxation laws administered by the ATO. The categorisations do not necessarily match with whole documents. Under the TAA, a ruling document such as a TR or product ruling, for example, will rarely, if ever be wholly a public ruling, but parts of such documents may be. Similarly, private ruling notices may also contain material which is not legally binding.

Figure 1

Taxation rulings system as at March 2001

Advice on Taxation Laws Administered by the Australian Taxation Office



Source: ANAO analysis

1.6 The characteristics of these categories of taxation rulings are outlined below.

1. *Taxation rulings and taxation determinations series of public rulings:* The taxation rulings series of public rulings set out the Commissioner's opinion as to the way in which a 'tax law' applies to a person or a class of persons in relation to an arrangement or a class of arrangements. Significant features of these public rulings are that they are legally binding on the Commissioner²⁷ and only relate to arrangement/s that began or begin to be carried out after 1 July 1992.²⁸ The taxation determinations series is similar to the taxation rulings series of public rulings (outlined above), except that taxation determinations are concerned with smaller, more specific issues than those examined as part of a taxation ruling;²⁹
2. *Product rulings:* These are public rulings which set out the Commissioner's opinion as to the taxation consequences of particular investment products and schemes marketed to groups of taxpayers as tax-effective arrangements. These rulings were designed to provide some level of protection to taxpayers, by providing certainty that the tax-effective arrangements proposed by promoters comply with the Commissioner's interpretation of the taxation law;
3. *Class rulings:* These enable the Commissioner to provide legally binding advice in response to a request from an entity seeking advice about the application of the tax law to a large number of persons in relation to a particular arrangement. Class rulings were introduced in February 2001.³⁰ They are designed to meet a need to provide rulings to taxpayers in circumstances that were not readily met by the established private rulings and public rulings mechanisms. For example, the class ruling will obviate the need for a private ruling to be sought by, or on behalf of, every person who may be affected by the arrangement.
4. *Goods and Services Tax (GST) public rulings:* These are similar to other public rulings. However, the ATO is also legally bound by information contained in GST fact sheets, information booklets, advice manuals,

²⁷ The Commissioner is legally bound to ensure that the final amount of tax payable under an assessment does not exceed the amount that would be payable if the law applies in the way that the Commissioner has ruled that it does apply.

²⁸ All taxation rulings issued prior to 1 July 1992 were administratively binding on the Commissioner. See dot point eight in Figure 1 for an outline of the context of administratively binding public rulings. Appendix 1 provides an overview of the history behind the development of the taxation rulings system.

²⁹ TD 92/100.

³⁰ Practice Statement PS 2001/4 *Provision of written advice by the ATO*, 5 February 2001.

bulletins and product manuals. The ATO is not legally bound by these materials in respect of other taxes;

5. *Private rulings*: These set out the Commissioner's opinion (upon receipt of an application by a taxpayer), as to the way in which the tax law would apply to that taxpayer entering into the particular arrangement for the year of income referred to in the private ruling. Significant features of private rulings are that they are legally binding on the Commissioner and that they relate to particular taxation arrangements that began or begin after 1 July 1992. Private rulings are issued under Part IVAA of the *Taxation Administration Act 1953* (TAA).
6. *GST private rulings*: These set out the Commissioner's opinion in relation to a particular GST issue for a particular entity. GST private rulings are issued under s37 of the TAA.
7. *Oral binding rulings*: set out the Commissioner's opinion in relation to a taxpayer inquiry on a simple income taxation issue. The oral advice provided in this ruling is legally binding on the Commissioner and is set out in Division 360 of the TAA. Broadly, they apply only to payments in respect of salary and wage earners, payments to company directors, payment to office holders and Commonwealth education or training payments. Importantly, income must consist solely of these categories. The oral binding rulings system commenced on 1 July 2000.
8. *Taxation rulings issued before 1 July 1992*: These set out the Commissioner's opinion regarding income taxation matters (through the Income Tax Taxation Rulings [IT series] and miscellaneous tax matters (through the Miscellaneous Tax Taxation Rulings [MT series])). These taxation rulings are administratively binding on the Commissioner, in contrast to public rulings and private rulings which legally bind the Commissioner.³¹ Pre-July 1992 rulings differ in effect from present taxation rulings only in that they cannot contain legally binding material (that is, be a public ruling).
9. *Taxation rulings on procedural, administrative or tax collection matters*: These are rulings which set out the Commissioner's view on procedural, administrative or tax collection matters which are not considered to be public or private rulings. These rulings are not legally binding on the Commissioner, however the Commissioner has undertaken to be administratively bound by these rulings.

³¹ The concepts of administratively binding and legally binding are described in Appendix 1.

10. *Rulings on liability issues under a tax law other than a 'tax law'*³² within Part IVAAA of the TAA: The Commissioner is able to publish a taxation ruling on liability issues on any of the laws he administers. This includes areas such as excise and superannuation, and used to include the Child Support Agency. However, the Commissioner is only able to publish legally binding public rulings on the laws covered by Part IVAAA of the TAA (i.e. the laws governing public rulings).³³ As a consequence, all taxation rulings issued by the Commissioner that do not fall under Part IVAAA of the TAA, and are not GST taxation rulings,³⁴ are considered to be administratively binding.

1.7 It is also worth noting that, although providing advice to taxpayers is a central role of the ATO and the activity is a lubricant enabling the tax machinery to work smoothly, in a self-assessment tax system the ATO is not the only source of taxation advice. Some taxpayers prefer to take private advice, and some (for example, taxpayers with larger tax liabilities) may seek to rely on a 'reasonably arguable position' rather than to seek the advice of the ATO.³⁵ Australia's current tax system establishes this as a right for taxpayers.

1.8 A more detailed explanation of the history of taxation rulings and the various types of taxation rulings can be found in Appendix 1. For the purposes of this audit, we were interested in the main categories of rulings (public and private legally binding rulings) and we focused on the administrative systems in the ATO and the quality, (including clarity), of the rulings produced. In considering the clarity of public rulings, we touched on the current legal and institutional frameworks for public rulings since they affect the clarity of public rulings.

³² A 'tax law' is defined in s. 14ZAAA of the *Taxation Administration Act 1953* as being:

- (a) an income tax law; or
- (b) a fringe benefits tax law.

³³ The areas of taxation law covered by Part IVAAA of the TAA relate to income tax and fringe benefits tax issues.

³⁴ GST taxation rulings are defined under a separate piece of legislation to other taxation rulings. This is s. 37 of the TAA.

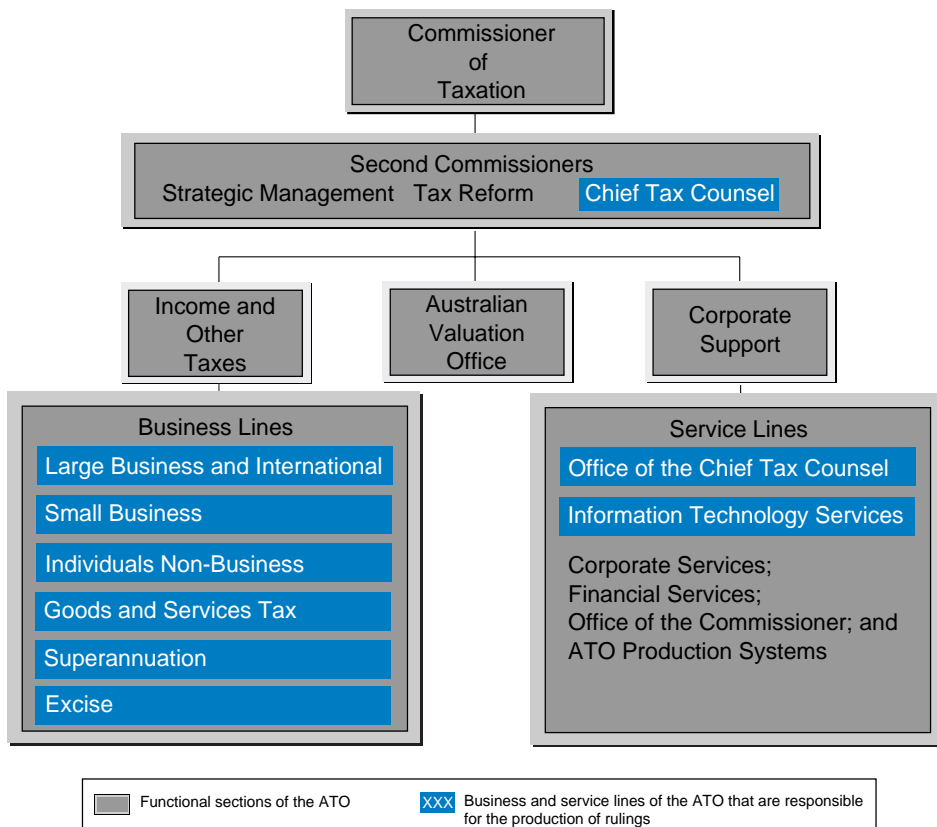
³⁵ The concept of Reasonably Arguable Position is described in Chapter 5 and Appendix 1.

The ATO's administration of rulings

1.9 The ATO is structured around 12 divisions known as lines. Of these, six lines focus on major market segments and are known as business lines. The other lines are concerned with providing internal support for the ATO, such as information technology and financial support. These areas are known as service lines. The figure following illustrates the structure of the ATO as at 30 June 2000 and the areas responsible for the production and administration of taxation rulings.

Figure 2

Structure of the Australian Taxation Office as at June 2000



Source: ATO data

Note: The Excise business line produces Excise Bulletins, taxation rulings which are administratively binding (see Figure 1 dot point 10).

1.10 Taxation rulings are researched and drafted by all ATO business lines. The business lines have responsibility for the production of taxation rulings in their areas of taxation or client responsibility and the selection of the business line responsible depends on the nature and subject matter of the taxation ruling. The production of private rulings is the responsibility of the business lines. The Office of the Chief Tax Counsel provides advice to the business lines during the drafting of taxation rulings (including private rulings). It is also responsible for administering the production and publication of all public rulings.

1.11 The production of all taxation rulings is dependent on the efficiency, comprehensiveness and reliability of the taxation rulings production systems. All of these systems rely heavily on information technology (IT) systems to register, monitor and produce taxation rulings. The monitoring and maintenance of these IT systems is the responsibility of the Information Technology Services service line.

Operating environment

1.12 The ATO's current operating environment has been shaped by the demands of preparing for, and implementing, tax reform (for example in respect of the GST, the Pay as you go system and redesign of the business tax system). These measures required the ATO to modify its systems, procedures and education strategies and brought with it immense demands on staff as well as systems. Tax reform creates new demands on the ATO's provision of technical advice, both within the ATO and outside it. The demands on its administrative systems, people and technology increase the challenges involved in meeting these demands.

Reviews

1.13 Taxation rulings is an area of considerable change. Aspects of the taxation rulings systems have been subject to both internal and external reviews since the introduction of taxation rulings in 1982. Some of these reviews (including a major review of the private rulings system during the course of the audit) have had a significant effect on the shape and scope of the rulings systems and may lead to changes in the future. The proposed expansion of the rulings system recommended in two recent influential reports is a case in point.³⁶ In other instances, although rulings have not been the direct focus of the review, they have had relevance to the matters under examination. An example is the Senate Economics References Committee's current inquiry into mass marketed tax effective schemes and investor protection.³⁷

³⁶ See *Tax Reform not a new tax a new tax system: The Howard Government's Plan for a New Tax System*, August 1998 and *Review of Business Taxation, Report A Tax System Redesigned*, July 1999.

³⁷ For more information, see Appendix 1.

1.14 The key recent reviews to note are:

- Joint Committee of Public Accounts, Report No. 326 *An Assessment of Tax*, November 1993;
- *Tax Reform not a new tax a new tax system: The Howard Government's Plan for a New Tax System*, August 1998;
- Review of Business Taxation Report, *A Tax System Redesigned*, July 1999; and
- Sherman T., *Report of an Internal Review of the Systems and Procedures relating to Private Binding Rulings and Advance Opinions in the Australian Tax Office*, August 2000.

1.15 The following section outlines these key recent reviews. Brief summaries of these and other reviews bearing on rulings, are in Appendix 1.

Report No. 326 of the Joint Committee of Public Accounts (JCPA)—An Assessment of Tax

1.16 The report focused broadly on changes made to the taxation system during the 1980s through to 1993. These changes included: the ATO administration of the self-assessment taxation system, taxpayer audits and the public disclosure of administrative performance of the ATO. Sixteen of the Committee's 148 recommendations related to the income tax rulings system. A minority report made another three relevant recommendations.

1.17 We specifically reviewed the ATO's implementation of recommendations in Report 326. Our detailed examination is set out in Appendix 2. In summary, we found that, with three exceptions (Recommendations 36, 42 and 43), the ATO has implemented all the report's recommendations (i.e. those that the Government and the ATO supported and which it committed itself in 1994 to implement).

1.18 Recommendation 36 concerning public access to summaries of private rulings has only been partially implemented. Our audit analysis shows that, at the time of the audit, the ATO was not in a position to implement the recommendation. However, the ATO's initiatives responding to the Sherman report (discussed in Chapters 4 and 5 and outlined in Appendix 4) mean that it plans to publish income tax private rulings for applications received after the end of March 2001. The partial progress on Recommendation 36 means that the similar part of Recommendation 43 relating to access to private rulings has also not been implemented, as a consequence. Recommendation 42, concerning reviews to determine the continuing validity of private and public rulings, has only been partially implemented, because of the limitations of the review action in respect of private rulings.

1.19 It is worth noting that changes have occurred in the rulings policy framework since the Committee's report.³⁸ One important tax policy change was the introduction in mid 2000 of the GST and the development of GST public rulings and GST private rulings (that formally sit outside the income tax rulings system which was the subject of Report 326). Some of the other changes in administrative policy have resulted in the reconsideration, and in some cases acceptance of, positions adopted by the Committee earlier.³⁹

Tax reform not a new tax a new tax system: The Howard Government's plan for a new tax system

1.20 The Government's report (called the ANTS report) outlined comprehensive tax changes.⁴⁰ The ANTS report's proposed measures to improve the certainty and reliability of ATO advice include:

- introducing a system of binding oral rulings on simple matters that can be resolved for taxpayers over the telephone or via electronic mail;
- broadening the scope of public and private rulings provisions to allow the Commissioner to give a ruling on procedural, administrative or collection matters;
- examining the feasibility of a system of user charges for private rulings given to large business taxpayers in complex cases; and
- improving communication facilities between the ATO and the community, including enhanced use of electronic facilities and modern technology.

Review of business taxation—a tax system redesigned

1.21 A number of the recommendations in the Review of Business Taxation Report: *A Tax System Redesigned* (known as the Ralph Review) involved administrative changes designed to improve the reliability, certainty and timeliness of rulings. Key recommendations of the Ralph Review⁴¹ on private and public rulings include:

³⁸ For example, summaries of sanitised (i.e. without any details identifying the taxpayer) private rulings are to be made accessible to the public and new forms of taxation rulings (product rulings, class rulings and oral rulings) have been introduced. In other instances, other reviews have made recommendations similar to those of the Committee (e.g. disclosure on an income tax return whether a private ruling has been followed, removal of administrative penalties for non-compliance with a private ruling and the charging for rulings in some circumstances).

³⁹ For example regarding public access to private rulings.

⁴⁰ Subsequent legislation, *A New Tax System (Tax Administration) Act 1999*, included wide-ranging changes to income tax and social security, indirect and state taxes and tax administration. As of 1 July 2001, Australian businesses will face further tax reform through the introduction of the new Business Tax System.

⁴¹ The Government-appointed head of the *Review of Business Taxation* was Mr John Ralph, AO.

- The scope of the private and public rulings systems to be expanded to allow the Commissioner to issue rulings on matters of:
 - administration, procedure and collection (a measure consistent with the position outlined in ANTS);
 - ultimate conclusions of fact; and
 - to give the Commissioner a specific power to issue rulings on the potential application of the general anti-avoidance rules set out in Part IVA of the *Income Tax Assessment Act 1936*.
- The ATO to charge a fee for the provision of selected rulings (also a measure proposed in ANTS);
- The ATO to publish, in a form protecting taxpayer privacy and confidentiality, technical decisions and other administrative advice; and
- The penalty provisions to be amended so that taxpayers who decline to follow a private ruling are subject to the same penalty regime as those who decline to follow a public ruling.

1.22 As at July 2001, the Government has not announced its response to these Ralph Review recommendations. We note though, that the recommendation to publish private rulings has been overtaken by events in that the ATO has agreed to do this, in light of the recommendations of the Sherman report (discussed below).

Report of an internal review of the systems and procedures relating to private binding rulings and advance opinions in the Australian Tax Office, (Sherman Report)

1.23 In May 2000, the Commissioner of Taxation commissioned an independent review of the quality, consistency and integrity of the private rulings systems and procedures. This followed the laying of charges against a former senior executive of the ATO involved in providing private rulings, and media criticism of aspects of the private rulings system. The review was conducted by Mr Tom Sherman, AO.

1.24 Key recommendations of the Sherman report are that the ATO should:

- develop, as a matter of urgency, a single corporate IT system for ATO technical work that encompasses both management information and authorship requirements;
- issue all private rulings through a central exit registry with each ruling given an identifying number in the one series of numbers for each year;

- publish all private rulings (with taxpayer identifiers deleted) on a public database. This is designed to enhance the transparency of the private rulings system and provide a means to check the authenticity of private rulings;
- only allow authorised officers (with the necessary skills and experience) to prepare and issue private rulings; and
- simplify the Income Tax Advice Manual and bring it up to date as quickly as possible and develop (and keep up to date) equivalent manuals in other areas of tax law.

Provision of advice project responding to the Sherman report

1.25 The ATO has commenced work on developing a corporate approach to the provision of advice.⁴² In particular, the ATO is refining its processes and integrating existing work-flow and case management systems to embrace a full end-to-end process from receipt and registration to publication of private rulings. The Commissioner also announced that the ATO is planning to publish income tax private rulings for applications received from the end of March 2001 and GST private rulings for applications received from July 2001. The published rulings will be suitably edited to remove any material that would identify individual taxpayers.⁴³

1.26 The ANAO took into consideration the recommendations of the Sherman report, and the ATO's work to implement these recommendations. However the scope of this report extends beyond the material covered in the Sherman report. In particular, our report also covers the administration of the public rulings system, as well as investigating the extent to which the current legal and institutional framework for public rulings provides clarity (certainty) for taxpayers. The scope of the audit report is discussed further later in this Chapter.

⁴² The ATO's provision of advice (PoA) project is described in Appendix 4 and discussed in Chapter 4.

⁴³ Refer to the speech given by the Commissioner of Taxation on 15 November 2000 to the Taxation Institute of Australia, titled *The Integrity of the Private Binding Rulings System*. Note that the ATO has the right not to publish the sanitised private ruling if it is deemed that it is too sensitive, or may identify the taxpayer, however the ATO has advised that it will publish a brief summary for integrity purposes. See Appendix 4.

Overseas practice

1.27 Other jurisdictions have rulings systems as part of their tax administration (for example, Sweden, New Zealand, Canada and the United States). While we considered relevant administrative aspects of these systems as part of the audit, the precise features differ from those in Australia, reflecting differences in the tax systems and differences in scale. Features of countries' rulings systems are compared in Appendix 8. More detailed information on the processes New Zealand uses in its administration of taxation rulings is presented in Appendix 9.

Audit objective and methodology

1.28 The topic of rulings is of interest because of its significance to the effective functioning of the tax system, for the reasons noted earlier. Taxation rulings are an important part of tax administration and they perform a crucial function in the Australian taxation system. As taxpayers should be able to rely on applicable taxation rulings to assess their taxation liability, it is imperative that taxation rulings are clear and unambiguous, comply with the taxation law, and are consistent with existing taxation rulings. If the ATO does not ensure that its taxation rulings meet these criteria, there could be potentially serious ramifications for the fair collection of taxation revenue as well as for the level of public confidence in the ATO's ability to administer efficiently and effectively the Australian taxation system.

1.29 Our interest and audit work on the topic of rulings administration were given additional impetus with the high level of public and Parliamentary interest which followed the laying of charges against a former senior executive of the ATO involved in providing private rulings, and media criticism of aspects of the private rulings system.

1.30 The objective of the performance audit was to:

- a) report to Parliament on the operation of the ATO's administration of taxation rulings (public, private and oral rulings⁴⁴); and

⁴⁴ We looked broadly at oral rulings but could not review them in detail because, as noted earlier, at the time of the audit few of these rulings had been issued.

b) where appropriate, make recommendations for improvements, having regard to considerations of:

- efficiency and effectiveness of the ATO's administration of the rulings system, particularly in relation to the achievement of the objectives set by Parliament for the rulings system;⁴⁵
- the ATO's systems' capacity to deliver consistency⁴⁶ and fairness⁴⁷ for taxpayers; and
- good corporate governance, including the control framework.

1.31 As part of the audit, criteria were developed to examine the processes and how well administrative arrangements supported the goals of increased certainty and fairness for taxpayers. These criteria relate to the reliability and efficiency of processes and systems used to produce public and private rulings; the clarity with which rulings are expressed; the adequacy of the overarching governance and control framework to ensure that the taxation rulings systems are managed well in terms of openness, integrity, accountability and leadership.⁴⁸

1.32 The ANAO considered five key areas in meeting the audit's objectives. These key areas form the basis of the structure for the audit report, depicted in Figure 3 below.

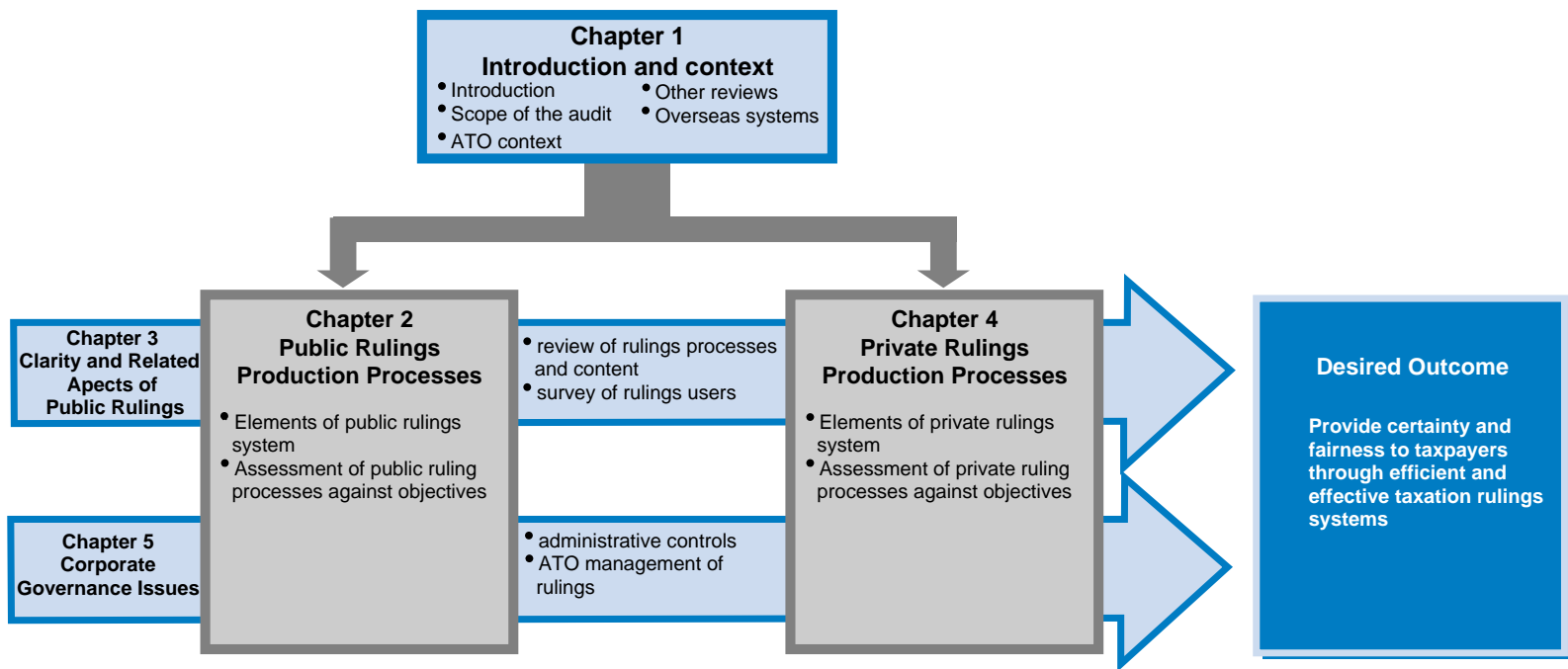
⁴⁵ As noted previously, the Minister noted in the Second Reading Speech on the *Taxation Laws Amendment (Self-Assessment) Bill 1992* that the measures were intended to improve the certainty and fairness of the taxation system. The Speech and the Bill referred to provisions allowing taxpayers to object to private rulings and to have the matter reviewed by an independent tribunal or court as making the system fairer. Improved certainty for taxpayers was to follow from, among other things, allowing the ATO to give parts of the advice it was already providing to taxpayers, in a legally binding form.

⁴⁶ Consistency is linked to certainty. We view certainty to relate to notions of assurance for taxpayers, completeness of knowledge or information and predictability.

⁴⁷ Fairness in tax administration requires the ATO to balance ensuring that tax legislation is complied with and treating taxpayers equitably. We view fair treatment to taxpayers as relating to appropriate treatment to taxpayers and to be linked with the notions of equal treatment to taxpayers in equal circumstances and different treatment to taxpayers in different circumstances, consistency of treatment over time and consistency of treatment between ATO regions. In the Taxpayers' Charter, the ATO undertakes, among other things, to treat taxpayers fairly and reasonably. For information on what this means in terms of the behaviour of ATO staff, see The Taxpayers' Charter Explanatory booklet, *Treating you fairly and reasonably*.

⁴⁸ These principles are described in Chapter 5.

Figure 3
Structure of the report



Audit scope

1.33 The audit focused on the ATO's administrative systems and the corporate governance processes it uses to produce public and private taxation rulings⁴⁹ and manage the overall processes. We did not second-guess the ATO as to the legal merits of individual rulings.

1.34 Our analysis of the systems focussed on 'fairness' in terms of the systems' capacity to deliver fair treatment to taxpayers and maintain consistency over time. The audit did not examine the detailed operations of the taxation rulings appeal and judicial review mechanisms (one of the aspects of the rulings administrative system introduced in 1992 with the objective of making the tax system fairer). However, our examination of the current legal and institutional frameworks for public rulings did allow us to consider aspects of the appeal and judicial review framework for taxation rulings.

1.35 The ANAO considered relevant aspects of the ATO's fraud control plan and took account of the findings of reports regarding alleged instances of fraud involving taxation rulings systems (see Appendix 1). However, we did not examine the one case before the courts of alleged fraud and associated mismanagement associated with the private ruling system.

Audit methodology

1.36 The audit centred on:

- the production of public rulings by the Office of Chief Tax Counsel in conjunction with the business and service lines (see Figure 2);
- the production of private rulings by the business and service lines (see Figure 2) with assistance from the Office of Chief Tax Counsel;
- whether the legal and institutional framework for public rulings provided clarity for taxpayers;
- whether stakeholders in the production of taxation rulings were satisfied with the ATO's administration of rulings and the clarity of rulings; and
- whether the ATO's corporate governance processes are sufficient to support the efficient and effective production of taxation rulings.

⁴⁹ We explored the system of oral rulings, noted at Appendix 1, but, as explained above, we did not examine oral rulings in detail because at the time of the audit there had been only very limited numbers of these rulings provided. We did not examine class rulings, which were only introduced in February 2001.

1.37 Audit fieldwork started with the preliminary study which commenced in May 2000 and was substantially completed by December 2000. In addition to file and document review and an analysis of ATO taxation rulings data, the ANAO conducted interviews with key ATO staff at ATO National Office in Canberra and nine regional offices. The principal purpose of these visits was to examine the numerous systems the ATO uses to produce its taxation rulings, as well as to determine whether staff were adhering to the controls and procedures in place for the production and publication of taxation rulings. Key staff, integral to the effective implementation of policy applicable to taxation rulings, were also located in these regions. Additionally, fieldwork included an analysis of taxation rulings data stored on a number of the ATO's taxation ruling systems.

1.38 We had discussions with stakeholders with considerable involvement with the ATO and its rulings administration (such as the Commonwealth Ombudsman's Special Tax Adviser and members of legal, taxation and small business representative bodies and industry).

1.39 As part of our analysis of public rulings, the ANAO employed senior academics (Professors Richard Vann, Graeme Cooper and Duncan Bentley) with extensive expertise in the field of taxation law and taxation administration⁵⁰ to examine the clarity of public rulings. Chapter 3 draws on the work undertaken by these consultants for the ANAO along with the views of the wide range of stakeholders consulted during the audit.

1.40 As another part of our consideration of the clarity of rulings, the ANAO engaged the firm ORIMA Research to survey stakeholders to assess their perceptions of public and private rulings. These stakeholders included private sector tax professionals as well as ATO staff involved in preparing and using private and public rulings. Results of aspects of this survey, undertaken with the assistance of the ATO and the Taxation Institute of Australia, are used in Chapters 3 and 5 and are reported more comprehensively in Appendix 6. However, we must point out that caution should be exercised in interpreting the findings relating to private sector perceptions because there was a very low response rate to the private sector survey.⁵¹

⁵⁰ The three are professors of law at various Australian universities. Professor Vann is a member of two ATO public rulings panels and Professor Cooper has been an external reviewer in the ATO quality assurance process.

⁵¹ There is a risk that the private sector results may be subject to non-response bias, whereby the findings may not accurately reflect the views of the underlying population of private sector tax professionals due to the views of non-respondents being systematically different from those of the respondents to the survey.

1.41 We also conducted literature research and obtained information on rulings administrative systems from tax administrations in Canada, New Zealand and the United States.

Audit cost

1.42 The audit was conducted in conformance with the ANAO auditing standards at a total cost of \$620 000.

Acknowledgments

1.43 The ANAO would like to thank the ATO officers who assisted in the conduct of the audit, and particularly the officers of the business lines and the Office of the Chief Tax Counsel for their time, effort and expertise. We also appreciate the cooperation of the other stakeholders and other parties overseas, consulted during the audit.

2. Public Rulings Production Processes

This chapter examines the ATO's system of producing public rulings. The public rulings system comprises several categories ('series') of public rulings including the Taxation Ruling (TR) series, the Goods and Services Tax (GSTR) series, and the Product Ruling (PR) series. The ANAO examined the various systems and controls used by the ATO to produce timely, accurate and consistent public rulings.

Background

2.1 Following the introduction of the self-assessment taxation system in 1986,⁵² the then Government introduced legislation in 1992,⁵³ to establish the public rulings system, which binds the Commissioner legally to the advice he provides in his taxation rulings.⁵⁴

2.2 This measure,⁵⁵ which modified the original taxation rulings system established by the Commissioner in 1982, recognised that, in preparing their returns under a self-assessment system, taxpayers could be seeking to be able to apply the taxation law in the same manner as the Commissioner. This increased the onus on the Commissioner to provide comprehensive guidance on taxation issues to the public.⁵⁶ The then Government also recognised that by binding the Commissioner legally to the advice he issues in his public rulings, taxpayers could expect a greater measure of 'certainty' and 'fairness' in the administration of the taxation law.⁵⁷

⁵² The self-assessment system requires taxpayers to assess their own taxation liability before their returns are examined in detail by the ATO. Thus the Commissioner is specifically authorised to make an assessment on the basis of unverified information contained in a taxation return. Pursuant to former s. 169A of the *Income Tax Assessment Act 1936*, a taxpayer could raise a question for the determination of the Commissioner in respect of the taxpayer's income tax return. Following the introduction of the new rulings system in 1992, s. 169A was amended to exclude questions which could be raised by way of a private ruling.

⁵³ *Taxation Laws Amendment (Self-Assessment) Act 1992*.

⁵⁴ P. Baldwin, *Second Reading Speech Self-Assessment Bill 1992*, op. cit.

⁵⁵ That is, public and private taxation rulings issued by the Commissioner post July 1992 and which taxpayers can use as a basis of their self-assessment as they are binding on the Commissioner.

⁵⁶ Appendix 1 provides an overview of the history of the taxation rulings system, including the adoption of a full self-assessment taxation system, and the use of public rulings to educate and inform taxpayers of the Commissioner's interpretation of the taxation law.

⁵⁷ P. Baldwin, *Second Reading Speech Self-Assessment Bill 1992*, op. cit.

Public rulings

2.3 Public rulings are one type of taxation ruling (see Figure 1 in Chapter 1). Public rulings are the considered and decided position of the Commissioner on the interpretation of the laws relating to income tax,⁵⁸ Fringe Benefits Tax (FBT), and the Goods and Services Tax (GST). Although the Commissioner can issue taxation rulings on a wide range of income tax and FBT issues, those taxation rulings are public rulings⁵⁹ only to the extent that they express the Commissioner's opinion on the way a 'tax law' applies to a person or a class of persons, in relation to an arrangement or a class of arrangements.⁶⁰ By way of contrast, any written advice issued by the Commissioner on the GST law that is not a private ruling⁶¹ is a legally binding public ruling.

2.4 As public rulings are issued on a wide variety of taxation matters, the ATO has divided public rulings into several groups or 'series'.⁶² These 'series' are used by the ATO to categorise public rulings by particular taxation types, issues or themes. The ANAO examined the systems and controls the ATO uses to administer three major series of public rulings. These public rulings series⁶³ relate to:

- Income tax and FBT rulings (TR and TD series of taxation rulings);
- GST rulings (including GSTR and GSTD series of taxation rulings);
and
- Product rulings (PR series of taxation rulings).

2.5 The different systems and controls used by the ATO to administer these rulings series largely constitute the ATO public rulings system overall. Other series of public rulings (for example, Superannuation Guarantee Rulings (SGR), Class Rulings (CR) and Miscellaneous Taxation Rulings (MT)) utilise the administrative procedures outlined in the TR series.⁶⁴

⁵⁸ Income tax law is defined under the TAA to mean a law under which is worked out the extent of liability for income tax, withholding tax, mining withholding tax, Medicare levy, or franking deficit tax.

⁵⁹ That is, they are legally binding on the Commissioner.

⁶⁰ For a more detailed description of public rulings, see Appendix 1.

⁶¹ Under the GST ruling system, a private ruling is defined to mean a ruling given to a particular entity. For a more detailed description of GST, see Appendix 1.

⁶² A full description of the different taxation rulings series can be found in Appendix 1.

⁶³ All the public rulings series are public in so far as they are published widely for public information. However not all content in these rulings is legally binding on the Commissioner. For an explanation of administratively and legally binding, see Appendix 1.

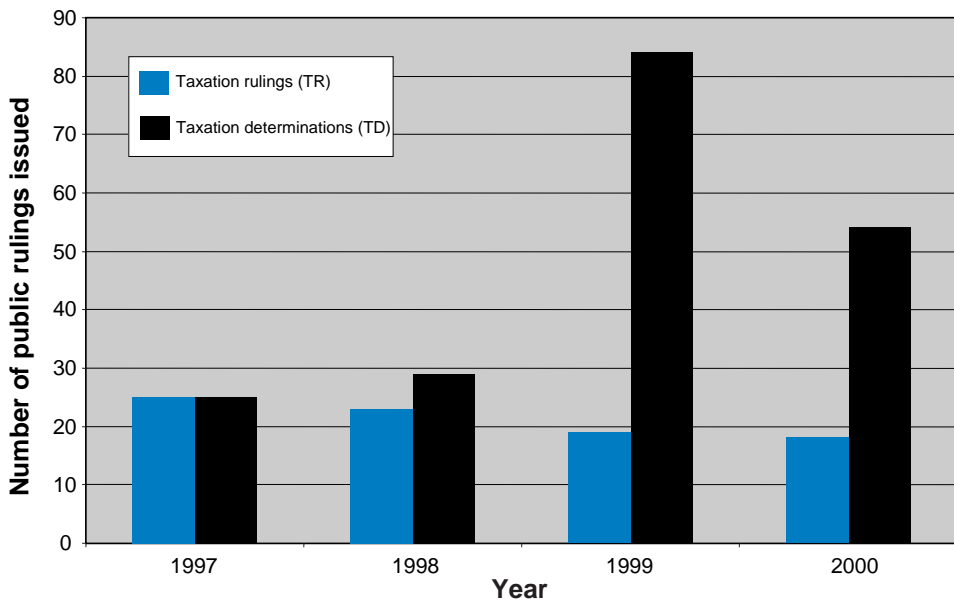
⁶⁴ For more detail on the TR series, see Appendix 1.

Income tax and Fringe Benefits Tax public rulings system (TR and TD series of taxation rulings)

2.6 The first series of public rulings issued by the ATO was the Taxation Rulings (TR) series. The TR public rulings series is used by the ATO to promulgate the Commissioner's interpretation of income tax and FBT law on complicated or broad-ranging taxation arrangements. A complementary series of public rulings, known as the Taxation Determinations (TD) series, are issued on smaller, more specific income tax and FBT matters. The graph below illustrates the number of TR public rulings and TD public rulings issued since 1997.

Figure 4

Numbers of public rulings (TR and TD series) issued between 1 January 1997 and 30 December 2000



Source: ATO data⁶⁵

⁶⁵ There were some minor inconsistencies in the data used to produce this diagram. However, the diagram is indicative of the numbers of TR and TD public rulings issued since 1997.

2.7 Both the TR and TD public ruling series are administered by the Taxation Rulings Unit (TRU)⁶⁶ within the Office of the Chief Tax Counsel. The TRU uses the same administrative processes and controls to produce TRs and TDs.

2.8 The TRU has established a comprehensive administrative system to produce TR and TD public rulings. The various stages of this production process are illustrated in Appendix 3 Diagram 1. The ANAO considers that this system has a number of features that provide a high level of assurance that TR and TD public rulings are drafted and reviewed by ATO officers with appropriate expertise, and issued with due care. These features are that all TR and TD public rulings:

- *are issued with a unique number when finally approved.*⁶⁷ This allows the TR and TD public ruling to be traced back to the original documentation specifying why the topic for the public ruling was chosen, through to comments received from external sources, as well as drafts and revisions (see Appendix 3 Diagram 1 Stages 3–7). This ‘audit trail’ ensures that the ATO officers responsible for the ruling are accountable. A unique identifying number also serves as an integrity measure for ensuring that the Commissioner’s opinion is quoted and applied correctly from TR and TD public rulings.
- *have a single exit point before they are issued.* All TR and TD public rulings must go through a final review process. This review process includes review by taxation officers with high levels of expertise in taxation law. Final approval is provided by the TRU (see Appendix 3 Diagram 1 Stage 8). This process ensures that only public rulings endorsed by the Commissioner are released publicly.
- *have a transparent production process.* When TR and TD public rulings are prepared, they are listed publicly on the ATO web-site (see Appendix 3 Diagram 1 Stage 5). Once finalised TR and TD public rulings are formally published in the Commonwealth Government Notices Gazette. The ATO also tables these public rulings in both Houses of Parliament, even though there is no legislative requirement

⁶⁶ The TRU coordinates and monitors the public rulings program and arranges for the issue of draft and final determinations and rulings. TRU provides a rulings adviser role including the provision of assistance and advice to authors, approving officers, peer reviews and responsible business line managers. In addition to these roles, TRU has a strong technical input into the taxation rulings system. It also provides technical advice to the Chief Tax Counsel and Deputy Chief Tax Counsel as well as other Tax Counsel on complex technical issues. TRU is responsible for ensuring that the procedures established to maintain quality rulings and determinations are followed. TRU officers also draft determinations and rulings on issues that affect the ATO as a whole.

⁶⁷ See Stage 7 in Appendix 3, Diagram 1.

to do so (the transparency of the ATO public ruling topic selection process is examined in this chapter).

- *have extensive consultative processes.* The ATO advised the ANAO that a number of networks of specialists are relied upon to identify ATO officers with the skills necessary to draft public rulings. Senior level ATO staff and members of the various public rulings panels,⁶⁸ which include community representatives who are tax practitioners and academics as well as senior ATO officers, may also provide drafting input (see Chapter 5).⁶⁹ Draft TR and TD public rulings usually are issued for public comment and may be subject to consultation with stakeholders before issue;⁷⁰
- *have extensive quality control processes.* The ATO applies a range of pre-issue quality review processes (see Appendix 3 Diagram 1 Stages 4 and 7) to all TR and TD public rulings in order to ensure the technical accuracy of its TR and TD public rulings. These review processes differ according to the perceived complexity or importance of the topic and may be carried out by ATO staff, people engaged by the ATO and using general feedback provided by the public. Post-issue quality review processes are also used. These are discussed as part of corporate governance in Chapter 5; and
- *have extensive community consultation processes.* The ATO has a comprehensive community consultation process for TR and TD public rulings. This level of consultation ranges from the publication of its public rulings program on the ATO web-site,⁷¹ through to specific comment from major stakeholders⁷² with an interest in particular public ruling topics.

⁶⁸ ATO tax panels for TR and TD public rulings include the Public Rulings Panel and the International Tax Rulings Panel. More information on these panels can be found in Chapter 3.

⁶⁹ The ATO also has a GST Rulings Panel. This panel is similar in nature to the Public Rulings Panel, except that is concerned only with GST rulings.

⁷⁰ We note that most, but not all, TR and TD public rulings are subject to this consultation process.

⁷¹ The ATO web-site contains the following information: current public rulings topics, finalised taxation rulings and taxation determinations, finalised drafts and delayed topics. The provision of this information in the ATO web-site provides the public with the opportunity to examine and make comment on public rulings topics from a draft through to finalisation.

⁷² The ATO often consults specifically with leading community and professional groups potentially affected by applicable rulings topics. The National Tax Liaison Group (NLTG), which is the peak consultation forum for discussion and resolution of broad issues of procedures and policy in tax administration, and which discusses topical tax matters relevant to the ATO and professional groups also has a role to play. Issues covered by the NLTG discussions can include the operation of the public rulings system and the public rulings program, reviewing ATO processes for handing private binding rulings, community and other education programs, and enhanced consultation processes on taxation legislation. Other NLTG activities are discussed later in this Chapter. See also Chapter 5.

Overall performance of the income tax and Fringe Benefits Tax public rulings system

2.9 In assessing the performance of the TR and TD public rulings system, the ANAO sought to determine whether the system met the objectives for which it was established.⁷³ These objectives are to make the taxation system fairer, and to provide taxpayers with certainty in relation to the administration of the taxation law by the Commissioner. Factors that have a significant influence on the fairness and certainty of public rulings, are the administrative procedures and controls the ATO has in place to ensure timely production of clear and technically accurate public rulings.

2.10 We found that the ATO has exhaustive administrative procedures and controls in place to produce public rulings. However, there has been some comment passed by the Australian judiciary, academics and public, on the ability of the ATO to produce clear and binding TR and TD public rulings. This commentary has related to the level of certainty TR and TD public rulings provide taxpayers in relation to the application of the taxation law. We found that issues regarding the: timeliness of TR and TD public rulings; prioritisation of public rulings topics; and collection, analysis and effective use of performance information, have an impact upon the efficient production of TR and TD public rulings that meet taxpayers' needs as intended. The ATO should ensure that these areas are addressed fully as part of the ATO's public rulings production processes.

Timeliness of TD and TR public rulings

2.11 During the course of the audit, the ANAO consulted with a number of private sector stakeholders (see Chapter 1) on the ATO public rulings processes, and conducted a survey of the users of taxation rulings. (The survey results are noted, as relevant, in Chapter 3 and are outlined more comprehensively in Appendix 6.⁷⁴) Our discussions with stakeholders showed that while some were satisfied with, or complimentary of, the ATO's topic selection and drafting processes associated with public rulings, some raised concerns at the length of time it took the ATO to process and publish some public rulings. The timeliness and responsiveness of public rulings were significant issues raised by the Senate Economics References Committee when it examined the ATO's

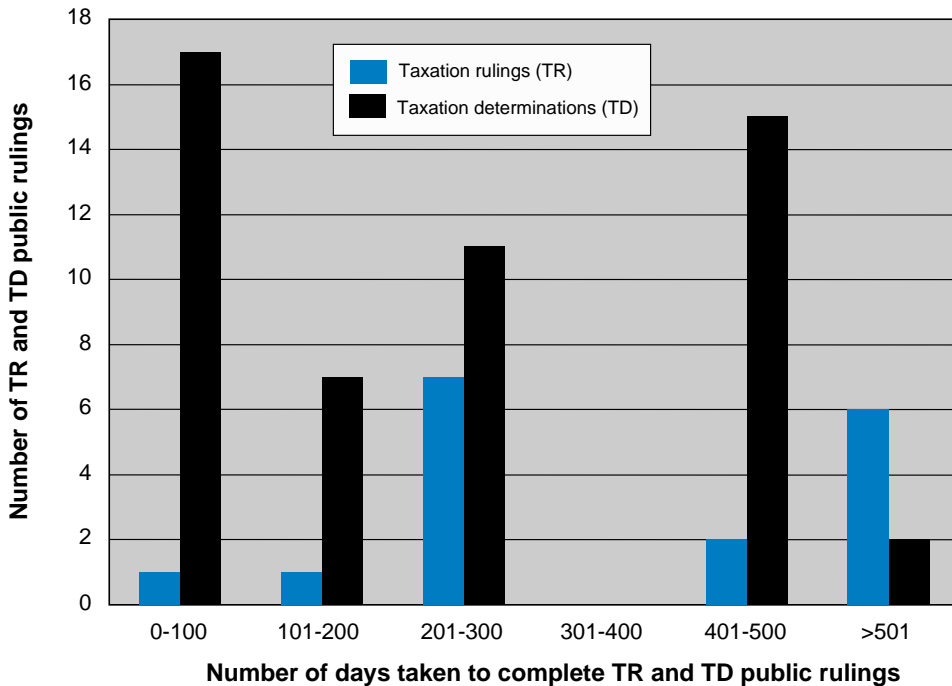
⁷³ The history behind the establishment of these objectives is outlined in Appendix 1.

⁷⁴ It is noted that the survey of private sector stakeholders elicited a low (13%) response rate.

responses to the development of mass marketed schemes.⁷⁵ The following diagram illustrates the amount of time it took the ATO to produce TR and TD public rulings for the calendar year ending 31 December 2000.

Figure 5

Number of days taken to issue Taxation Rulings (TR series) and Taxation Determinations (TD series) issued in the 2000 calendar year



Source: ATO data

2.12 The ANAO recognises that, due to the potentially complex taxation matters dealt with, and the rigorous review and approval processes employed, by the ATO to issue TR and TD public rulings, it can take a significant amount of time to issue public rulings. Given the duration of some of the tasks, we consider that there might be benefit in the ATO monitoring and collecting performance information and setting standards for the production of public rulings. TR and TD public rulings performance information is discussed further later in this Chapter.

⁷⁵ Senate Economics References Committee, *Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection Interim Report*, June 2001. See, especially, Chapter 4 of the Committee report.

Prioritisation of TR and TD public rulings topics

2.13 The selection and prioritisation of topics upon which the ATO rules publicly is an important component of providing an effective taxation system. By ensuring the timely promulgation of the ‘most important’ public rulings to the public, the ATO can provide taxpayers with the most important taxation information they need to assess their taxation liability. This is also of benefit to the ATO as taxpayers are more likely to comply with their taxation obligations (as outlined by the Commissioner in a public ruling) if they receive important taxation information in a timely manner.

2.14 As noted in Appendix 3, Diagram 1 (which outlines the process of producing a TR or TD public ruling), the business lines are responsible for the identification⁷⁶ and prioritisation of the majority of TR or TD public rulings topics.⁷⁷ In addition, the ATO may identify public rulings topics through a number of consultative groups and forums that comprise ATO staff, leading external taxation experts and members of the public. Ultimately, it is the responsibility of the business lines in conjunction with the TRU and the National Tax Liaison Group (NTLG) to manage and prioritise competing business service line public rulings topics and public rulings topics identified by other groups.

2.15 Although the TRU has constructed detailed processes to issue rulings, and these processes specify who prioritises TR and TD public rulings topics (see Appendix 3 Diagram 1), the ATO (in particular, the business lines) has not specified the methodology and criteria it uses to prioritise public ruling topics. The ANAO considers that to have an efficient and effective TR and TD public rulings system that addresses the most pressing public ruling taxation matters first, the ATO needs to clearly articulate the methodology and criteria (i.e. the approach) it uses to prioritise these topics. The approach used by the ATO to prioritise its

⁷⁶ The principal mechanism used by the business lines to identify potential issues that may result in a public ruling is the ‘significant issues criteria’ listing (see Appendix 5). The issues identified through the use of these criteria by the ATO do not necessarily result in the identification of public rulings topics, as the ATO can use other means to resolve issues identified using the criteria. These criteria are used to prioritise significant issues, but are not used to prioritise public rulings topics. Public rulings topics are prioritised using business line risk assessments carried out as part of the ATO’s overall corporate governance process.

⁷⁷ As noted above but more specifically, public rulings are generally prioritised by the business lines as part of their overall corporate governance risk assessment process (known as the *Health of the System Assessment*). However, the NTLG, with its high level focus on the ATO’s administration of the tax system as noted earlier, can advise the ATO on which public rulings should receive priority. The ATO usually acts upon that advice.

public rulings could be outlined in the ATO Rulings Manual (or the ATO Advice Manual that the ATO intends to introduce as a consolidated source of procedural guidance for staff on the provision of interpretative advice, see Chapter 5).

2.16 Clearly articulating the approach used to prioritise TR and TD public rulings not only allows the ATO to more readily assess the efficiency of its prioritisation processes, but also allows the public to better understand the methodology used by the ATO to determine its public rulings program. That is, the public would be in a better position to understand the reasoning behind the ATO's selection of public rulings topics, as well as to consider the progress of an individual TR and TD public ruling from the initial drafting stages through to its issue.

2.17 As part of this process of more clearly articulating the approach it uses to produce rulings the ATO should document clearly:

- which risks identified as part of its principal corporate governance process (HOTSAs) could require public rulings to address those risks;
- the application of the criteria contained in ATO Practice Statement PS 2000/7 to determine whether an issue is significant, and whether that issue should be addressed in a public ruling;
- the criteria used by the NTLG to prioritise public rulings; and
- the application of the criteria or reasoning used by the NTLG to prioritise public rulings.

Recommendation No.1

2.18 The ANAO recommends that the ATO more clearly articulate the approach it uses to prioritise public rulings, and document how it has applied that approach to determine the priority of topics identified for its public rulings program.

ATO Response

Agreed.

TR and TD public rulings performance information

2.19 The ANAO notes that the ATO has invested heavily in its public ruling system to ensure the technical and overall quality of its public rulings. In particular, comment from principal stakeholders through official ATO public rulings panels and the NTLG (see Chapter 5) ensures that performance feedback on the technical quality and clarity of rulings is obtained regularly by the ATO.

2.20 As noted previously, the TR and TD public rulings system also has comprehensive review mechanisms and processes in place to detect sub-optimal or technically incorrect rulings prior to issue. These mechanisms and processes are displayed in Appendix 3, Diagram 1. The TRU also has formal checklists⁷⁸ in place to ensure that correct procedures have been followed and all clearances are received from the relevant reviewer.

2.21 However, to manage the public rulings system efficiently and effectively, factors in addition to quality, such as the time and cost of producing public rulings should also be analysed and reported regularly. The ANAO notes that the ATO does not systematically analyse and report on these aspects of performance for its public rulings systems. We consider that the ATO should analyse and report on these aspects of performance. The ANAO examines and discusses these issues as part of Chapter 5 on corporate governance.

2.22 The ANAO considers that by analysing the costs and the amount of time associated with the drafting of public rulings, the ATO would be in a better position to assess the efficiency and effectiveness of the drafting process. When aspects of time and cost are analysed in conjunction with quality, the resulting performance information could serve to improve the public ruling production process by helping to ensure that the areas in which taxpayers require assistance, for instance, are all dealt with, and are dealt with in timely and cost-effective ways, that best meet taxpayer requirements.

2.23 The management of the production of public rulings (in particular the collection, analysis and use of public rulings performance information) is discussed further in Chapter 5.

⁷⁸ The TRU has checklists for each series of taxation rulings. These are known as TRU Pre-Issue Checklists.

Goods and Services Tax public rulings

2.24 The Commissioner commenced issuing GST public rulings in 1999 to explain his interpretation of the law relating to the GST. GST public rulings are legislatively different from other series of public rulings (this is discussed in more detail in Appendix 1).⁷⁹ Any ruling or advice given or published by the Commissioner on the GST law is legally binding on the Commissioner. Hence, GST rulings (GSTRs) and GST determinations (GSTDs) are legally binding.

Systems relating to the production of GST written material

2.25 Unlike other material published by the ATO⁸⁰ which is not legally binding on the Commissioner, as noted above, all written advice given or published on the GST by the ATO is legally binding on the Commissioner. This written advice covers a broad range of ATO written material and publications including:

*...GST bulletins, GST product rulings, general information booklets, guides and fact sheets published by the Australian Taxation Office and notices in the Government Gazette or special publications of the Australian Government Printer...*⁸¹

2.26 Although there is no single set process for the production of ATO GST publications and other written materials, the GST Rulings Unit (GSTRU),⁸² a centralised unit established by the GST business line, is responsible for reviewing and approving all GST written material, when necessary, before it is released publicly. Generally, the taxation issues forming the basis of ATO publications and other written material are less complicated or contentious than those covered by GSTR and GSTD public rulings. However, if a complex or contentious tax matter is encountered when drafting a GST publication, then the ATO has mechanisms in place to escalate the matter to an ATO officer with relevant expertise, an ATO industry group or the GST Rulings Panel.

⁷⁹ The GST rulings system is closely based on the old sales tax rulings provision. GST taxation rulings are issued in accordance with s. 37 of TAA. This legislation differs markedly from the legislation governing income taxation and FBT rulings which has its basis in Part IVAA and Part IVAAA of the TAA. For a more detailed explanation of the GST taxation rulings system see Appendix 1.

⁸⁰ Which does not state that it is a public ruling for the purposes of Part IVAAA TAA.

⁸¹ *Goods and Services Tax Ruling—Goods and Services Tax: the GST rulings system* GSTR 1999/1.

⁸² The GSTRU provides a central mechanism for the drafting of public rulings in the GST business line. Approving officers and peer reviewers are provided by the Tax Counsel Network, as is the case for other types of public rulings. The TRU is responsible for the overall administration of all public rulings.

2.27 The ANAO notes that through rigorous escalation processes, and review by the centralised GST Rulings Unit, the GST business line has minimised the risk that technically incorrect written material will be issued to the public. This provides taxpayers with certainty that the GST material issued by the ATO is correct and can be relied on to assess their GST taxation obligations.

Systems relating to the production of GSTR and GSTD public rulings

2.28 The ATO produces two ‘formal’ series of GST public ruling. These are:

- Goods and Services Taxation Rulings (GSTR). This series is used by the ATO to promulgate the Commissioner’s interpretation of GST on complicated or broad-ranging taxation issues; and
- Goods and Services Taxation Determinations (GSTD). This series is used by the Commissioner to rule on smaller, more specific GST tax issues.

2.29 Both the GSTR and GSTD public ruling series are generally drafted by ATO staff within the GSTRU. The GSTRU is responsible for all materials relating to the GST including GSTRs and GSTDs. For the calendar year 2000 the ATO issued 37 GSTRs and 12 GSTDs.

2.30 The processes and controls associated with the production of GSTR and GSTD public rulings are broadly consistent with those of the TR and TD public rulings production process outlined in Appendix 3, Diagram 1 (note that draft rulings are referred to the GST Rulings Panel).

2.31 Once a GST public ruling has been drafted and reviewed, if necessary, by the GST Rulings Panel, it is also reviewed by the TRU. In addition to the publication of income tax and FBT public rulings, the TRU is also responsible for the publication of GST public rulings.

Overall performance of the GSTR and GSTD public rulings system

2.32 The ANAO notes that the administrative systems the ATO has in place to produce GST written material have been continuously evolving during the implementation of the GST. We also note that GST publication systems have needed to be flexible to produce the large quantities of information required by the public during the implementation of the new tax system.

2.33 However, the ANAO found that the rigorous processes and controls used by the ATO to produce income tax and FBT rulings are similarly rigorous for GSTR and GSTD rulings. Therefore the 'better practice' features of the TR and TD public rulings systems mentioned earlier in this chapter apply equally to the GST rulings system.

Prioritisation of GST public rulings topics

2.34 The GST business line has established criteria to identify significant GST issues, a high proportion of which the ATO addresses through its GST public ruling program.⁸³ In addition to its significant issues criteria, the ATO also consults extensively with industry groups, other external stakeholders, and the NTLG, to determine which issues are addressed in GST public rulings.

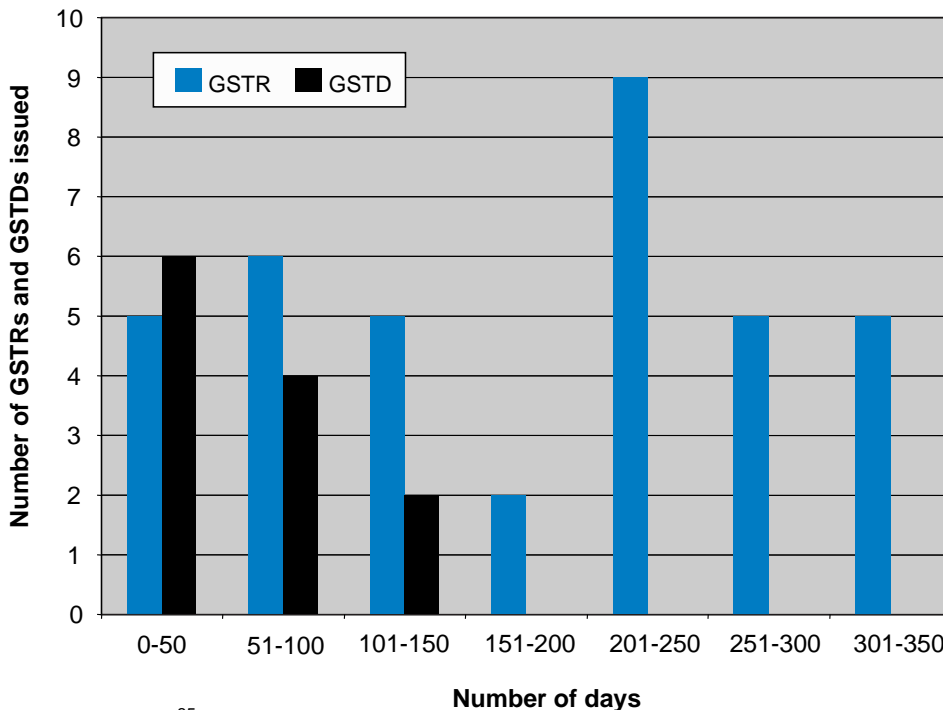
2.35 The GST business line uses significant issues criteria to identify potential GST public rulings topics, and consults widely with external stakeholders on proposed public rulings topics. Nevertheless, as was the case for the prioritisation of TR and TD public rulings topics, the ANAO could not find evidence that the GST business line used a systematic process to prioritise its GST rulings topics. However, the ANAO acknowledges that the ATO has contributed significant resources to ensure the timely and high quality production of its GST public rulings. To illustrate the time taken to issue GST public rulings, the diagram below displays the number of days taken by the ATO to issue GSTR and GSTD public rulings in the year 2000.⁸⁴

⁸³ The criteria used by the ATO to identify significant GST issues are similar to the significant issues criteria outlined in Appendix 5, and are outlined in Practice Statement PS2001/3.

⁸⁴ The total number of GST public rulings issued by the ATO is far higher than the GSTR and GSTD public rulings in Figure 6. However GSTR and GSTD public rulings tend to deal with more complicated and time consuming topics than other GST rulings issued.

Figure 6

The number of days taken issue GSTR and GSTD public rulings for the year ending 31 December 2000



Source: ATO data⁸⁵

2.36 The ANAO considers that, although the ATO has, to date, issued its GST public rulings in a timely manner, it should consider the development of a systematic process to prioritise its GST public rulings. Prioritisation of GST public rulings against one another, and against other business line functions and priorities, would help ensure the efficient and effective allocation of resources.

GST public rulings performance information

2.37 The GST business line has developed IT systems to collect information relevant to the timeliness⁸⁶ and cost⁸⁷ of its GST public rulings, and it regularly receives feedback from relevant stakeholders and the

⁸⁵ Note that Figure 5 cannot be compared directly with Figure 6, as GST rulings have only been issued since 1999. TR and TD public rulings have been issued since 1992.

⁸⁶ The TRU keeps an up-to-date list of all GSTR and GSTD rulings issued. However the GST business line does not collect information on the timeliness of other GST public rulings.

⁸⁷ The GST business line has redeveloped the INBUCA system (see Appendix 3 for a description of INBUCA) to cost GST activities. This system is known as GSTUCA. At the time of the audit, this system was not used uniformly throughout the GST business line, however GST areas relevant to the production of GST rulings were using GSTUCA.

GST public rulings panel on the quality of its GST rulings. However at the time of the audit, the GST business line had not introduced a comprehensive reporting framework to analyse and use the GST performance information generated by the IT systems which collect timeliness and cost information.

2.38 In a manner consistent with other public rulings, the ATO should seek to analyse performance information on the timeliness and cost its GST rulings, in conjunction with the information on the quality of GST rulings. Analysis and use of information combining time, cost and quality will enable the ATO to assure itself that the GST public rulings system is operating efficiently and effectively. The ATO advised us in May 2001 that the most recent version of GSTUCA produces comprehensive timeliness and cost performance reports for both public and private rulings.

Product rulings (PR series of public rulings)

2.39 The Commissioner commenced issuing product rulings in July 1998 to provide both promoters and investors with certainty about the taxation consequences of particular investment products and schemes.⁸⁸ A 'product' refers to an arrangement in which a number of taxpayers individually enter into substantially the same transactions with a common entity or a group of entities. For example, a 'product' may be described as a primary production scheme, investment, arrangement, a tax effective arrangement, a financial arrangement, or an insurance arrangement. Often the 'product' is offered to the general public by a promoter⁸⁹ through a memorandum or prospectus, but may be forwarded to individuals on an invitation basis.⁹⁰ Refer to Appendix 1 for further information on product rulings.

⁸⁸ Senate Economics References Committee, *Operation of the Australian Taxation Office*, 9 March 2000.

⁸⁹ A promoter is the person/s responsible for formulating and promoting the product to the product participants. The promoter must not be a participant in the product, PR 1999/5.

⁹⁰ PR 99/95 Income tax and Fringe Benefits Tax: product rulings system.

Systems relating to the production of product rulings

2.40 Originally, product rulings were produced using the same processes and controls used in the TR and TD public rulings system. However, due to the nature of the taxation arrangements dealt with in product rulings (which are generally less diverse and complicated than other public rulings), and the numbers of product rulings issued (102 in the year ended 31 December 2000 compared to 17 for TR public rulings),⁹¹ a separate product ruling system was established. This system differs significantly from other public rulings systems as shown when comparing the processes outlined in the product rulings process illustrated in Appendix 3, Diagram 7 and the TR and TD public rulings process outlined in Appendix 3, Diagram 1.

2.41 Two business lines are primarily responsible for the administration of product rulings in the 2000 calendar year. These are the Small Business business line, which was responsible for producing 100 product rulings, and Large Business and International business line, which produced two product rulings. Although the two business lines are responsible for different numbers of product rulings, both have similar procedures to administer and produce product rulings. That is, both have similar signoff and quality assurance processes. These are outlined in Appendix 3. Both business lines also send all product rulings to the TRU for review prior to publication.

2.42 As product rulings generally focus on specific products, rather than broad issues of complex or contentious tax law,⁹² the ATO's procedures for drafting and reviewing product rulings are not as comprehensive as those used for other public rulings, such as TR and TD public rulings. If a product ruling does require additional technical expertise to clarify complex or contentious tax issues, the author of the product ruling may refer those issues to other taxation officers with additional tax technical expertise as part of the product ruling escalation process, see Appendix 3, Diagram 7. This process provides the ATO with assurance of the technical accuracy of product rulings.

⁹¹ Numbers relating to other types of taxation rulings issued are: GSTR 37, GSTD 12, MT 2, SGD 1, SST 2, STD 3, TD 55. See Appendix 1 for a description of these series of public rulings.

⁹² as may be the case with TR and TD and GSTR, and GSTD public rulings.

Overall performance of the product ruling system

2.43 In assessing the performance of the product rulings system, the ANAO sought to determine whether the system the ATO had in place to administer product rulings contributed to a fairer taxation system, and provided taxpayers with certainty of the Commissioner's interpretation of the taxation legislation. Factors that have a significant influence on whether the product rulings system is operating efficiently and effectively include the administrative procedures and controls the ATO has in place to ensure timely and cost-effective production of clear and technically accurate product rulings.

2.44 We found that the ATO has strong administrative procedures and controls in place to produce product rulings. Similar to TR and TD public rulings, this strength is derived from a product rulings system that has a single exit point, comprehensive escalation processes and networks, and sound quality control processes.

Monitoring and reporting product rulings work-flow

2.45 Both the public rulings⁹³ and product rulings systems use rudimentary Microsoft Excel spreadsheets to document and monitor the progress of draft rulings. Although work-flow is distributed and controlled centrally through individual spreadsheets for both systems, it must be manually updated on a regular basis to reflect accurately the current status of a product ruling as it is being produced.

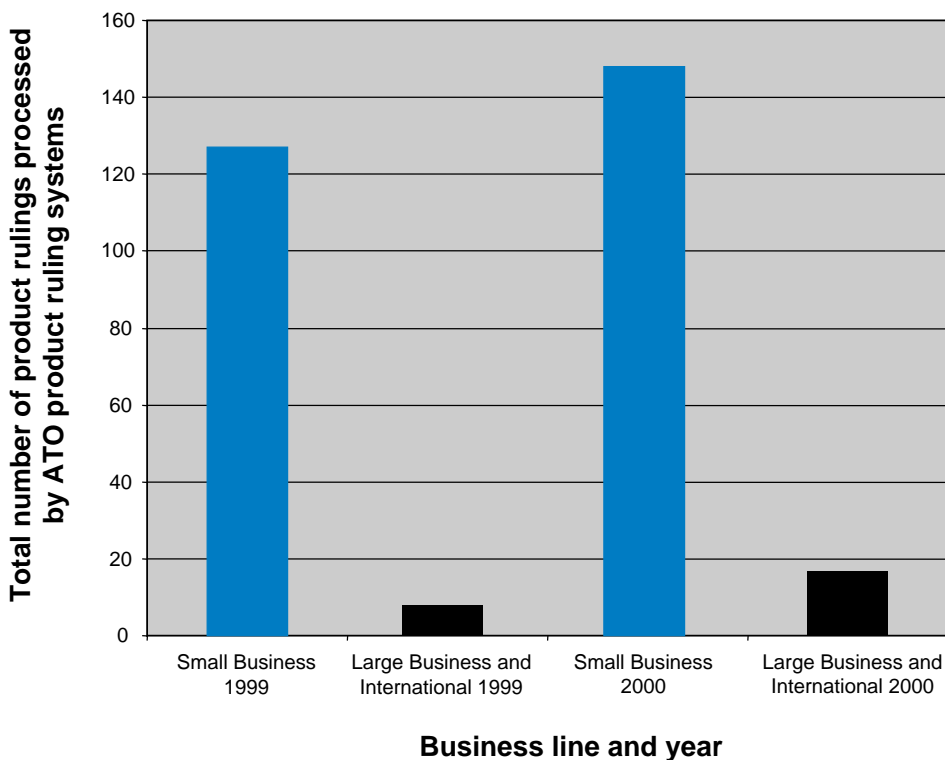
2.46 At present, the use of a spreadsheet is an effective tool to manage product rulings work-flow. However, the ANAO considers that the numbers of product rulings have the potential to increase in the future. As the graph below illustrates, the number of product rulings processed⁹⁴ by the ATO has increased since 1999.

⁹³ Public rulings refers to TR, TD, GSTR, GSTD.

⁹⁴ Processed refers to product rulings either in production or issued by the ATO.

Figure 7

Number of product rulings processed between 1999 and 2000



Source: ATO data

2.47 If numbers of product rulings sought by taxpayers continue to increase, the ATO should consider a new work-flow management system to manage and report on product rulings work-flow, as the existing spreadsheet may become administratively unwieldy. The control offered by the Excel spreadsheets is examined as part of the chapter in this report dealing with corporate governance (Chapter 5).

2.48 The ATO advised that it was investigating other work-flow management systems to manage the production of product rulings. In particular, the ATO considers that the Duplicate Work-flow Management System (DWMS) which is currently used for private rulings could be used to manage product rulings effectively. Trials on the effectiveness of DWMS commenced during the audit.

Product rulings performance information

2.49 The ATO has pre-issue quality assurance mechanisms as part of its product rulings production process. These mechanisms relate mainly to the peer review process conducted on all product rulings prior to issue. This is displayed in Appendix 3, Diagram 7. However the ANAO noted that the ATO does not formally monitor and report regularly on

the outcomes of the peer review processes in aggregated peer review information. By producing aggregate peer review performance information, ATO management would be better placed to identify systemic issues applicable to all officers currently responsible for producing product rulings. The ANAO considers that the ATO could analyse and report this information regularly as part of its existing corporate governance reporting processes.

2.50 The ANAO notes that the ATO does collect and report regularly on the performance of some aspects of the product rulings system, including the timeliness and quality of product rulings. However, the ATO should also consider collecting, analysing and using information on other aspects of performance, such as the cost of producing product rulings. The ANAO notes that the ATO has conducted some analysis of the aggregate costs of producing product rulings over a limited time period. However to be relevant and effective, this type of analysis should be conducted regularly and for each product ruling issued. This would allow the ATO to effectively manage the costs associated with the work for individual product rulings, as well as analyse the overall costs associated with the product rulings system.

2.51 Similar to other series of public rulings, the ATO should analyse and use performance information relating to the timeliness, cost and quality of producing product rulings to determine whether individual product rulings are produced efficiently and effectively. Also, by analysing aggregated time, cost and quality performance information, the ATO would be better able to determine the overall performance of the product rulings system. The collection and reporting of performance information is discussed further in Chapter 5—Corporate Governance.

Other forms of taxation advice

2.52 Aside from formal public rulings,⁹⁵ the ATO also provides other material to clarify the Commissioner's position on contentious or unclear issues of taxation law. This material can include TaxPack, media releases, return form guides, information booklets and speeches by the Commissioner or ATO staff. These materials are not considered to be binding on the Commissioner, except in relation to GST (as mentioned previously). Nevertheless, the Commissioner takes the view that reasonable reliance on these materials will mean that taxpayers are not exposed to penalty tax.

⁹⁵ Public rulings refers to TR, TD, GSTR and GSTD.

Conclusion

2.53 For administrative purposes, the ATO divided its public rulings into three main categories (series). These are income tax and FBT public rulings (TR and TD series), GST public rulings (GSTR and GSTD series) and product rulings (PR series).

2.54 In assessing the performance of the ATO in relation to the production of its public rulings, the ANAO sought to determine whether the ATO had administrative procedures and controls to ensure the efficient and effective production of timely, cost-effective and technically accurate public rulings.

2.55 Overall, the ATO has a well-developed public rulings system, which draws on the expertise of ATO staff with detailed knowledge of taxation law, industry and community group experts, academics and the general public. The system incorporates control mechanisms that allow the ATO to produce public rulings of high technical quality and the ATO can obtain feedback on the technical quality and clarity of rulings from stakeholders, for example through official ATO public rulings panels and the NTLG. However some stakeholders we consulted have commented on the time taken to produce some public rulings

2.56 The ANAO found that, although the ATO has mechanisms to assist it to identify whether it has produced public rulings of high technical quality, it does not use a systematic and consistent process to determine the priority of public rulings topics that are dealt with in TR, TD, GSTR and GSTD public rulings. That is, we were unable to determine whether the ATO was addressing the most important public rulings topics first, and how these topics were prioritised against other ATO functions. We consider that this is an important aspect of an efficient and effective public rulings system as it not only allows the ATO to manage its public rulings resources better, but also increases the public awareness of ATO operations where this information is reported externally. An increased public awareness of the methodology used to prioritise and address public rulings topics is a factor in providing assurance that the public rulings process is operating effectively.

2.57 The ATO does not regularly monitor the overall performance of its public rulings system. This issue is discussed further in Chapter 5 of this report. In particular, the ATO does not analyse or report aggregate information relating to the timeliness, cost and quality of its public rulings prior to issue. The ANAO considers that, by analysing the time and cost of drafting public rulings, in combination with aspects of quality of the final product, the ATO could assess the overall efficiency and effectiveness of the drafting process.

3. Clarity and Related Aspects of Public Rulings

This chapter examines the clarity of public rulings by reviewing matters relating to the legal framework, public rulings production processes relating to clarity and the clarity of the content of public rulings.

Introduction

3.1 We concluded in Chapter 2 that the ATO has a well-developed public rulings system and that the system has control measures that allow the ATO to produce public rulings of high technical quality and to assess its performance in this regard. Our work in this chapter considering the clarity of public rulings should be seen in that context. This chapter examines a range of matters (such as the legal framework and processes) which have the potential to contribute to uncertainty in the operation of the public rulings system, and therefore uncertainty for taxpayers regarding their tax responsibilities in the self-assessment environment. It also examines the clarity of the content of published rulings.

3.2 The first section of the chapter reviews aspects of the legal framework for the public rulings system that negatively affect the clarity and usefulness of public rulings. The second section of the chapter deals with the process of developing public rulings. It examines how the process affects the certainty provided to taxpayers by taxation rulings. The third section examines the clarity of the content of public rulings.

3.3 As outlined in Chapter 2 and Appendix 1, the framework for public rulings in Australia is based in law and includes formal rights, including provision for judicial review.⁹⁶ These are worthwhile features of the public rulings system supporting taxpayers in a self-assessment tax environment.⁹⁷ However the legal framework for public rulings in which the ATO operates has features that can contribute to uncertainty for taxpayers by undermining the clarity of the guidance that public rulings can provide to them.

⁹⁶ See Appendix 8 for a comparative summary of some of the features of rulings systems in a range of countries.

⁹⁷ As outlined in Appendix 1, elements of the legal framework that facilitate taxpayers' certainty and understanding of the Commissioner's opinion as to the interpretation of the tax law and their tax liabilities (by promoting exposure and awareness of the Commissioner's views on the tax law) include the gazettal of public rulings and their tabling in Parliament.

3.4 Aspects of the public rulings production processes may affect the certainty that the public rulings system provides to taxpayers, for example regarding their confidence or understanding as to the extent to which topics chosen as the subject for public rulings are the priority ones and the extent to which they are provided in a timeframe that provides guidance (clarity and certainty) to them.

3.5 Our work with regard to the clarity of rulings draws heavily on work undertaken for the ANAO by three professors of law, on a consultancy basis. In undertaking their work, Professors Richard Vann, Graeme Cooper and Duncan Bentley use information of a descriptive nature provided by the ATO;⁹⁸ the results of the survey of ATO and private sector perceptions of public and private rulings conducted by the ANAO as part of the audit;⁹⁹ and the results of their own research and experience with the rulings systems in Australia and overseas.¹⁰⁰ The focus of our work is on clarity in public rulings and the certainty that the public rulings system can provide.¹⁰¹ However it does deal with some issues in relation to private rulings because of the interlinkage between the public rulings and private rulings systems that the ATO administers. This link occurs because a taxpayer wishing to challenge a public ruling on income tax or FBT can do so by securing a private ruling and then challenging the private ruling. Private rulings are discussed in detail in Chapter 4.

⁹⁸ The main material referred to is the ATO Rulings Manual. This document is not publicly available.

⁹⁹ This survey was undertaken with the assistance of the ATO and the Taxation Institute of Australia and conducted by ORIMA Research. The methodology and results are described in Appendix 6. We reiterate the point made earlier and in that Appendix, that caution should be taken in interpreting the results of that research, especially in respect of the perceptions of private sector practitioners, because of their low response rate to the survey questionnaire.

¹⁰⁰ Professor Vann is a member of two ATO public rulings panels and Professor Cooper has been an external reviewer in the ATO quality assurance process.

¹⁰¹ The classes of document addressed are primarily public rulings of general application released in the ATO rulings series IT, TR, TD, MT, GSTR and GSTD, and to a lesser extent private rulings for specific taxpayers issued for the purposes of income tax (including capital gains tax), FBT and GST. It does not consider oral private rulings, a recent tax reform measure, product rulings issued since 1998, or the new class rulings. The various types of rulings are described in Appendix 1.

Issues of clarity emanating from features of the legal framework

3.6 In examining the features of the legal framework for public rulings, we are aware that we are commenting on the system formulated and approved by Government when it set up the framework in 1992. That said, we consider that it is worth commenting on some conceptual matters relevant to the rulings framework that the ATO administers for consideration by Government, because that framework can, and does, affect the clarity of public rulings. We acknowledge that possible changes in the legal framework for public rulings to improve the clarity of public rulings are matters for consideration by Government.¹⁰²

Income tax and FBT public rulings

3.7 Aspects of the legal framework for public rulings cause difficulties in ensuring the clarity and usefulness of public rulings. Factors contributing to the difficulties are:

- *Questions and uncertainties as to what in a public ruling is legally binding on the ATO:* By virtue of the legislation giving effect to the public rulings system, there are currently many areas of tax law that, as a matter of law, cannot be subject to a legally binding public ruling. (For example, as noted in Appendix 1, income tax and FBT public rulings can only be made on a ‘tax law’, specifically defined,¹⁰³ and must set out how a tax law will apply to an ‘arrangement’.) Another related area of difficulty exposed in recent Court decisions is that legally public binding rulings must describe ‘transactions’ (as opposed to ‘principles’)¹⁰⁴ and, moreover, that there must be a high degree of similarity between the transaction described in the public binding ruling and the arrangement undertaken by the taxpayer, before the public ruling will be binding on the ATO.¹⁰⁵ The ATO advised that this is how the law was intended to operate, the rationale being that the Commissioner is bound by the outcome under a public ruling, whereas an individual taxpayer is not. Indicative of other concerns is

¹⁰² Concerns about the operation of the framework in relation to public rulings were raised in submissions to the Ralph Committee. The Government has not yet announced its response to the recommendations made in the Ralph report.

¹⁰³ Meaning an income tax law or FBT law under which is worked out the extent of liability for such tax, i.e. it does not include procedural, administrative or collection matters.

¹⁰⁴ *Bellinz Pty Limited v. FCT* (1998) 98 ATR 4399, at 4412-13, per Merkel J.

¹⁰⁵ *Bellinz Pty Limited v. FCT* (1998) 98 ATR 4634, at 4646, per Hill J.

the perception by some people¹⁰⁶ that the ATO does not always follow its legally binding public rulings or the public rulings to which it would be administratively bound, as it should.¹⁰⁷ The departures may be either because the binding public ruling does not cover the case at hand (i.e. not a 'departure from the public binding' at all)¹⁰⁸ or because the ATO is seen to be taking a position contradictory to its public rulings. We note that some of these uncertainties reflect the limits of the current legal framework for public rulings.¹⁰⁹ The negative perceptions by some people suggest that if the ATO could manage perceptions better, public rulings may be considered more favourably as providing certainty to taxpayers.

- *Difficulties in challenging public rulings:* As noted in Appendix 1, public rulings relate to classes of persons or arrangements. They are not given in relation to a specific person and no right of objection exists against a public ruling. However, if a taxpayer is potentially affected by a public ruling he or she can apply for a private ruling on the same subject matter and, if the private ruling is adverse, object against the private ruling. However, because the system for challenging private rulings is proving problematic, mounting a meaningful challenge to a public ruling is similarly difficult. Alternatively, a taxpayer can self-assess in accordance with the Commissioner's interpretation of the law contained in a public ruling and then object to the assessment. By doing this, a taxpayer can overcome some of the perceived weaknesses of the private rulings system. Some of the relevant weaknesses of the framework for private rulings¹¹⁰ are outlined in the next section.

¹⁰⁶ See for example, Minutes of the National Tax Liaison Group meeting (4 June 1998), Item 5; Press Release, Corporate Tax Association, *Greater Accountability Needed for ATO* (28 April 1998).

¹⁰⁷ We note that 86 per cent of private sector survey respondents indicated that they were confident that they could rely on a public ruling.

¹⁰⁸ *Bellinz Pty Limited v. FCT* (1998) 98 ATR 4399 (Federal Court), *Bellinz Pty Limited v FCT* (1998) 98 ATR 4634 (Full Federal Court). See in this regard, Michael D'Ascenzo, Ownership: The *Bellinz Saga* (1998) 2 *The Tax Specialist* (No 2), p. 2.

¹⁰⁹ As noted in Chapter 1 and Appendix 1, major reports have suggested that the scope of the rulings system be extended. The Government has not indicated a final position of these recommendations.

¹¹⁰ As noted earlier, private rulings production processes are discussed in Chapter 4 and the history and framework of the rulings system are outlined in Appendix 1.

Issues for private rulings on income tax and FBT also relevant to income tax and FBT public rulings

3.8 Some weaknesses in the private rulings framework include:

- *Delay in securing rulings from the ATO:* As noted in Chapter 4, some private rulings take a long time to be issued.¹¹¹ Delays in issuing private rulings on proposed transactions, in particular, can, in some particular instances, render the objection process ineffective because by the time the objection is considered, the income year referred to in the private ruling may have elapsed, and therefore even if the ruling were to be overturned, the taxpayer would not be able to implement the transaction described.
- *Limitations on the issues on which private rulings can be issued:* The ATO cannot issue private rulings on questions of fact.¹¹² This contrasts with the situation whereby the ATO may issue public rulings (as distinct from public binding rulings) for classes of taxpayers on matters which largely revolve around matters of fact. Such public rulings are, by virtue of the legal framework in effect, incontestable.¹¹³ We note, as a further point, the limitation in the current legal framework for private rulings (like public binding rulings) which means that private rulings cannot be issued on issues of collection, tax administration and procedure.¹¹⁴

¹¹¹ Stakeholders indicated their dissatisfaction with the timeliness of private rulings in discussions with us during the audit and in their responses to our survey of user perceptions. The survey results show that although the content of private rulings is rated favourably by private sector respondents, timeliness was rated negatively (almost 50 per cent of respondents rating it as poor or very poor). See Appendix 6.

¹¹² Minutes, National Tax Liaison Group meetings (5 March 1996, 4 June 1996). Two examples are whether the taxpayer is a resident, and whether the taxpayer is carrying on a business.

¹¹³ While we label these public rulings 'incontestable', because the ATO does not issue private rulings on questions of fact, we note again that taxpayers can still object and appeal against a tax assessment made by the ATO. As well, the Administrative Appeals Tribunal has the power to stand in the Commissioner's shoes in determining the assessment.

¹¹⁴ As mentioned earlier, major reports have recommended the expansion of the scope of the rulings system to encompass these issues.

- *Court processes make challenging a private ruling impractical:* The series of steps and procedures involved in challenging a ruling and the approach adopted by the Courts and the Administrative Appeals Tribunal (AAT) mean that the review process may fail. This is because the limited materials tendered with the taxpayer's ruling request, to which the Court limits itself¹¹⁵ and the specific scope of the AAT's or the Court's examination,¹¹⁶ will often be considered insufficient by the Court or the AAT to determine whether the unfavourable ruling was correctly or incorrectly issued.¹¹⁷ Time delay is another factor undermining the practicality of contesting a private ruling in court.¹¹⁸ This is because the court only has jurisdiction to consider a ruling on the instigation of a person who is 'dissatisfied' and that term cannot apply unless the applicant's tax liability could be affected by the outcome of the ruling for the year identified. That may no longer be the case by the time the matter ultimately reaches court. Nevertheless, the ATO has advised the ANAO that there are administrative arrangements designed to overcome the requirement for the applicant's tax liability to be affected for the year identified – the taxpayer can ask for a new private ruling and the Commissioner will issue one for the relevant year.

¹¹⁵ *CTC Resources* (1994) 27 ATR 403 at 436 (per Hill J); *Payne* (1994) 28 ATR 58 at 66.

¹¹⁶ When the AAT or a Court considers an appeal against the refusal of a taxpayer's objection, it frames the issue as, what should the Commissioner have ruled, based on the material that was before him at the time, *McMahon* (1997) 37 ATR 167.

¹¹⁷ See G.T. Pagone, Live Issues – Dead Certainties: The Information Gap (1994) 29 *Taxation in Australia*, p. 133.

¹¹⁸ G.T. Pagone, Live Issues – Dead Certainties: Objectionable Delays (1994) 29 *Taxation in Australia* 68, p. 71.

GST public and private rulings

3.9 Some issues in the legal framework for GST rulings include:

- *When is a GST ruling binding:* The terms of s. 37 of the TAA do not make it clear if a GST public or private ruling is legally binding only when the Commissioner rules in one way and later rules in another, or if a GST public or private ruling is legally binding also when the Commissioner rules in one way but then issues a tax assessment in a different way.¹¹⁹ We also understand that there may be dispute over what documents are GST rulings, given that s. 37 of the TAA, refers to ‘advice given or published by the Commissioner’. We understand that some taxpayers may take that to include a far wider range of material than outlined in GSTR 1999/1.¹²⁰ A further question about the limits of GST binding rulings is also the extent to which additional issues or matters of principle canvassed in GST public rulings might constitute a public ruling in relation to those matters.¹²¹
- *Contestability:* The application of GST public and private rulings to completed transactions can be challenged only through the structure of the assessment process under the GST.¹²² However current law is unclear as to what amounts to an assessment can be challenged on appeal (e.g. whether it covers an assessment for zero tax or an assessment that the taxpayer is entitled to a credit or refund). The ATO advised that, in its view, the decision in *Ryan* has clarified the law in this respect. Another factor affecting the contestability of GST

¹¹⁹ The ATO advised us in June 2001, however, that in its view, the practical effect of s.37 of the TAA is that an entity is protected from the ATO acting in any way contrary to what is stated in a GST public or private ruling on which the entity is entitled to rely.

¹²⁰ As noted in Chapter 2, GSTR 1999/1 sets out the framework for GST rulings. Materials additional to those cited as examples by the ATO in GSTR 1999/1 are the text of public written speeches, press releases or authorised written minutes of meetings. The ATO advised us that it is accepted that the concept of ‘public ruling’ in GST covers a wide range of publications, but the ATO did not specifically indicate whether the additional written materials such as listed above would be considered GST rulings. The ATO advised that it considers the legal test to be whether it is intended to be advice. For example, the ATO does not consider that Case Decision Summaries are public rulings.

¹²¹ This is because the GST rulings legal framework does not have the requirement applying under the income tax rulings framework that specifies that public binding rulings can only bind on the application of ‘tax laws to a class of arrangements’. For example, GSTR 2000/28 entitled ‘Attributing GST Payable or an Input Tax Credit Arising from a Sale of Land Under a Standard Land Contract’ deals with specific ‘timing’ and ‘attribution’ issues. However it also provides comments and general advice about the meaning of the term ‘invoice’. It is arguable that these expressions of principles of a more general application might also have the nature of a GST public ruling, even though the meaning of the term ‘invoice’ is not the main focus of the particular GST ruling.

¹²² There is no explicit right for taxpayers to challenge public or private GST rulings as there is for income tax and FBT rulings.

public rulings is that the GST procedures cannot be used in respect of the application of private and public GST rulings to proposed transactions, as an assessment can only be raised after the event. This matter is important, given that large proposed transactions will be affected by the GST in much the same way as the income tax on which private binding rulings can be sought and challenged.

How the process of developing public rulings affects the certainty taxation rulings provide taxpayers

3.10 Although the process of producing public rulings is rigorous (as discussed in Chapter 2) there are several factors in this process that may impact upon the certainty these rulings provide taxpayers regarding the Commissioner's application of the taxation law. These factors are:

- identification of public rulings topics;
- drafting public rulings;
- consultation with stakeholders;
- the length of time taken to draft public rulings;
- involvement of panels in public rulings;
- publication of public rulings;
- follow up of public rulings; and
- regular checking of existing public rulings.

3.11 The majority of these factors were examined in Chapter 2, which focused on the public rulings production process. The matters raised in this chapter relate to the process of developing public rulings and discuss its impact on the clarity of public rulings.

Identification of public rulings topics

3.12 Public rulings will make the greatest contribution to certainty if they address the issues of interpretation that most commonly arise for taxpayers, their advisers and ATO staff. Hence the identification and prioritisation of topics for public rulings is an important process.

3.13 The ATO has advised that topics for public rulings arise through its significant issues process, which automatically allocates public rulings the highest level of authority in terms of resource allocation. Whether or not an issue is significant is determined by the significant issues criteria, which are listed in Practice Statement 2000/7 (see Appendix 5 for the relevant extract). Whether an issue is significant is ultimately a matter of judgement and will depend upon a variety of factors, including the need to explain complex areas of the law to enable taxpayers to comply; the amount of revenue that may be at risk because of non-compliance with the law; and the number of taxpayers who may be affected. This significant issues process is discussed in Chapter 2, and is also described briefly in the ATO Rulings Manual.¹²³ The process is summarised in Appendix 3 Diagram 1.¹²⁴

3.14 As noted in Appendix 3, it is the responsibility of the business lines to identify significant issues that may arise and form the basis of public rulings topics, with input sought from the private sector, the ATO's Tax Counsel Network and the NTLG. Identification of these issues arises in part, from broad business and service line risk management information, knowledge gained from private ruling requests to the ATO and from the very wide variety of consultation mechanisms that the ATO uses (see Chapter 2). However there does not appear to be a systematic and documented process of assessing which topics require public rulings according to taxpayer requirements.

3.15 In accordance with Recommendation 1 in Chapter 2 of this report, we consider that the ATO should:

- enhance their current processes for identifying public rulings topics, particularly regarding the various internal and external sources of input. This includes possibly placing a general facility for requesting public rulings on the ATO web-site, and further enhancing the ATO's existing practice of writing to professional associations and others in the private sector on a systematic and regular basis to identify new public rulings topics; and
- specify more explicitly how the process of identifying, assessing and prioritising public rulings topics works in the ATO and make the broad basis of the selection known publicly.

¹²³ The ATO Rulings Manual describes the taxation rulings process which is administered by the ATO. The processes described in the manual are largely confined to public rulings. The manual covers several areas. These are: *Taxation Rulings: a guide for authors*; *Taxation Determinations: a guide for authors*; *Rulings-related documents: a guide for authors*; *Approval of Taxation Rulings and Determinations*; and *The role of the Taxation Rulings Unit*.

¹²⁴ The taxation rulings process document in the Manual has a flow chart on identification and another on prioritisation with several bullet point comments on each.

Drafting public rulings

3.16 The ATO Rulings Manual sets out the preparation processes for public rulings (including the research and drafting processes). The Rulings Manual explains, in some detail, the purpose of the various parts of a public ruling, the generation of public rulings on a fixed ATO template and the style requirements. Staff are encouraged to use plain English and the Manual illustrates this style with some useful practical advice for authors.¹²⁵

3.17 We found that staff meet the formal requirements of the Rulings Manual when drafting public rulings. We found, for instance that the requirements regarding the structure of public rulings and layout are observed. However, there is considerable variation in writing styles of the ATO staff who have drafted public rulings. It is to be expected that style will vary with the individual, however we consider that it is worth the ATO continuing to seek to promote clarity of expression particularly as regards writing in plain language in a forthright and positive style. Strategies to deal with commonly encountered problems in writing public rulings are discussed in the section dealing with the clarity of content of public rulings.

Consultation with stakeholders

3.18 As noted in Chapter 2, considerable consultation takes place throughout the public rulings production process. Professional bodies involved in taxation coordinate their submissions on public rulings by allocating drafts to one organisation which prepares a draft response that is circulated to the other bodies for comment. The resultant document becomes a joint submission to the ATO. The process for the ATO receiving comments from other sources tends to be less systematic. We are aware that with the recent development of a wide range of industry partnerships arising out of tax reform, the ATO now uses a wider range of consultative bodies more intensively. We encourage the ATO to continue to seek to use professional, industry and community consultative forums systematically to get a diverse range of feedback on draft public rulings, with adequate safeguards over the confidentiality of the working discussions.

¹²⁵ For example, when discussing the need for clear expression, the Manual advocates authors avoid long sentences, long paragraphs, Latin phrases and the academic essay style.

3.19 The ATO requires that all written submissions be formally acknowledged and that when the final public ruling is released, a further letter be written explaining how the submission was dealt with in the public ruling (except where the person's views have been adopted in full or addressed in detail). A similar system applies to oral submissions made by telephone or at meetings.

3.20 Although we recognise that there will always be a level of dissatisfaction from people whose views in rulings submissions have not been accepted, it is not clear how effective the system of acknowledgment is in practice. The ANAO survey of perceptions of taxation rulings indicated that less than half the private sector tax practitioner respondents making comments on draft public rulings received individual responses to their submissions (and the current ATO procedures may not have required them to, either, as noted above). On the other hand about 80 per cent of private sector tax professional respondents rated consultation as moderately or highly effective (about equal numbers for each). These comments suggest that the system is generally working well, but there may be some ways in which it can be improved.

3.21 One possible way in which the ATO could improve public rulings consultation and ensure comments are captured and appropriately considered would be to construct a tabular summary of submissions with comments on how issues were addressed. The Rulings Manual suggests that this should be done for particular, important feedback on public rulings; however, it may be useful for all draft public rulings. A template could be created for this purpose which would provide a useful tracking device from draft to final public ruling and a standard way of answering submissions.

3.22 These minor alterations to the public ruling production process will assist in making clear that a public ruling is intended to be the ATO's unbiased interpretation of the law. Confidence on this issue will make public rulings more acceptable to taxpayers who are then more likely to rely on them in interpreting the law. The manner in which the ATO handles consultation with its stakeholders is important in contributing to the certainty that public rulings is intended to promote and the ATO acknowledges that it also contributes to the community's confidence in the public rulings system.

The length of time taken to draft public rulings

3.23 As noted in Chapter 2, processing a public ruling from issue identification, through to final release, is time consuming. It obviously is in the interests of certainty that public rulings on issues that have been identified as important priorities are completed as expeditiously as possible. The Rulings Manual provides an ideal of six months from commencement of drafting to finalisation of public rulings, including a period of three months between draft and final public ruling for public rulings which are relatively complex, including a review by the Public Rulings Panel.

3.24 Data relating to the amount of time taken to produce public rulings suggests that the standards set in the Rulings Manual are not realistic. A more realistic target might be six months between draft and final public ruling. In the case of public rulings that have not been finalised after one year, the ATO should undertake an explicit process in conjunction with stakeholders such as the NTLG, to assess the degree of progress and the continued importance of these rulings topics. The ATO should then act to resolve topics agreed to be of continued significance, including by identifying factors that are inhibiting finalisation and ensuring that sufficient resources are forthcoming to complete them within an agreed (and short) timeframe (for example, within a further three month period).

3.25 In recent years the ATO has sought to introduce greater discipline into the process by regularly producing compendia which set out the status of the development of public rulings and targets for timing, with lists of current topics and delayed topics (including reasons for delay). However, it does not appear to compile systematically general performance information from the data contained in the compendia. It would be useful for the ATO to provide summary information about performance in relation to final public rulings in a convenient place. Summary information could indicate, by category of ruling, the numbers completed in a particular period and current numbers on hand, status and timeliness of current work (e.g. numbers by stage of preparation, and length of time at the current stage) and the source of the suggested topic (internal or external suggestion). A possible location could be with its lists of public rulings published during the year, public rulings compendia and the public rulings area of the legal materials on the ATO web-site. The mere fact that this information would be made readily available in public may encourage greater expedition. We deal with performance information relating to public rulings in Chapter 5.

Involvement of panels

3.26 As a result of the report, *An Assessment of Tax*, the ATO set up the Public Rulings Panel in 1995 and the International Tax Rulings Panel in 1996.¹²⁶ A GST Rulings Panel was established by the ATO in 1999.¹²⁷ The purpose of the panels is to provide a forum for review of important public rulings. The panels consist of a number of senior ATO staff (including the Chief Tax Counsel) and community representatives who are tax practitioners and academics. The GST Rulings Panel also has a representative of the State and Territory Governments as a permanent member.

3.27 The Rulings Manual contains a brief set of rules for the meetings of the public rulings panels. The public rulings that go the panels are chosen by the Chief Tax Counsel assisted by the head of the TRU. Choice is on the basis of several criteria: complexity, sensitive or controversial nature, doubtful area of law, substantial impact and change of view.

3.28 In practice the procedures of the panels are very flexible. Material comes before the panels in the form of discussion papers before any draft ruling is produced, draft public rulings (with or without papers identifying particular issues) and papers on particular points. The length of many public rulings means that they may require several sessions at a panel before being finalised. Occasionally the panels deal with the prioritisation of public ruling topics and the ATO seeks suggestions on improvements in the panels' operations. Although there are specified criteria for referral to a rulings panel (and the ATO advised that, in practice, very few public rulings are not referred to a panel), it is not always clear why some public rulings come before the panels and why others do not.¹²⁸

3.29 The flexibility of the panels permits them to canvass the issues involved in public rulings in a substantive way without too much concern for formality. As a result, the direction of the public ruling often changes, sometimes very significantly from the initial ATO position. Although the public rulings are finally the responsibility of the ATO, there is a strong emphasis on obtaining consensus among the external members concerning the direction taken in the public ruling.

¹²⁶ ATO, Media Release Nat 95/4, 19 January 1995, Media Release Nat 96/49, 24 October 1996.

¹²⁷ ATO, Media Release Nat 99/66, 27 September 1999.

¹²⁸ In the case of GST, the matter is a little more clear in that the ATO has obligations under the Inter Governmental Agreement to consult with the States and Territories on all GST public rulings that impact on the revenue base. In practical terms this covers most GST public rulings and as noted above, the States and Territories have a permanent representative on the GST Rulings Panel.

3.30 The ANAO survey of perceptions of rulings indicates that about half of private sector respondents are aware of rulings panels and the involvement of external representatives, which is slightly lower than the results relating to their general awareness of the public rulings process. Approximately 70 per cent of ATO staff respondents are aware of the Public Rulings Panel but only about 50% indicated that they were aware of the GST Rulings Panel. Not surprisingly, the International Tax Rulings Panel is less well known to ATO respondents than the other panels because its work is more specialised. We have been advised that ATO staff are sometimes surprised that their interpretations may be challenged when they bring material before the panels. This may possibly reflect the fact that the material on the panels in the Rulings Manual is fairly brief and does not give much guidance to ATO staff about what is expected.

3.31 The survey figures indicate that more could be done to promote the work of the panels (particularly because this is where external input into public rulings is the most direct) and more generally the public rulings process. For example, although the external membership of two panels varied recently and the number of representatives has increased slightly, this has not been announced generally. The ATO web-site provides little information on panels beyond who is on them (and is not current for GST).

3.32 The creation of the panels was in response to recommendations that there be a high degree of external participation in the preparation of public rulings and that all public rulings be subject to formal independent review.¹²⁹ As the preparation of public rulings is primarily the responsibility of the ATO, as is the case in most other countries, an increase in the profile and some changes in operation of the panels may give further certainty to taxpayers that public rulings are properly tested before release.

¹²⁹ Joint Committee of Public Accounts, Report No. 326 *An Assessment of Tax*, 1993, p. 4.

3.33 A range of alterations could be made to the panels that could increase their efficiency and effectiveness and public awareness of their role and activities. These alterations include:

- formalising the operations of the panels more by defining their role and procedures;
- specifying the basis for the identification, assessment and prioritisation of public rulings issues and then involving the panels more regularly in prioritising public rulings issues, specifying the basis on which draft rulings are submitted to the panels and then determining which public rulings should come before panels (and which not);
- considering having external representatives as the chairs of panels with some responsibility for the operation of the panels as a way to allow a greater focus on operational issues;
- incorporating information on their procedures and operations more fully into the Rulings Manual;
- including more material about panels on the ATO web-site and making this material more accessible (for example, a folder in the legal database dealing with ATO processes for legislation and rulings) and;
- creating processes for tracking panel performance, for example by making assessments of the technical quality, cost and timeliness of the panels' work on public rulings.

3.34 So far as the performance of the panels is concerned, no work has been undertaken that is publicly available. It is reasonably clear from the Rulings Manual and experience that panels add time to the publication of public rulings. There is also a view in the private sector that the quality of public rulings has increased over the 1990s as a result of a variety of measures taken by the ATO. The ATO considers that the introduction of rulings panels to review public rulings has been a significant factor in the ATO improving the quality of its public rulings. Nonetheless, it may be appropriate to examine the efficiency and effectiveness of the panels given the extra costs in terms of time and personnel involved. We discuss the assessment of the public rulings system in Chapter 5.

3.35 Public rulings will only provide certainty to taxpayers and increase the clarity of the taxation law if they are readily available to those who need them. The effective dissemination of public rulings will only occur if there is a good communications strategy in place to inform taxpayers about what public rulings are available and where to access them.

3.36 In recent years the availability of public rulings has been dramatically improved by the Internet. The ANAO survey of user perceptions of rulings shows that for the private sector, access to public rulings via the ATO web-site now almost equals that via the hard copy services which are sold commercially (and the CD-ROMs on which they are also published) for income tax and FBT rulings, and substantially exceeds them in the case of GST rulings.

3.37 However, as public rulings settle issues of interpretation in the law where there is room for uncertainty, they will of their nature be fairly technical in many cases and by no means cover the entire area of the tax law. We recognise that the ATO incorporates the basic outcomes of public rulings in general taxpayer information material with references to the relevant public ruling where appropriate. The usefulness of this general information for some taxpayers could be enhanced by the information making clear how to access public rulings should they wish to do so (generally by providing clear and precise directions on how to use the ATO web-site to locate a particular public ruling).

3.38 It is clear from the ANAO survey that, in the professions dealing with tax matters, public rulings are heavily used not just by tax specialists but also by generalists who provide tax advice as one part of broader accounting and business services. The research also indicates that tax advisers usually have little trouble finding relevant public rulings.

3.39 Notwithstanding these positive comments about the accessibility of public rulings, we consider that there is some scope for improving the level of accessibility on the web-site, such as making public rulings easier to locate and ensuring that there is a link to public rulings material in general ATO publications for readers who wish to investigate public rulings further.

Follow up of rulings enquiries

3.40 According to the ANAO survey of the perceptions of rulings, the greatest criticism of public rulings from a private sector perspective is the difficulty of finding ATO staff with whom to discuss a public ruling in a meaningful way. It is important that the ATO finds means to have a staff member available who can deal with questions on public rulings. Due to the technical nature of many public rulings, call-centre and counter staff will not be equipped to answer questions on public rulings nor should they be expected to be. They should, however, be able to put inquirers in contact with a relevant area. Other mechanisms should also be available for facilitating such contacts as many calls from tax professionals will not go to general inquiries in the first instance because they make use of specific ATO contacts.

3.41 Identifying the relevant ATO officer to deal with a public rulings enquiry can be achieved in a number of ways (e.g. in ruling status documents and as the contact for comment on draft public rulings). However, when a public ruling is finalised, no officer or area is generally mentioned for future contacts. Because of staff movements within the ATO it is not possible to permit follow up for any length of time by putting a person's name on a final public ruling. A solution in the long term might be to maintain a central record of a responsible officer and/or area within the ATO for each public ruling issued. The TRU could be an appropriate area to locate this function. Although this task could be time consuming, it could be a worthwhile part of a series of steps to assist the taxpayers and ATO staff using rulings to maintain an accurate understanding of them.

Regular checking of existing public rulings

3.42 Maintaining the currency of existing public rulings so they record changes in taxation law is an important aspect of maintaining the clarity of public rulings. By explaining how existing public rulings are affected by changes to the taxation law, the ATO also demonstrates effectively the application of the new law to taxpayers. We are aware that ATO business service lines have mechanisms to ensure that taxation rulings are kept current and that the ATO has also done particular exercises to review the validity of public rulings (e.g. in the context of the Tax Law Improvement Project).

3.43 The older IT series of taxation rulings (as discussed in Appendix 1), which are not legally binding on the Commissioner, constitute approximately 40 per cent of the total volume of the total of the IT, TR and TD rulings series. These three series are used most by the private sector. While we recognise that this exercise may require significant resources, we suggest that the ATO consider the merits of conducting an exercise to update the ATO's inventory of older rulings and to reissue all rulings in the IT series that remain current as either a TR or TD public ruling. An additional benefit of reissuing the IT series would be that the legal status of IT taxation rulings would be consistent with other public rulings issued after 1 July 1992, that is, legally binding on the Commissioner. This would mean that the legal status of a ruling was not determined by the age of a ruling but by its nature.

3.44 The issue of reviewing and rationalising existing public rulings is discussed further in Appendix 2 as a matter raised in Report 326 of the Joint Committee of Public Accounts.

Clarity of the content of public rulings

3.45 This section focuses on the actual content of public rulings and the extent to which they are clear in the message they seek to convey. Much of the discussion is closely linked to the discussion of the legal status of public rulings. It considers the use of taxation rulings by the ATO to deal with matters on which the Commissioner cannot be legally bound and to communicate ATO views on the principles in the law.

3.46 In studying the clarity of the content of public rulings we examined:

- reactions of courts and tribunals to public rulings;
- ANAO survey research findings; and
- the actual content of public rulings.

3.47 These areas are outlined in turn below.

Reactions of courts and tribunals to public rulings

3.48 An important source of feedback on public rulings are the courts and tribunals. Our consultants undertook a brief indicative survey of court and tribunal decisions to see the extent to which courts and judges have commented on public rulings or the public rulings system.

3.49 In considering these survey results, it should be recognised that it is inevitable that there will be occasions on which the courts and tribunals will not agree with the Commissioner's interpretation of the law (i.e. they will disagree with ATO taxation rulings). It is also important to recognise the subjective nature of the survey analysis, which means that the statistics are not definitive.

3.50 With these caveats in mind, it is worth noting some of the results of the survey of court and tribunal decisions. (The summary results are at Appendix 7 of this report.)¹³⁰ The study shows that the use of public rulings in decisions is significant, if not substantial. In the five years 1996–2000, public rulings were referred to in around 102 AAT decisions (14 per cent of AAT decisions) and 54 judicial decisions (around 5 per cent of judicial decisions). Public rulings have been commented on adversely in 29 AAT decisions (28 per cent) and 9 court judgments (17 per cent).

¹³⁰ While the table in Appendix 7 attempts to be reasonably exhaustive, there may be some omissions because of the varied sources in which tax decisions are reported and the ability of electronic search engines to capture all relevant material. The data in Appendix 7 does not give the full story of rulings in courts and tribunals as issues covered by rulings may be directly raised but the relevant rulings not cited. For example, the High Court of Australia effectively rejected TR 93/8 without referring to it (the ruling was immediately withdrawn).

Over time there seems to be a tendency to comment on public rulings rather than just refer to them. While again noting the necessarily subjective nature of the judgements, there seems also to be a tendency for approving references to increase slightly and disapproving references to decrease slightly.

3.51 Overall, and not unexpectedly, the views of the courts and tribunals on the content of public rulings and/or the operation of the public rulings system are diverse. However, they do lend weight to the ATO's own goal to strive for continuous improvement in the quality of the rulings (including the content of public rulings) it produces from the rulings systems it administers.

ANAO survey findings

3.52 Two of the findings of the ANAO survey of user perceptions are also relevant to the clarity of the content of public rulings. These are the frequency of use of public rulings and the perceived satisfaction with the clarity of public rulings.

Use of public rulings

3.53 In order to gauge the importance of public rulings in promoting taxpayer certainty, it is necessary to have a sense of their importance relative to other sources of guidance and how often they are used. This was the subject of a number of questions in the survey. One question concerned the frequency of use of various kinds of tax materials. For private tax practitioners, public rulings ranked just behind legislation in frequency of use and ahead of private sector publications, other ATO publications, explanatory memoranda accompanying legislation and decisions of courts and tribunals.

3.54 Over 60 per cent of the private sector tax professional respondents indicated that they used public rulings all the time or often in their work overall. Less than 10 per cent seldom, or never, used them. Overall the use of public rulings is substantial across all professionals engaged to a greater or lesser degree in tax-related work. Public rulings are thus a vital means by which to provide certainty to tax professionals. It is likely that they are less important to non-professionals engaged in tax matters.

Perceived satisfaction with the clarity of public rulings

3.55 The ANAO survey of perceptions of rulings also considers the extent to which public rulings provide the answer to a question in an easily understood way. The survey results show that there are differences and parallels in responses between private sector professionals and ATO staff in this area, the ATO staff being much more positive than the private sector in their responses. This disparity in positive responses

could be explained in various ways. For example, it may be because of a sense of ownership in the public rulings by ATO staff or it may be because of a bias to the revenue perceived among the private sector respondents.

3.56 About 50 per cent of the private sector respondents rated technical content in public rulings as very good or good (compared to 70 per cent for the ATO). The survey results also show that there is a significant band of average rankings in the private sector respondents (around 30 per cent). This compares with 20 per cent for ATO staff. The survey results also indicate that both ATO staff and the private sector respondents give lower approval ratings to technical content than the approval ratings for either the ruling being specific and precise in its application or for the ruling being accessible.

Content of public rulings

3.57 In discussing the content of public rulings, we consider four main areas:

- mingling of binding and non-binding public rulings, and binding and non-binding text;
- dealing with principles;
- structure of public rulings; and
- technical quality.

Mingling of legally binding and administratively binding public rulings, and legally binding and administratively binding text in income tax and FBT rulings

3.58 The ATO issues public rulings which contain jointly legally binding elements and administratively binding elements. The legally binding elements are those parts which express the Commissioner's opinion on the way in which a tax law would apply to a person or a class of persons in relation to an arrangement or a class of arrangements. There is other text in a public ruling that is not legally binding, but because it is an explanation of the ATO's interpretation of the relevant law, the Commissioner regards it as administratively binding.¹³¹ The ATO also issues taxation rulings publicly which cannot be legally binding public rulings, by virtue, for example, of their subject matter. (See Appendix 1 for an explanation of legally binding and administratively binding rulings.)

¹³¹ See for example, S. Bernhardt, *The Bellinz Case and the Rulings System* (1998) 27 *Australian Tax Review* 117 at 119 (noting that 'the only part of a ruling that will constitute a public ruling will be the definition of the class of persons and type of arrangements to which the ruling applies, and the statement of the taxation consequences resulting from the ruling. The remainder of the ruling, which usually consists of background material, explanations and examples, does not form part of the public ruling. Thus in most cases, the vast majority of verbiage that appears in tax rulings and determinations does not form part of the public ruling').

3.59 We have been informed by tax practitioners that this mixing of legally binding and administratively binding elements of public rulings and issuing taxation rulings which are not ‘public rulings’ in terms of Part IVAAA of the TAA can cause difficulties for taxpayers in distinguishing and interpreting various income tax and FBT public rulings and in particular in identifying the legally binding part with clarity.

3.60 We recognise that the ATO seeks to identify for taxpayers in the preamble to a public ruling which parts of the public ruling are a ‘public ruling’ in terms of Part IVAAA of the TAA and therefore are legally binding. The ATO also seeks to identify documents that it does not consider to be ‘public rulings’ for the purposes of Part IVAAA of the TAA, but which it considers to be administratively binding.

3.61 While we appreciate this concern about the potential difficulties taxpayers may face in identifying the legally binding part of a public ruling with clarity, we are also aware that it is a consequence of the legal framework established in 1992 that specifies, among other things, what a public binding ruling covers. This legal framework and its history are outlined in Appendix 1. We agree with the ATO’s advice that, if a taxation ruling were to provide only the material that is legally binding on the Commissioner and did not provide an explanation for its interpretation of the law, taxation rulings would be less meaningful to taxpayers than they are now.

Dealing with principles

3.62 This section addresses the problems associated with public rulings dealing with the interpretation of taxation legislation and the application of taxation legislation. In particular it identifies the difficulties that the ATO has in producing public rulings which deal with the principles that the legislation contains. Indicative of these difficulties is the use of qualifying phrases and terms in the text of public rulings that undermine the clarity of their content. These issues are discussed below.

Qualifying Phrases

3.63 The use of qualifying phrases and terms in public rulings may erode the clear decisive character of the ATO’s opinion. More significantly, it may also mean that the document cannot be a public ruling. This is because in order to be a public ruling, the document must set out ‘the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to ...’¹³² A statement that is too qualified may fail to set out any opinion at all.¹³³

¹³² TAA ss. 14ZAAE, 14ZAAF, 14ZAAG.

¹³³ See S. Bernhardt, op. cit., p. 119.

3.64 We recognise that the use of qualifying phrases will be necessary and unavoidable sometimes. We also recognise that the ATO has sought in public rulings issued subsequent to the *Bellinz* case to test content more carefully to see if it is possible to be more precise or to elaborate the discussion so that the different types of cases that can arise are covered. We commend the ATO's efforts to improve the clarity of the content of public rulings subsequent to the *Bellinz* case (particularly regarding the use of qualifying phrases). We suggest that these efforts might be advanced with the ATO continuing to encourage officers, as appropriate, to use forms of expression that set out objective tests to the extent that it is possible under the relevant law. For example in the case of statements concerning the deductibility of self-education expenses, the author could be encouraged to use forms of expression specifying the tests for deductibility rather than describing issues. If taxpayers are able to apply the text of the public ruling more readily, they can achieve a greater level of certainty because they have a better chance of understanding correctly the Commissioner's application of the tax law.

Inconsistencies

3.65 We were informed that there are sometimes instances of apparent inconsistencies between public rulings.¹³⁴ We acknowledge that, where public rulings seek to deal with the principles of tax legislation, the risk of inconsistencies between public rulings is increased. The issue is a difficult one to manage in the GST area especially, because all parts of all public GST rulings are 'rulings' for GST purposes and because there has been significant pressure to produce them rapidly.

3.66 We acknowledge that the ATO addresses apparent inconsistencies as they arise as part of its ongoing technical work and we encourage the ATO to continue to review rulings to ensure it can identify and deal with inconsistencies between public rulings on a timely basis.

Structure of rulings

3.67 In considering how the structure of rulings affects the clarity of the content of public rulings, we deal with: the series (types) of public rulings to see whether the style in which a particular series is drafted is preferable to taxpayers; the use of 'explanation' parts of public rulings; and the use of alternative views and examples in public rulings.

¹³⁴ Our consultants advised us of one instance, however the ATO indicated in April 2001 that it disagreed with this example.

Types of public rulings

3.68 Both for income tax and GST there are two main types of public binding rulings, the longer public rulings (TR and GSTR) which generally have public rulings and explanation parts, and the shorter determinations (TD and GSTD) in question and answer form. The difference is not required by legislation and has developed because of a need perceived by the ATO to have the two different formats.

3.69 The ANAO perceptions of rulings survey sought to elicit whether there was any strong preference for one format over the other and why. The survey disclosed that for both the private sector and the ATO respondents, the strong preference was for continuation of both formats (59 per cent and 70 per cent respectively). For those who preferred a single format, the TR and GSTR public rulings style ranked above the TD and GSTD in both groups. The reasons for preferences were predictable – quick answers to narrow questions, or detailed elaboration of ATO views on important topics.

3.70 Notwithstanding the separation of the two types of public binding ruling (i.e. TR and GSTR versus TD and GSTD) and the different function assigned to them, there has been a general tendency for both to grow in length. This is most noticeable for the public rulings series TR compared to its IT predecessor but the trend was underway even before the TR series commenced. The idea was to allow connected issues to be dealt with in one place and with the full reasoning that coverage of a relatively large topic warranted. While we recognise the merit of this approach, a number of problems have arisen out of this development. First, TR (and GSTR) public rulings have come to deal more with principles underlying the legislation rather than specific tax outcomes for particular transactions giving rise to the challenges noted above. Second, the size of the public rulings means that completion takes longer, leaving taxpayer uncertainty in the interim, which sometimes can inhibit activity. Other factors such as the panel process have added to completion times also.

3.71 It may be an appropriate time to revisit the current approach to see if it is possible to improve completion times. One possible measure, in some cases, might be to break topics down into a number of issues and process public rulings on each issue to conclusion, rather than trying to do all issues at once.¹³⁵

¹³⁵ The ATO informed us in April 2001 that in GST, the industry log process addresses these issues to some degree.

Use of explanation parts of public rulings

3.72 The use of a structure that has ‘ruling’ and ‘explanation parts’ as well as the use of examples and presentation of alternative views were raised in the ANAO survey of perceptions of rulings. There was strong support for all these aspects in the current TR and GSTR rulings. ATO staff particularly appreciated the inclusion of examples and the private sector the inclusion of alternative views and examples.

3.73 We note that for income tax and FBT rulings, only the ‘ruling part’ is considered legally binding by the ATO.¹³⁶ We are aware that the ATO attempts to make it clear in the preamble which part of the taxation ruling constitutes a ‘public ruling’ for the purposes of the TAA. As noted earlier, under the terms of the law, for TR rulings this can have the unfortunate consequence that much of the material that applies to real situations (including examples) is not considered legally binding by the ATO, although the Commissioner considers that material to be administratively binding.

Alternative views

3.74 In the ANAO survey of perceptions, ATO respondents ranked the importance of including alternative views as the lowest of the three matters¹³⁷ canvassed relating to structure. However the private sector respondents ranked it the highest. The inclusion of alternative views is mainly driven by private sector needs and from our discussions with stakeholders, their inclusion is clearly appreciated in the private sector. The private sector wishes to know that the ATO is aware of, has considered and has reasons for, rejecting alternative views. The Rulings Manual has quite detailed material on the handling of alternative views.

Use of examples

3.75 Although examples in public rulings are not legally binding on the Commissioner, they do provide guidance to taxpayers about the way in which the Commissioner will apply the law, and taxpayers are able to obtain certainty by requesting a private ruling about their individual circumstances.

Technical quality

3.76 In considering technical quality, we examined the use of public rulings as ambit claims and the legal accuracy of public rulings.

¹³⁶ The situation for GST rulings is different. As noted in Appendix 1, all written advice given and published on the GST by the ATO is binding.

¹³⁷ The matters were: use of examples, the separation of the rulings part and the explanations part; and the inclusion of alternative views.

Use of public rulings as ambit claims

3.77 One of the issues raised by the consultants and in some of our stakeholder discussions is the concern by some practitioners that the public rulings system is a means for generating more tax. These perceptions appear to be exacerbated by taxpayers considering that although they may self-assess their tax and then object to the ATO assessment, they cannot effectively challenge what they view as incorrect public rulings through the private rulings system, for technical reasons already noted. In this situation, it is argued that many taxpayers will choose to abandon their rights rather than spend their time and money in a challenge that is weighted against them.¹³⁸ The ATO rejects this view and it is difficult to determine whether this view is valid. We are aware that pro-active approaches by the ATO can be helpful in dealing with these difficulties. One example is the use by the ATO of test cases for rulings which are known to be the subject of significant disagreement in the private sector. The ATO seeking to deal promptly with court or tribunal decisions that take contrary positions to rulings also helps in this regard.¹³⁹

Legal Accuracy

3.78 Another issue highlighted by the consultants and some stakeholders we met is the alleged variable ‘quality’ of public rulings. This complaint takes many forms. Some people argue that public rulings display a systematic bias toward the ATO’s view of the law — the problem of ambit claims mentioned above. The ATO disagrees and it is difficult to conclude one way or the other about user/stakeholder perceptions. On other occasions, the complaint in the past has been that a public ruling appears to overlook major authorities, especially when inconvenient, or misconceives the law.¹⁴⁰

¹³⁸ D. Bentley, A Proposal for Reform of the Australian Rulings System (1997) 26 *Australian Tax Review* 57, pp. 59–60.

¹³⁹ For example, in the *Bellinz* case, (1998) 39 ATR 198 at 212, the Full Federal Court cast doubt on whether the ATO can issue a private ruling on whether the general anti-avoidance provisions of the *Income Tax Assessment Act 1936* Part IVA will apply to a proposed transaction. It is understood that the ATO considers that it is able, and will continue, to issue private rulings on the application of Part IVA, but taxpayers are concerned that such a ruling may be later challenged by the ATO in a court and found defective. This appears to highlight the need for an authoritative and widely-publicised ATO response.

¹⁴⁰ The examples are: Draft Ruling TR 95/D28 on the trade in of leased equipment, which did not mention the High Court decision on the treatment of trade-ins *AL Hamblin Equipment Pty Ltd and AL Hamblin Constructions Pty Ltd* (1974) 131 CLR 570. The ATO advised that it did not consider the *Hamblin* case to be relevant, but it was discussed in the final ruling in response to submissions on the draft ruling. The ATO concluded that the decision was not relevant to the issue and it explained its reasons.

The issue regarding Draft Ruling TR 95/D28 was rectified in the final ruling three years later TR98/15. Another example is IT 2631—a ruling on lease incentives which is seen as an example of the problem of oversimplification of the law.

3.79 We note that some rulings are contentious and we appreciate that views may differ on matters of legal interpretation (sometimes very important matters of legal interpretation) because that is the nature of the interpretative process. However, in view of our discussion and conclusions relating to the public rulings production processes, canvassed at length in Chapter 2 and elaborated on in parts of this Chapter, we conclude that the processes are in place to assure reasonably the legal quality of the ATO's public rulings.

Conclusion

3.80 A wide range of factors affects the clarity of public rulings for taxpayers and therefore the certainty about the way in which the Commissioner will apply the law. These factors include the legal frameworks, aspects of the processes by which public rulings are produced and the clarity of their actual content.

3.81 Using the results of our audit research and analysis of ATO material and our survey of users' perceptions of rulings, discussions with stakeholders and with the assistance of legal experts, we identify some areas that we consider merit further attention by the ATO because they could improve the clarity of public rulings. These areas embrace:

- possible changes in the legal framework for public rulings, (such as the scope of the public rulings system and the legal processes around contesting public rulings);
- enhanced processes in developing public rulings (such as the identification and prioritisation of topics and improvements to the comprehensive consultation and rulings panels processes); and
- ways to further improve the content or expression of public rulings (such as the continued use of objective tests, consistent with the law, to enhance clarity, and the use of clear language with relevant examples).

3.82 We acknowledge that possible changes in the legal framework for public rulings to improve the clarity of public rulings are matters for consideration by Government. However other matters deserve the continued attention of the ATO. Aspects of some of these, and related matters, particularly the enhanced processes in developing public rulings, staff training and skilling and assessing the performance of the public rulings system are canvassed in Chapter 5–Corporate Governance Issues.

Recommendation No.2

3.83 The ANAO recommends that, to improve the certainty of public rulings, the ATO consider:

- enhanced processes in the operation of the public rulings panels to increase their efficiency and effectiveness; and
- ways to further improve the content or expression of public rulings to improve their clarity.

ATO response

3.84 Agreed.

4. Private Rulings Production Processes

This chapter examines the ATO's administration of private rulings and assesses whether the ATO's administration of the private rulings system meets the certainty and fairness objectives for which it was established. We focus, in particular, on the administrative systems the ATO uses to produce and manage private rulings and the impact these systems have on the ATO's ability to produce timely rulings of high quality.

Background

Income tax and fringe benefits tax private rulings

4.1 Private rulings, or as they are commonly known, Private Binding Rulings (PBRs), were introduced in 1992 as part of new legislation designed to provide certainty and fairness to taxpayers when assessing their taxation liability under a full self-assessment taxation system.¹⁴¹ A more detailed description of the history behind the PBR legislation is in Appendix 1.

4.2 A PBR is the Commissioner's written opinion on the way in which the tax laws apply to an income tax or FBT arrangement a taxpayer has entered into after 1 July 1992, or proposes to enter into after 1 July 1992. Unlike public rulings which can address a number of arrangements for a number of taxpayers in a single ruling, PBRs address specific arrangements that are proposed, or have been entered into or completed by a particular taxpayer (the 'rulee'). Accordingly, the matters covered by a PBR are specific to the:

- rulee;
- tax law;
- year of income; and
- arrangement dealt with in the ruling.

4.3 Also, the Commissioner has an obligation to issue a PBR in response to a valid taxpayer's request for a ruling on a specific income or FBT arrangement, except under particular circumstances. The circumstances under which the Commissioner is not required to issue a PBR are outlined in Appendix 1.

¹⁴¹ We use the acronym 'PBR' in this chapter for convenience.

GST private rulings

4.4 Unlike income tax and FBT private rulings,¹⁴² GST PBRs have their legislative foundation in s37 of TAA.¹⁴³ This legislation provides a far broader definition of what issues can be addressed in GST PBRs, in comparison to income tax and FBT PBRs. That is, a GST PBR is defined as a ruling issued to a particular entity. For a more detailed description of GST legislation private rulings legislation, see Appendix 1.

4.5 Although there are differences between GST PBRs and income tax and FBT PBRs, the systems and controls the ATO uses to administer all PBRs should be similar. Therefore ANAO discussion and findings on ATO PBR systems is relevant to all PBRs issued by the ATO unless a particular PBR type or business line is specified.

The ATO private binding ruling environment

4.6 The environment in which the ATO administers PBRs is significantly different from that for public rulings. These differences are:

- the ATO issues significantly higher numbers of PBRs in response to taxpayer requests, in comparison to the lower numbers of public rulings issued. For the calendar year 2000 the ATO issued 89 779 PBRs,¹⁴⁴ and in comparison it issued 133 public rulings¹⁴⁵; and
- PBRs only address a single arrangement, specific to a particular taxpayer, whereas public rulings need to cover broad issues, with guidance that can be relied upon by a range of taxpayers.

4.7 Shaped by this PBR environment, the ATO has constructed an overall PBR administrative system with the following characteristics:

- each business line has its own procedures and processes to produce PBRs;¹⁴⁶
- the PBR system is decentralised, with PBRs being issued from numerous regional offices around Australia. In contrast, all public rulings have a single exit point.

¹⁴² Income tax and FBT PBRs derive their legislative authority from Part IVA of the TAA.

¹⁴³ The GST Rulings System is closely based on the old sales tax rulings provision. This provision was made defunct with the implementation of the GST.

¹⁴⁴ Figure taken from ATO case management systems. Figure includes the following numbers of PBRs from the following business lines: GST 84 287, INB 2 847, SB 1 067, Superannuation 2, LB&I 1 576.

¹⁴⁵ Figure taken from the ATO public ruling program. Figure includes all public rulings except GST public rulings which are not GSTRs and GSTDs. Excludes product rulings.

¹⁴⁶ There are process controls common to all PBR production processes. These are outlined later in this chapter.

- a greater number of staff are required to draft and issue private rulings than is the case with public rulings. The staff drafting PBRs come from most business lines;
- the staff drafting PBRs, on the whole, are generally less senior than those drafting public rulings;
- PBR clearance processes are less stringent in comparison to public rulings. That is, there can be a higher number of reviews required to issue public rulings, and there can be a wider range of parties external to the ATO consulted prior to issuing public rulings; and
- standards for the amount of time it takes to issue a PBR are more strict than those applicable to public rulings. This means ATO staff drafting PBRs are subjected to more specific time pressures to issue PBRs than those officers drafting public rulings.¹⁴⁷

The ANAO's approach to assessing the ATO's administration of private rulings

4.8 In assessing the performance of the systems the ATO uses to administer PBRs, the ANAO sought to determine whether these systems meet the objectives for which they were established.¹⁴⁸ These objectives are to make the taxation system fairer, and to provide taxpayers with certainty in relation to the interpretation of taxation legislation by the Commissioner. Factors that influence the degree to which PBRs provide fairness and certainty to taxpayers include the procedures and controls the ATO uses in the:

- production of PBRs of high quality; and
- management of PBRs.

4.9 These two factors form the basis of the discussion in this chapter. Effective procedures and controls relating to these two factors should ensure the timely production of clear and technically accurate PBRs.

¹⁴⁷ The ATO aims to issue PBRs within the time period specified in the Taxpayers' Charter. These standards are discussed further in Chapter 5 of this report. Public rulings are not subject to the same Taxpayers' Charter standards, although there are internal goals, as mentioned in Chapter 3.

¹⁴⁸ The history behind the establishment of these objectives is outlined in Appendix 1.

4.10 During the course of the ANAO's audit into the ATO's administration of taxation rulings, the ATO was in the process of revising all PBR production processes and system controls as part of its Provision of Advice (PoA) project.¹⁴⁹ The PoA project is aimed specifically at addressing the issues raised in the Sherman Report (see Appendix 7). The PoA project, which includes the introduction of a new, integrated PBR system, if implemented as intended, may address some of the issues raised in this report (especially issues regarding the production of PBRs). However this chapter focuses on the systems the ATO had in place until March 2001 and it includes the ATO's comments on changes to the PBR system after this date.

4.11 The ATO advised that some changes have been made to PBR systems as part of the PoA project. These changes were implemented on 2 April 2001. They are listed in Appendix 4. As it is too soon to assess the impact of the changes made to the PBR systems, the ANAO was not able to determine the success of these changes.

Production of private binding rulings of high quality

4.12 In general terms, the PBR production process consists of four principal stages. These stages are: the receipt of the application from the 'rulee'; researching and drafting the PBR; clearing the PBR; and issuing the PBR to the 'rulee'.

4.13 Unlike the production of public rulings, which is based primarily around the procedures and controls specified in the ATO Rulings Manual,¹⁵⁰ the ATO uses a number of systems and production procedures to produce PBRs. The use of these systems and procedures, as part of the production process, differs between the business lines, as each business line has independently developed a PBR production process tailored to its requirements. The PBR production processes for each business line are outlined in Appendix 3 Diagrams 2-6.

4.14 As illustrated in Appendix 3, there are process controls common to all PBR production processes that provide the ATO with some assurance that the PBRs issued accurately reflect the Commissioner's interpretation of the taxation law. These process controls, outlined in detail in Appendix 3, include:

- standardised receipting procedures for PBR applications. This

¹⁴⁹ The PoA project is outlined in Appendix 4.

¹⁵⁰ The ATO Rulings Manual describes taxation rulings processes and controls, which are administered by the ATO.

provides assurance that ATO officers drafting PBRs do not process applications that do not meet the criteria for a PBR (see Appendix 1 for the circumstances in which the Commissioner can issue a PBR and refuse to issue a PBR);

- comprehensive escalation procedures. This provides assurance that if a difficult or contentious tax issue is raised in a PBR, ATO officers with relevant expertise are able to provide direction on that tax issue; and
- pre-issue quality control procedures. Prior to the PBRs being issued, all PBRs are reviewed for technical accuracy, consistency with other PBRs and clarity of expression.

4.15 Due to the high number of PBRs produced by the ATO, each PBR production process is heavily reliant on the use of information technology (IT) systems to manage and monitor PBR work-flow, and draft and publish PBRs. The ATO’s PBR IT systems are an essential element in ensuring the efficient production of PBRs, and ensuring that PBRs reflect accurately the Commissioner’s interpretation of the tax law. The IT systems used by the ATO to produce PBRs are outlined below.

Table 1
Information technology systems used by ATO business lines to produce PBRs

Business Line	PBR Information Technology Systems	
	IT systems used to manage and monitor PBR work-flow (Case Management Systems)	IT systems used to draft and publish PBRs
Small Business	DWMS, CICADA	CRS
Large Business and International	CASES ¹⁵¹	CRS
Individuals Non-Business	DWMS, CICADA	CRS
Goods and Services Tax	CWMS	CRS
Superannuation	DWMS	CRS

Source: ANAO audit analysis¹⁵²

¹⁵¹ The ATO advised that as part of its PoA project, LB&I uses DWMS as well as CASES to manage and maintain PBR workflow.

¹⁵² A full description of the IT systems used to produce PBRs and to support the production of PBRs is in Appendix 3.

4.16 In examining the PBR production process, and in particular the efficiency and effectiveness of ATO IT systems used in the production of PBRs, the ANAO focused on four main areas. These areas were:

- ATO production procedures and systems to support the production of timely, high quality PBRs;
- the reliability of the systems used to produce PBRs;
- PBR procedures and associated systems to support ATO staff drafting PBRs;
- ATO administrative procedures and controls to prevent the issue of sub-standard PBRs; and
- PBR data quality.

4.17 As noted above, IT systems are an integral part of the production process and impact on the areas outlined above. Therefore, the functioning of ATO IT systems is a crucial focus of our analysis.

ATO production procedures and systems

4.18 Having reliable systems and production procedures that are integrated is an important aspect of efficiently and effectively producing PBRs, particularly as the PBR production processes are heavily reliant on a combination of disparate manual procedures and numerous IT systems. Without the seamless integration of these procedures and systems, there is the potential for inefficiencies to occur through the: duplication of work (e.g. entering the same data into two separate systems in a single production process); loss of data integrity (e.g. errors arising out of the manual re-entry of data from one system to another); and difficulties in extracting performance information in the timely production of PBRs. In addition, a lack of integration between procedures and systems can cause harm to the overall quality of PBRs by, for example, key information not being available to ATO staff drafting PBRs.

4.19 Ideally, a single production process, which uses one IT system for the production of all PBRs would eliminate many of the inefficiencies outlined above. However, the ANAO recognises that the integration of all PBR systems may also be effective if the ATO develops clear policies and procedures regarding the purpose and function of each of its IT systems to avoid the duplication of functions, and ensure that these systems are efficient and reliable. The ATO advised that through its PoA project it has developed comprehensive policies to produce PBRs and it now has a fully integrated PBR monitoring and production system.

An integrated PBR production process

4.20 Several internal ATO reports have raised serious concerns on the number of IT systems needed to produce PBRs, and the lack of integration between those systems. In particular the Sherman review found ‘the duplication between [systems] and the further duplication of different systems across business lines is simply unsustainable and a major impediment to the quality and consistency of work.’¹⁵³

4.21 Similarly, the ANAO found that, at the time of the audit, the IT systems used by the ATO to manage and monitor PBR work-flow (i.e. PBR case management systems), and the IT system it uses to draft and publish PBRs (i.e. CRS), were not fully integrated. As noted below, the ANAO considers that the lack of integration between the case management systems and CRS is the major factor preventing a fully integrated and efficient PBR production process. In particular, poor integration between the case management systems and CRS means that the PBR production process is:

- **unduly complex** as CRS must be updated with information already stored in the case management systems;
- **inefficient** due to data duplication between systems; and
- **subject to data integrity problems** through ill-defined process controls.

4.22 To assess the extent of these shortcomings, the ANAO conducted an analysis of the data contained in the case management systems and the CRS database. According to ATO policy, all PBRs registered in a case management system, must be registered, drafted or recorded in CRS.¹⁵⁴ Therefore, if proper procedures are followed, the number of finalised PBRs located on the case management systems should equal the number of PBRs recorded in CRS.¹⁵⁵ The following table displays the results of our analysis.

¹⁵³ T. Sherman, *Report of an Internal Review of the Systems and Procedures relating to Private Binding Rulings and Advance Opinions in the Australian Tax Office*, August 2000, p. 17.

¹⁵⁴ The GST business line was not subject to this policy requirement until 1 January 2001. Until that time, only precedential GST PBRs needed to be registered on CRS.

¹⁵⁵ ATO policy outlines that not all GST cases recorded on CWMS need to be recorded on CRS.

Table 2

Number of finalised PBRs on case management systems and CRS between the period 1 July 1999 – 1 October 2000

<i>Business Service Line/Area</i>	<i>Case Management Systems</i>	<i>Case Reports System</i>	<i>Variance</i>
Large Business and International	442	282	-160
Individuals Non-Business	3 711	3 155	-556
Small Business	1 608	1 271	-337
Superannuation	2	104	102
Goods and Services Tax	72 944	8 925	-64 019
Other (e.g. Excise)	84	57	-27
Total	78 791	13 794	-64 997

Source: ATO statistics

4.23 The ANAO recognises that the large difference between the figures for GST's case management systems and CRS is due to this business line only being required to record precedential¹⁵⁶ PBRs on the case management systems (as discussed later in this chapter). However, there are significant variances between all other case management systems and CRS. This indicates that non-compliance by ATO officers with mandatory procedures for using case management systems and CRS in preparing PBRs, contributes to these variances.¹⁵⁷ The ATO agrees that a degree of non-compliance is one factor contributing towards the variances. However, it has also attributed the variances between the case management systems and CRS to:

- the LB&I business line not recording highly sensitive material on CRS;
- procedural difficulties in INB, which the ATO says have now been addressed;
- the Superannuation business line using a manual system to record PBRs following performance problems experienced during the pilot of an earlier version of DWMS;
- the GST business line recording only precedential PBRs on CRS; and
- some non-recording of cases on CRS due to performance problems experienced by CRS/SQL¹⁵⁸ in its first year.

4.24 The ATO stated that through the PoA project, it has put in place controls to ensure the integrity of the data entered into PBR IT systems.

¹⁵⁶ 'precedential' means a decision embodying the Commissioner's interpretation of the 'tax law' serving as an authoritative rule or model for reliance in similar cases in the future.

¹⁵⁷ The ATO advised that all business lines, with the exception of LB&I are required to follow mandatory CRS reporting requirements. LB&I uses the CASES system and will continue to do so in the future.

¹⁵⁸ Structured Query Language (SQL) is a computer programming language.

4.25 The ATO has recognised that the integration between the case management systems and CRS is an essential part of ensuring efficient and effective PBR production processes. Through its PoA project, the ATO has stated that it has improved the compatibility of these IT systems, and now has a fully integrated production process which is consistent between all business lines. A description of the changes the ATO has made to the PBR production process as part of its PoA project, is in Appendix 4. The ANAO was unable to assess fully the effectiveness of the changes made to the PBR IT systems as these changes have only been in place since 2 April 2001. We were also unable to obtain documentary evidence from the ATO on effectiveness of the changes to the PBR production process and whether this process is operating efficiently.¹⁵⁹

Business line-specific issues concerning integrated PBR production processes

4.26 In addition to the ATO-wide problems associated with the lack of integration of primary IT PBR production systems, the business lines have developed specific IT tools to augment their PBR production processes, which also are not easily integrated into ATO production processes. For example, staff in the INB and SB business lines use the same two IT systems (DWMS and CICADA) to manage the production of PBRs and generate performance information. Although DWMS is the principal IT system used to manage PBR work-flow and contains the information which could be used to measure performance, CICADA is used to generate the majority of performance reports relating to the production of PBRs. This is because CICADA is better equipped to generate performance reports on the ATO's performance in relation to meeting Taxpayers' Charter standards (this issue is discussed further in Chapter 5). The ATO advised that CICADA is in the process of being phased out and will be replaced by functions provided on DWMS. However, CICADA will continue to operate until the end of the 2001 calendar year.

4.27 The duplication of data between IT systems impacts significantly on the efficiency of the PBR production process. Not only does the entry of similar data into multiple IT systems take a significant amount of time for staff to complete, but also increases the probability that the data transferred will become corrupted.

¹⁵⁹ The ANAO sought reports, statistics, system testing data and other information relevant to the changes made to PBR systems as a result of the PoA project. The type of information we would expect the ATO to collect to assess whether its changes to the PBR systems were effective could include the amount of time taken to produce a PBR, the accuracy/ quality of the data recorded on PBR systems, and PBR IT systems down time. By collecting this, and other performance information, the ATO would be in a position to determine the effectiveness of its PBR system changes.

4.28 Changes to the ATO's policy with regard to the production of PBRs during the implementation of the GST, indicates that the ATO acknowledges the amount of time and costs associated with maintaining separate case management and case reporting systems, containing the same information. As noted earlier, it is mandatory to register and save all PBR applications received from taxpayers on CRS. However, this requirement was waived, in part, for the GST business line, because of the overwhelming workload facing this business line following the introduction of the GST. The ATO recognised that the process of storing PBR applications on both CWMS and CRS impeded its ability to process PBRs expeditiously. Consequently, ATO policy was changed temporarily for the GST business line so that only PBRs that were considered to constitute ATO precedent were required to be stored on CRS.¹⁶⁰

4.29 The ANAO notes that the difficulties regarding the lack of integration of PBR production systems outlined above, have been documented in the ATO's internal reports to senior management. One report noted that *'it often takes longer to input case statistics into CICADA and CRS than it takes to resolve the case.'*¹⁶¹ In response to these reports, the ATO stated that it has streamlined the process of producing its PBRs through changes made under the PoA project (see Appendix 4), and now has a fully integrated PBR case management and production system.

Reliability of systems used to produce PBRs

4.30 Having properly functioning and reliable IT systems is vital to the efficient production of PBRs. Poorly performing IT hardware, or IT hardware that fails, not only frustrates the IT system user, but can severely impede performance or prevent the carrying out of routine or specific work. As the ATO is reliant, almost entirely, on its IT systems for the production of PBRs, it is vital that these IT systems have fast response times, and are operational when staff require them.

Overall performance of PBR IT systems

4.31 To assess the performance of the ATO's IT systems, the ANAO requested that the ATO provide statistics on the 'responsiveness' and 'down-time' of each critical PBR IT system. The ATO advised that such performance statistics were not regularly collected for individual databases, however some data was available on the performance of 'computer servers' upon which these databases are stored. These statistics related to the CRS, CWMS, DWMS and CASES databases.

¹⁶⁰ However, as part of the PoA project, this practice changed and from 1 January 2001 all GST PBRs are required to be placed on CRS.

¹⁶¹ Small Business Biannual Report for July to December 2000.

4.32 The statistics show that the performance of the various case management systems and CRS has historically been poor. One internal report found that a principal cause of non-compliance by ATO staff with the ATO's provision of advice policy was the IT infrastructure and performance problems impacting upon system performance. Other ATO reports and statistics support this contention. For example an ATO investigation of CRS performance found opening and closing cases on CRS used to take in excess of one minute in some sites, which we consider to be excessive, whereas another report found that historically CWMS has had system down time of up to 40 per cent.

4.33 The ANAO notes that the ATO has made a concerted effort to improve the performance of some of its PBR IT systems.¹⁶² This has improved the performance of CWMS, CRS and CASES. CASES has less failed connections than it used to and CWMS and CRS have shown improvements in system speed and response times.

4.34 The ATO has advised the ANAO that it has now placed the CRS system on a new IT platform. It has also stated that through the PoA project, it has integrated CRS with other systems without an adverse effect on performance.

The impact of workload on the performance of PBR information technology systems

4.35 Although the ATO has taken measures to ensure the reliability of its IT systems used in the production of PBRs, it should ensure that these measures take into account future increases in the numbers of PBRs. In particular, the problem of increasing numbers of PBRs recorded on CRS could potentially impact upon its ability to process information in a timely manner. The table below illustrates the significant increases in the numbers of cases¹⁶³ entered into CRS.

¹⁶² A new computer server has been purchased and installed, some program code has been rewritten for CRS and ATO has also upgraded the software platform (SQL Server 6.5 to SQL Server 7.0) for CRS and the case management systems.

¹⁶³ Cases include other interpretative advice, disputes, appeals, compliance, PBRs, GST PBRs, and GST interpretative advice.

Table 3
Number of cases on CRS

<i>Financial year</i>	<i>Total number of cases recorded in CRS for each financial year (cumulative)</i>	<i>Number of new cases processed in CRS for each financial year</i>
1997–98	15 807	+2 898
1998–99	20 339	+4 532
1999–2000	30 522	+10 213

Source: ATO statistics

4.36 The regular monitoring of CRS system performance will assist the ATO to identify problems and trends and allow the ATO to take corrective action in a timely way. This will help to mitigate the detrimental impact of IT systems reliability problems on the production of a PBR.

4.37 The ATO advised the ANAO in May 2001, that is now has sophisticated software that can be used to monitor system performance. The ANAO considers that the ATO should regularly monitor system performance of all PBR IT systems, using this software, given the large increases in the amount of data existing IT systems are expected to process and store. This can be achieved by regularly monitoring IT system logs that track system performance. This will assist the ATO with the early identification of problems and allow it to take corrective action in a timely way, because it better appreciates the data on the size, frequency and location of the problems.

4.38 The ANAO notes that as part of the PoA project, the ATO has conducted analysis on the new PBR IT system's ability to process increased numbers of PBRs. These reports show that the system should be able to processes additional numbers of PBRs in the future. However, the ANAO considers that the ATO needs to regularly monitor the new PBR IT system's ability to process PBRs in a timely manner, on a regular basis.

Recommendation No.3

4.39 The ANAO recommends that the ATO regularly monitor and report to senior management: private rulings information technology system response times and system down-times and failure rates, so that problems with the private rulings case management systems and the Case Reporting System can be quickly identified and corrected.

ATO response

4.40 Agreed.

PBR procedures and IT systems to support ATO staff drafting PBRs

4.41 Having systems which perform specific subsidiary functions to aid the drafting of PBRs, is an important aspect in providing an efficient and effective PBR production process. PBR IT systems which make it easier to research and identify precedential PBRs, and other relevant tax-related material, enhances the production of consistent and technically accurate PBRs. The ANAO examined two IT tools which are used to support ATO officers responsible for drafting PBRs. These are CRS (which has been used to establish PBR precedent), and the Technical Reference Search Engine (which is used to search for and identify relevant tax material).

CRS

4.42 As noted earlier, all business lines drafting and publishing PBRs use CRS. However it also used by ATO officers to search for ATO PBR precedent¹⁶⁴ when drafting PBRs. Without a comprehensive, up to date precedential database, it would be difficult for the ATO to ensure that, where appropriate, the decisions taken in older PBRs are consistent with those being considered in respect of newer PBRs.

4.43 We also noted earlier, that the large variances in the numbers as shown in Table 2 may indicate that all not all PBRs are recorded on CRS. If this is the case, then all relevant precedential material necessary to support the drafting PBRs may not be available readily for staff to use. This could increase the risk that inconsistent decisions are made on the application of the tax law by ATO staff, thereby potentially undermining the fairness and certainty provided by the PBR system to taxpayers. Also, an incomplete precedential database could also potentially undermine its usefulness as a source of intelligence for other ATO functions (such as taxpayer audit and investigations) and as a source of meaningful performance information for management.

¹⁶⁴ As mentioned earlier, for the purposes of this report precedential means a decision embodying the Commissioner's interpretation of the 'tax law' serving as an authoritative rule or model for relying on in similar cases in the future.

4.44 At present, the CRS database does not identify which PBRs are precedential, making it difficult for ATO officers to identify the correct PBRs they should use as precedent. The ATO advised that as part of its new process of capturing PBR precedential decisions, it is developing a new, more comprehensive database of precedential interpretative decisions from PBRs issued.

Technical Reference Search Engine

4.45 Search engines can be powerful IT tools useful in identifying relevant material for ATO officers drafting PBRs. The ANAO notes that the ATO re-developed its main search engine (the Technical Reference Search Engine) in early 2001, to search through large quantities of data more efficiently.¹⁶⁵

4.46 The Technical Reference Search Engine is capable of performing free text searches across numerous databases including: ATO Assist, ATO Connect and CRS. It can be used to retrieve information relating to rulings, determinations, tax reform and legislation. The ATO advised that the Technical Reference Search Engine is now available across all business lines, and for the majority of these business lines, its use is mandatory when researching PBRs.

4.47 The ANAO considers that the Technical Reference Search Engine is a useful and effective tool to research PBR topics and notes that the ATO is planning to expand the number of databases through which the Technical Reference Search Engine can search.

ATO administrative procedures and IT controls to prevent the issue of sub-standard PBRs

4.48 Unlike the public rulings systems which have centralised production and clearance processes, PBRs are generated by five business lines. Each business line can issue PBRs from ATO regional offices located throughout Australia. Consequently, under existing PBR production processes, PBRs can be issued from numerous 'exit points'. In the absence of compensating controls, having multiple exit points decreases the control the ATO has in relation to the issue of legitimate PBRs.

¹⁶⁵ Prior to 2001, the ATO had key-word search facilities for two of its technical advice databases. These search facilities, in combination with the data contained on the technical advice databases, did not allow system users to obtain technical information used to draft private rulings in a timely and efficient manner.

4.49 A mechanism for maintaining control of the numerous PBRs issued by the ATO would be to assign a unique numeric identifier to each PBR issued. At the time of the audit, the case management systems and CRS could not reliably assign a uniform consecutive and unique numeric identifier to each PBR issued. However the ATO advised that, as part of the PoA project, it has now made alterations to existing IT systems which allow a unique identifying number to be assigned to each PBR. The ANAO considers that the sequential numbering of PBRs will go some way to improving the controls associated with issuing PBRs from numerous 'exit points' located throughout Australia.

4.50 Having fully integrated PBR IT systems and production procedures will increase significantly the efficiency and effectiveness of PBR production processes. The multiplicity of PBR IT systems and production procedures makes the PBR production process unduly complex and inefficient and may compromise the integrity of PBRs. The ATO has stated that through its PoA project, it now has a fully integrated PBR system. This should assist in addressing the problems highlighted above. The integrated PBR system should also improve the ATO's performance against the Taxpayers' Charter standards (see Chapter 5) in terms of the time taken to produce PBRs.

4.51 Having properly functioning and reliable IT systems is vital to the efficient production of PBRs. Poorly performing hardware or hardware that fails, not only frustrates ATO officers using the IT systems in preparing the PBR, but can severely impede performance or prevent the carrying out of routine or specific work. By regularly monitoring the performance of all IT systems relevant to the production of PBRs, the ATO would be in a better position to identify problems with the reliability of IT systems early and take timely corrective action to prevent significant disruptions to staff.

4.52 An important aspect of a secure PBR production process is a single control at the 'exit point' for all PBRs issued by the ATO. For example, a means of ensuring that a PBR is valid would be to assign a unique identifying number to the PBR at the 'exit point'. The ATO has advised that it has altered its IT systems, so that each PBR drafted is assigned a unique identifying number. This unique identifying number should contribute to the integrity of the PBR production process overall, thereby providing taxpayers with increased confidence in the ATO's ability to administer PBRs.

Management of private binding rulings

4.53 An important part of the good management of PBRs is the ability to generate relevant, reliable and timely performance information. By collecting and analysing information on the performance of the PBR production process, the ATO is able to: make fully informed decisions about resources committed to the process; identify areas of the production process that require improvement; and determine whether it is fulfilling its obligations to the public by adhering to the standards of the Taxpayers' Charter. Also, public disclosure of PBR performance information allows the Parliament and the public to make a more informed judgement as to how the ATO is fulfilling its obligation to make the taxation system fairer and more certain through the provision of PBRs.

4.54 To determine whether the ATO collects relevant information which accurately reflects the performance of the ATO's administration of PBRs, and whether ATO management can rely upon that information when making decisions, the ANAO examined the following aspects of the ATO's management of PBRs:

- relevance of the performance information the ATO uses to assess the performance of the PBR production process;
- pre-issue PBR quality control; and
- reliability of the data used in the compilation of PBR performance information.

4.55 Similar to other aspects of the PBR production process (see paragraph 4.12), the management of PBRs is heavily reliant on the PBR IT systems. That is, the ATO's ability to generate PBR performance information depends on the IT systems' ability to generate reliable and timely management reports.

Relevance of private binding ruling performance information

4.56 The ATO has not adopted a comprehensive and consistent approach to determine and measure whether it is meeting the objectives of the PBRs system, which is to provide fairness and certainty to taxpayers. PBR performance information collected by the ATO differs between business lines, and is of variable quality. The ANAO considers that a major factor hampering the ATO's efforts to construct a meaningful PBR performance management framework are the limitations of current PBR IT systems. Broadly, the type of performance information we would expect the ATO to collect and analyse as part of a comprehensive performance management framework would include:

- **general performance information** about how efficient the ATO is at producing timely, cost effective and high quality PBRs for taxpayers; and
- **specific performance information** which can be used by a range of functional managers, to allow them to make informed decisions about their specified functions. This includes the amount of time staff spend on PBR activities, the costs of those activities and the results of quality reviews of PBRs before they are issued to the taxpayer, i.e. 'pre-issue' quality reviews.

General performance information

4.57 Current ATO management processes do not allow the compilation of basic performance information for ATO senior management to assess the overall performance of the PBR production processes. This 'general' performance information is not only important for internal management purposes, but also to inform the public and the Parliament on the efficiency and effectiveness of the PBR system.

4.58 For example, during the audit, the ANAO sought to obtain 'general' performance information concerning the overall performance of the PBRs production process. This information included the number of PBRs issued since the introduction of PBRs in 1992, and the total cost of issuing PBRs, including the total number of staff involved in the production process. We considered that this information would provide us with a basic understanding of the PBR environment overall in which the ATO operates and the processes it uses to manage PBRs.

4.59 Although the ATO did provide some data relating to some aspects of the information requested above, this information could not be used to assess the environment or overall performance of the PBR system. This was due to either the information sought not being available or a significant proportion of the data provided to us not making sense or being incomplete. Indicative of the difficulties with the data provided to the ANAO are the following examples:

- *Data relating to the total number of PBRs issued.* The ANAO received data from each of the case management systems and the CRS. This data did not allow us to verify that a large proportion of the PBRs recorded in these systems were legitimate due to the data being incomplete or not making sense. This issue is discussed further at paragraph 4.85.
- *Data relating to the cost of producing PBRs including total staff numbers and classifications.* The principal cost in producing PBRs is the direct

staff time spent drafting, reviewing and publishing PBRs. The ATO does not have a system to identify the number of ATO staff that have these PBR responsibilities. Consequently, the ATO was unable to determine the total costs associated with providing PBR services.¹⁶⁶

4.60 Given these weaknesses in collecting and reporting 'general', performance information that measures the overall performance of the ATO's production of PBRs, the ANAO notes that the ATO would find it difficult to extract more detailed or specific performance information from its PBR IT systems. This means that the ATO could have difficulty in identifying or investigating further the factors that underlie this information. For example, if ATO performance information were to show an increase in the cost of producing PBRs, the ATO would not be able to determine the cause of the cost increases, in the majority of cases, as current systems are not able to perform this function.

4.61 By not being able to collect and analyse basic performance information such as numbers of PBRs produced and the cost of producing PBRs, it shows that the ATO is unable to provide assurance that its PBR production processes are operating efficiently and effectively.

4.62 The ANAO notes that the ATO does have systems in place to collect performance information on the length of time taken to produce PBRs. It monitors and reports this information regularly as part of its internal reporting processes, as well as reporting this information to the public (to satisfy Taxpayers' Charter requirements). The time taken to produce PBRs and the Taxpayers Charter standards regarding the timely production of PBRs are discussed Chapter 5.

4.63 Business lines also regularly receive feedback from stakeholders and clients on the quality of the PBRs they issue. For example, the LB&I business line is able to gain some indication of the effectiveness of the PBRs it issues through direct feedback from its client managers and monitoring the number of disputes/complaints received about PBRs. The ATO also undertakes quality assurance reviews of private rulings, involving tax experts from outside the ATO, three times a year. The results of the ATO's quality assurance reviews are discussed in Chapter 5.

¹⁶⁶ The ANAO notes that some business lines regularly collect accurate PBR staff cost information. For example the INB business line (using the INBUCA system) collects staff cost information regularly. Also, the GST business line has started using the GSTUCA system to collect similar information in selected areas of the GST business line. Those business lines that did not regularly collect staff cost information, did provide estimates of PBR staff costs. However this information could not be aggregated to come up with a total PBR staff cost figure. This was due to the different assumptions and analytical techniques used by each business line to determine their PBR staff costs.

4.64 The ANAO notes that the PoA project includes the ‘development of an end-to-end process for the provision of advice’. The ANAO would encourage the ATO, as part of the PoA project, not only to consider the hardware and software requirements for a more efficient and effective PBR IT system, but also the performance information these systems need to generate to provide taxpayers with assurance that the PBR production process is efficient and effective. The ATO has advised that, as a result of the PoA project, it can now generate reports that detail the number of private rulings received, the number finalised, and which of those private rulings are precedential.

Specific performance information for functional managers

4.65 Although the ATO is able to collect and analyse some performance information for individual business lines, particularly relating to Taxpayers’ Charter responsibilities, business lines are not able to generate specific performance information relating to individual teams.

4.66 For example, at the time of the audit, the DWMS and CWMS case management systems only generated performance information for the INB, SB and GST business lines nationally. This performance information relates mainly to business line compliance with the Taxpayers’ Charter Standards. However, CWMS and DWMS cannot readily generate information for individual teams or specific functions. As a result, ATO national managers and team leaders with responsibility for the management of PBRs, cannot readily access useful performance information relating to their teams or specific functions associated with their PBR responsibilities. The ANAO noted that a number of ATO officers expressed frustration with current PBR IT systems, as they could not access easily basic performance information such as:

- a list of PBR applications;
- the names of the officers responsible for drafting and reviewing PBRs;
and
- the number of rulings currently being drafted.

4.67 The ANAO notes that it is possible to extract this information from CWMS and DWMS. However, process of doing so is clumsy and time-consuming.

4.68 Without the provision of relevant, reliable and timely performance information, managers and team leaders may not be able to identify quickly problems with the performance of their teams (or indeed examples of better practice). Therefore, circumstances which may impact negatively on taxpayers, such as extended delays in the production of PBRs, may not be quickly identified and corrected. This could affect the public’s confidence in the ATO’s ability to administer effectively a PBR system designed to make the taxation system fairer and more certain for taxpayers.

4.69 The ATO has advised that, as part of the PoA project, enhancements have been made to CWMS and DWMS to provide a greater number of useful reports for ATO managers. The ATO expects that the enhanced PBR IT systems will be able to generate reports which focus on the following areas:

- business line;
- PBR type;
- PBR start date; and
- PBR finalised date.

4.70 The new PBR IT system will also produce reports generated by existing IT systems relating to the: ATO's performance against the Taxpayers' Charter, analysis of PBR work on hand, analysis of elapsed time between events and listing of finalised cases.

4.71 To ensure an efficient and effective PBR IT system, the ATO should consider carefully the type of information it needs to collect to report on the areas of performance outlined above. This task would include a rationalisation of the fields of PBR data contained in the databases in existing IT systems. Rationalisation would include clearly defining and describing each field of information to be contained in the new PBR IT systems, and putting in place controls to minimise the risk of incorrect data being entered into those fields. The quality of the data contained on ATO PBR IT systems is examined further later in this Chapter.

Time spent by ATO staff on PBR activities

4.72 As noted earlier, the principal cost in producing PBRs is the direct staff time spent drafting, reviewing and publishing PBRs.¹⁶⁷ Although staff time is the principal cost, the ATO does not have a reliable system capable of compiling information on the numbers of ATO staff who have PBR responsibilities, and the time they spend on PBR activities.¹⁶⁸

4.73 The ANAO notes that the ATO does have a number of IT systems that can produce varying quantities of time recording information. For example, the INB, LB&I and GST business lines all have separate time recording systems, whereas SB and SPR business lines do not regularly record the amount of time spent on work activities.

¹⁶⁷ We note that PBR applicants can also bear a very significant cost in preparing PBR applications, particularly because of the cost of professional advice on complex tax issues.

¹⁶⁸ As mentioned earlier, some business lines regularly collected PBR staff cost information.

4.74 However it is not possible to collate the time recording information from these systems to determine PBR costs. This is because the assumptions and analysis behind the allocation of time spent on work activities, and the quality and completeness of the data contained on each time recording system, differ significantly between time recording systems. As a result, the ATO is not able to compile meaningful performance information on the numbers of ATO officers with PBR responsibilities, and the total cost of administering the PBR system overall. This performance information is important to determine the most efficient and effective allocation of resources to PBR and other ATO activities as well as to plan activities to monitor costs across various ATO locations and over time.

4.75 Apart from being used as a measure of performance, time recording information also has other important applications. As noted in Chapter 1, the Government's paper *Tax Reform: Not a New Tax, A New Tax System* specified that the Government 'will examine a system of user charges for PBRs and other binding advice given to large business taxpayers in complex cases'. Similarly the Ralph Review (see Chapter 1), recommended that ATO 'have the discretion to charge for the provision of PBRs'. If the ATO were required to charge taxpayers for the provision of PBRs, knowing the time spent by ATO officers producing PBRs would be one component in determining the cost of PBRs.

4.76 The ANAO is aware that the ATO, through its PoA project, is planning to 'investigate moving towards improved cost and time recording processes' from 30 December 2001 onwards.¹⁶⁹ The ATO has acknowledged that being able to identify costs involved in producing binding advice clearly is a key efficiency measure. We also suggest that by identifying costs the ATO may be better able to manage its business and may heighten accountability for its PBR activities.

Pre-issue quality reviews

4.77 A review of the quality of a PBR prior to it being issued is an important aspect of providing taxpayers with certainty that the PBR accurately reflects the Commissioner's interpretation of the tax law. As well as being an important procedure used in the PBR process, pre-issue quality reviews also provide ATO management with assurance that the clarity and technical accuracy of the PBR are of a standard acceptable to the Commissioner.

¹⁶⁹ The ANAO notes that the ATO originally planned to investigate moving towards improved time costing in September 2001.

4.78 The mechanism used by the ATO to rate the quality of its PBRs is the ATO Judgement Model. The Judgement Model is based around the principal elements of providing a good decision which are comprehending the question and providing a correct, well reasoned and clearly communicated answer. (Chapter 5 examines the Judgement Model in more detail as part of corporate governance.)

4.79 All business lines conduct PBR pre-issue quality control reviews using the Judgement Model. However it is only the INB business line that actively records the results of these reviews and monitors the performance of individual teams as well as the business line against standards of pre-issue quality. To collect and analyse pre-issue performance information INB introduced an IT system called QualCom, which automatically collates all pre-issue quality control assessment results for INB.¹⁷⁰

4.80 Using QualCom data, INB is able to generate numerous reports with varying levels of detail. For example, QualCom is able to compile quality control assessment results for each ATO officer involved in drafting PBRs, as well as high level team and national performance reports. Team leaders and National Managers can then use this information to identify training needs and monitor PBR quality. The ANAO notes that other business lines do not have similar IT systems to collect pre-issue quality control results.

4.81 The ATO conducts broad post-issue quality assurance reviews¹⁷¹ that include PBRs. The process also involves tax experts external to the ATO, an initiative the ANAO supports. However these reviews are based upon samples of PBRs and are only conducted three times a year. The ATO only uses post-issue quality assurance reviews to identify systemic issues, rather than problems with individual performance.

4.82 The ATO, through its PoA project, will require all business lines to collect, monitor and analyse pre-issue quality control assessment results. Monitoring and analysis of these results could be used to assess various aspects of performance relating to the overall quality of PBRs, as well as other factors such as the training requirements for staff who work on PBRs.

¹⁷⁰ The LB&I business line noted that although it does not actively record and monitor performance, it has a rigorous process whereby each ruling has an approving officer and peer reviewer (both at a senior level) involved in any PBR prior to issue. It considers that this provides assurance that staff are regularly reviewed and monitored.

¹⁷¹ Please refer to Chapter 5 for more discussion relating to quality assurance.

Conclusion relating to the relevance of PBR performance information

4.83 The ANAO notes the ATO has not determined fully the information it requires in order to measure whether it is fulfilling its objective of provide certainty and fairness to taxpayers through the provision of timely, high quality PBRs. The effective management of the PBR production process requires the ATO to monitor how well it is delivering against these objectives. A major factor hindering the ATO's ability to effectively assess the performance of the PBR production process is its IT systems. These systems are unable to:

- report in an accurate and consistent manner, the overall performance of the PBR system;
- report in an accurate and consistent manner, the specific performance of individual teams and officers, so National Managers and Team Leaders can make informed decisions;
- accurately determine the costs associated with the production of PBRs, so that the ATO executive can make informed decisions on the allocation of resources to the provision of PBR and other ATO functions; and
- produce performance information for the SB, LB&I, SPR and GST business lines in relation to the quality of PBRs before they are issued.

4.84 The ATO advised, in May 2001, that these issues will be addressed in later phases of the PoA project.

PBR data quality

4.85 Complete, accurate and timely (high quality) data is crucial for the provision of meaningful performance information to management. Data collected by the ATO that does not meet these three criteria increases significantly the risk that decisions made by management based on that data will be incorrect. Similarly, if management and staff cannot rely on the data contained in its IT systems to produce meaningful information upon which they can make decisions, there is little reason to collect such data in the future.

4.86 The ANAO expects the ATO to have controls in place to maintain the quality of the data relating to PBRs. High quality data on the cost and timeliness of PBRs will assist ATO management in making informed decisions about factors such as resource allocation and staff training requirements. Similarly high quality data on PBR work-flow can be used to identify systemic problems in the production of PBRs and perform meaningful PBR trend analysis (for example analysis on the type of arrangements raised in PBR applications, and the categories of taxpayers or industries requesting PBRs).

The ANAO's approach to assessing the quality of PBR data

4.87 The ANAO undertook analysis on the quality of data contained on all IT systems relevant to the management of PBRs. Generally, we found that all the IT systems used to manage PBRs had poor data quality and/or a lack of data quality controls. To illustrate the problems we found with the ATO's PBR data, we provide our analysis of a key PBR IT system, that of CRS.

4.88 ANAO conducted analysis of CRS to assess data quality. We found that data quality was poor. There were several fields that contained data that either did not make sense, or was either inaccurate or incomplete. For example, one field in the CRS database, which is used to record which business line has responsibility for each recorded PBR, had 457 PBR records showing 'XXXXX' instead of a recognised business line code. Likewise, 'Sales Tax' appeared to have five different codes.¹⁷² This lack of data integrity will hamper ATO efforts to extract meaningful information about the number of PBRs each business line issues, which may impact on future management decisions, such as resourcing decisions.

4.89 The entry of data that does not make sense or the problem of inconsistent data (as outlined above) could be eliminated with the introduction of a simple control to limit the type of data that can be entered into particular fields, providing the user with a limited 'list of options'. The ATO has advised that it has introduced new IT controls to ensure standardised data is recorded in the PBR IT system. These changes were recently made as part of the PoA project.

Controls to ensure the quality of PBR data

4.90 The ANAO considers that the ATO's numerous PBR IT systems, and the numerous areas from which a PBR can be issued increase the need for rigorous controls to ensure the completeness and accuracy of PBR data. The ANAO considers that the ATO needs controls and mechanisms to protect the quality of data in the IT systems used in the production of PBRs.

4.91 An example of such a control is one that would automatically check key client details against a central and primary source. If an ATO officer inputs a Tax File Number (TFN), then it should be cross referenced and checked against data in the ATO mainframes, such as the National Taxpayer System (NTS)¹⁷³ or ATO Integrated System (AIS).¹⁷⁴ This would

¹⁷² S/T, Sales, SaleT, ST, STAX.

¹⁷³ NTS is the ATO computer mainframe that processes income tax for companies, individuals, partnerships, trusts and PAYG (relating to the replacement of provisional tax).

¹⁷⁴ AIS is the ATO computer mainframe that processes withholding tax. It is used for PAYG (relating to group employees), GST and prescribed payments.

ensure that data is consistent across ATO systems. It will also add an extra layer of assurance and confidence in data quality. There may also be scope for the ATO automatically to fill in the fields for the registered taxpayer used in the PBRs IT systems (like client details such as name, address and contact details) based on the TFN identifier.

4.92 The ATO advised the ANAO that CWMS and DWMS have been designed to check taxpayers' TFNs and Australian Business Numbers against AIS. However, due to technical problems, this function is currently disabled. Also, other case management systems and CRS do not have similar in-built identity verification processes.

4.93 Better integrated systems could also improve data quality. By eliminating duplicated processes and the need for duplicate data, current IT systems will become more 'user-friendly' and reduce the risk of unintended errors in re-keying or transferring data between systems. Inclusive of this, manual data entry should also be automated as much as possible to remove the opportunity for human error. Also, systems that provide guidance on, or limit the type of data that can be entered into databases, decrease the risk of incorrect data being entered.

4.94 The ATO advised that through the PoA project, it has addressed data quality issues with several initiatives. For example, the ATO stated that it has automated the process of down-loading information between the case management systems and CRS. This should reduce the risk of incorrect data being entered into CRS through manual entry. The ATO advised also, that it will investigate linking the case management systems and CRS with ATO mainframes. Ideally, these links will allow an ATO officer to enter a TFN into the case management systems or CRS to automatically obtain taxpayer information such as name, address and occupation. This saves time and is more accurate.

Overall conclusion

4.95 The administration of public and private rulings in the ATO are conducted quite separately and the administrative processes that support them are markedly different. Whereas the public rulings production process has clearly defined systems and controls, the PBR production process does not have integrated systems and lacks adequate controls. These features undermine the objectives of the PBR systems which are to provide certainty, fairness and consistency to taxpayers regarding the Commissioner's application of the tax law.

4.96 The ANAO notes that the ATO has implemented some procedures to control the production of high quality PBRs. These procedures include standardised receipting procedures for PBR applications, comprehensive PBR escalation procedures, and pre-issue quality control procedures.

4.97 However we identified the ATO's IT systems as a key weakness in the production and management of PBRs. The poor performance of these systems has had a detrimental impact on the effectiveness of controls over the management and production of PBRs. In particular, the poor performance of the ATO's IT systems has impacted negatively on:

- ATO staff's ability to access relevant materials needed to draft PBRs;
- the time it takes to efficiently produce PBRs; and
- ATO management's ability to control, review and improve the operation of PBR production processes.

4.98 The current IT systems do not generate timely or useful information for management to make informed decisions. There are also numerous information systems involved in the production of PBRs which are not integrated. These factors impact negatively on the ATO's ability to:

- assess whether it is achieving the objectives of the PBR system, which is to make the taxation system fairer and more certain for taxpayers;
- determine accurately the costs of producing PBRs, so that the ATO can make informed decisions about resource allocation; and
- obtain information about the quality of PBRs issued.

4.99 The ATO also has limited controls over data quality making the analysis and examination of PBR information difficult. IT systems did not readily support officers preparing a PBR. However initiatives in 2001, such as the introduction of a search engine for business service lines to allow PBR case officers to perform free text searches on all PBRs issued, have significantly improved the ability of these officers to research PBR topics.

4.100 The ANAO notes that the problems and difficulties faced by the ATO in the production of PBRs have been longstanding, having been identified in numerous internal ATO reports, including the Sherman report (although we recognise too, that the ATO has taken a number of steps over the years in response¹⁷⁵). These problems impede the achievement of the ultimate objective of providing certainty to taxpayers. We consider that the problems that significantly impact upon the efficiency and effectiveness of the ATO's systems and processes are the lack of integration between systems, the reliability of the ATO's IT systems, and the quality of data collected and reported by the ATO in order to manage PBRs.

¹⁷⁵ For example, the ATO implemented an IT system to draft private rulings and share information about private rulings in 1996; formalised quality assurance review processes in 1997; and introduced measures to minimise duplicate keying by ATO staff, in 1999. The ATO also established the Professional Excellence Forum in 1998 to drive improvement initiatives in technical decision making.

4.101 The ANAO notes that the ATO has taken significant steps to redress these problems. The ATO advised that it has resolved many of the following issues as part of its PoA project:

- integration of information systems;¹⁷⁶
- ability to generate timely and useful performance information;
- controls to ensure high data quality;
- reliable and stable information infrastructure; and
- supportive systems to assist ATO officers.

4.102 However the ultimate test for the ATO is whether these steps result in a more efficient and effective PBR system.

4.103 The ANAO fully supports the ATO's PoA project and the long-term commitment to integrate the provision of advice (including PBRs) with other areas in the ATO. However, we note the challenges ahead to remedy some of these major and longstanding problems will require the ATO to remain focused and resolute. The examination of periodic PoA implementation status reports could be a way of monitoring progress and maintaining the momentum. We consider that a possible mechanism for this could be the ATO's Internal Audit Committee or the Professional Excellence Forum.¹⁷⁷

¹⁷⁶ The ATO considers that its case management systems are integrated because it has:

- rationalised the number of systems used to manage and produce private rulings;
- increased consistency between business lines regarding the IT systems and controls it uses to produce private rulings;
- mechanisms (computer software) in place to facilitate the transfer of data between existing case management systems;
- the ability to produce aggregated PBR management reports across all business lines.

¹⁷⁷ The Professional Excellence Forum guides the ATO's work on developing and implementing measures to improve professional excellence in the formulation, interpretation and application of taxation laws. It is discussed in Chapter 5.

5. Corporate Governance Issues

In canvassing selected corporate governance issues in this chapter, we discuss the overall ATO framework and principles of corporate governance with reference to rulings, the process controls in rulings and the activities that provide corporate support for the process controls. We also discuss performance information and other issues in the management of the taxation rulings systems. The robustness of these processes and mechanisms influence the effectiveness of the corporate governance framework for rulings overall.

Introduction to corporate governance

5.1 ‘Corporate governance’, is the means, among other things, by which organisations are directed, controlled and held to account. It is concerned, among other things, with structures and processes for decision-making, and with the controls and behaviour within organisations that support effective accountability for performance outcomes.

5.2 With regard to the ATO as a whole, corporate governance has relevance to both the operations and accountability of the ATO. It provides a structure for managers in the ATO to make informed decisions with the assurance that proper controls are in operation and that risks are managed properly. It also provides ATO management, the Treasurer and the public with assurance regarding the performance of the ATO in achieving its objectives, the efficiency and effectiveness of operations, the reliability of its financial reporting and compliance with legislation and regulations.

5.3 With regard to rulings specifically, a sound corporate governance framework for the administration of rulings is important because rulings are a key mechanism underpinning the self-assessment tax system. As noted in Chapter 1, this mechanism bears directly on the administration of the tax system and the quality of client service. It also bears on the extent to which there is public disclosure of the Commissioner’s view on the administration of tax laws, and therefore public accountability.

5.4 Key operating principles of ‘openness’, ‘accountability’, ‘integrity’ and ‘leadership’ underpin a sound corporate governance framework in the public sector.¹⁷⁸ The behaviours, structures and activities giving effect

¹⁷⁸ P. Barrett, Auditor-General for Australia, Occasional Paper 1998 *A systematic approach to effective decision-making*, November 1998.

to these principles are depicted in Figure 8, following. This figure also illustrates the way in which these principles overlap and provide mutual support. For example, a code of conduct (or Taxpayers' Charter) and scrutiny, performance review and reporting in the ATO reflect and contribute to leadership, openness, integrity and accountability.

Figure 8

The operating principles underpinning corporate governance



5.5 At the broadest level, the ATO's corporate governance framework embodies structures and processes to develop strategy, plan, manage, review and account. There is a wide range of senior management groups for review, deliberation, strategy and decision making.¹⁷⁹ The ATO's strategic management processes are supported by the ATO's 'Strategic Planning System', key elements of which include the strategic processes of: strategic direction, planning and resourcing, and assurance.¹⁸⁰

¹⁷⁹ These include the ATO Executive as the peak decision making body, the Corporate Design Forum which considers themes in ATO corporate health such as leadership and communication, the Audit Committee, the Integrity Advisory Committee (previously titled the Fraud Committee) and the Professional Excellence Forum which focuses on managing the technical (i.e. tax law) environment.

¹⁸⁰ The other three core elements of the integrated planning system are 'high level corporate design', 'build and operate' and 'intelligence'. The six elements are outlined in the Commissioner of Taxation, *Annual Report 1999–2000*, pp. 88–90.

5.6 We examined the ATO's strategic documents, such as the ATO Strategic Statement 2000–2003 and strategic/ business operational plans prepared by the business and service lines and the performance and corporate governance reports prepared to meet the 'assurance' aspect of the strategic planning system.¹⁸¹ 'Rulings' as such do not feature prominently in the corporate governance framework at this high level of aggregation and abstraction, but they are mentioned in connection with ATO efforts to maintain community confidence.¹⁸² Our discussion of aspects of corporate governance in respect of rulings therefore, has a more detailed focus on operational aspects of rulings management. We examine specific activities and issues in the management of rulings (such as process controls and performance review, including technical review) and draw out their significance to corporate governance.

5.7 In terms of good corporate governance in rulings administration, we would expect to see a robust system of internal controls, including accurate and comprehensive sources of procedural guidance, vigorous checks on the quality of rulings made and effective training of staff to ensure that they have appropriate skills and experience. We would also expect to see that the tax rulings systems are well managed, involving, for example, effective consultation with stakeholders, input from senior management, consideration of risks and opportunities and how they might be managed and the collection, review and reporting of appropriate performance information and results to senior management and external parties.

5.8 In examining this topic, we consider, in turn, the process controls in producing the main types of rulings, various activities providing corporate support for the rulings process controls, the performance of the rulings system and other issues in managing rulings.

¹⁸¹ The assurance element includes the BSL monthly performance reports prepared for the ATO Executive, biannual governance reports prepared for the ATO Executive including biannual accountability discussions with the Commissioners and signoffs of business and system controls.

¹⁸² Almost exclusively, the references to rulings in these higher level documents are in relation to Taxpayers' Charter standards performance for private rulings, although we note that the results of periodic technical reviews of the quality samples of private rulings issued that are taken in each business line, are reported to the ATO Executive biannually. Performance information for rulings is discussed later in this chapter. Audit Report No. 46 2000—2001 *ATO Performance Reporting under the Outcomes and Outputs Framework* examines the internal reporting on outputs in the ATO. Of relevance here is Chapter 3 of that report, which outlines the ATO internal reporting framework.

Process controls

5.9 The ANAO reviewed two key process controls involved in the production of public and private rulings, namely production process controls and sources of procedural advice for staff.

Production processes—public rulings

5.10 As outlined in Chapter 2 and shown in Appendix 3, the production process controls for public rulings¹⁸³ are rigorous. There is strong peer review, well-developed escalation procedures, an intensive public consultation process, and heavy use of specialist panels. All public rulings are signed off by the Chief Tax Counsel; there is a single exit point; and there is a formal publication process for public rulings.

5.11 The process controls for product rulings as set out in Chapter 2 and Appendix 3 are sound, overall. Senior ATO staff are responsible for drafting product rulings; there is a strong peer review process; and a common exit point. The ATO publishes the list of product rulings issued on the ATO web site.

5.12 The ATO uses two separate Microsoft Excel spreadsheets to manage its public and product rulings processes. These spreadsheets are maintained by the Office of the Chief Tax Counsel (OCTC) and they contain information such as the date the product ruling application was received or work on the public ruling topic was activated, the person(s) responsible and the matter's current status. The Excel spreadsheets are separate from all other rulings case management and case reporting systems used in the production of private rulings and public rulings. The spreadsheets are protected by a password, making them accessible only to relevant ATO officers.

5.13 The Excel spreadsheets may have sufficient capacity, on the current numbers of public rulings, to meet the ATO's current needs. However, the ANAO is concerned that the system may not be operationally efficient as the numbers of entries on the spreadsheet increase. As shown in Chapter 2, the numbers of public rulings have been fairly consistent over time, but the numbers of product rulings have risen fairly strongly (from a relatively low base). If the numbers of product rulings continue to increase, then for reasons of operational effectiveness it may be necessary for the ATO to use a system for product rulings with capacities for workflow management, tracking and reporting.

¹⁸³ In this chapter, we use the term 'public rulings' to refer to income tax and FBT rulings in the TR and TD series and GST rulings in the GSTR and GSTD series.

5.14 Ideally the case management systems used in preparing rulings (especially private binding rulings and product rulings) should be integrated. Such integration would further support information being readily shared with other parts of the ATO, as necessary. Such a capacity to share relevant information with other parts of the ATO (e.g. as part of an intelligence function) would support more extensive research and analysis across the ATO than is easily achievable currently. The issue of the internal coordination of information within the ATO was raised recently by the Senate Economics References Committee, when considering the ATO's responses to the development of mass marketed tax effective schemes.¹⁸⁴

5.15 We acknowledge that the ATO has a range of intelligence mechanisms across the agency, such as groups to share intelligence, the SIGNUM database of ATO significant issues, the corporate governance processes, and the Strategic Intelligence and Analysis Unit in the LB&I business line. We consider that an *integrated* case management system would facilitate the ongoing dissemination of relevant information across the ATO.

5.16 An integrated case management system would support more extensive research and analysis across the ATO by better identifying across various parts of the tax system, the common issues emerging and players engaged. It would also permit improved administration and effectiveness of product rulings (and private rulings) by allowing the ATO to extract more readily performance information located in separate parts of the ATO and to act on this where appropriate. The ATO advised us in April 2001 that action is underway to move product rulings to DWMS.

Production processes—private rulings

5.17 Chapter 4 and Appendix 3 Diagrams 2–6 outline the processes surrounding the production of private rulings that applied during the audit fieldwork.¹⁸⁵ Compared to public rulings, the process controls inherent in the production of private rulings are weak. Pre-issue review (i.e. review for quality control before the private ruling is issued) occurs at a less senior level, there are multiple points from which private rulings may be issued and the production process and output (the private ruling) is not as transparent as in the public rulings production process. In making this comparison, we recognise that public rulings and private rulings are quite different in their scope and purpose, but similar in their underlying rationale, to provide certainty for taxpayers in their tax affairs.

¹⁸⁴ See Senate Economics References Committee, *Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection Interim Report*, June 2001, especially Chapter 4.

¹⁸⁵ As noted in Chapter 4 and Appendix 4, the ATO's PoA project introduced changes to the private rulings IT systems and controls as of 31 March 2001.

5.18 The problems experienced with the systems employed in producing private rulings, highlighted in Chapter 4 mean, as well, problems with process controls. These, in turn cause problems with the quality of the data and the performance information produced by these systems. These problems are discussed in Chapter 4 and also later in this Chapter. They also affect the quality of the ATO's reporting process as part of its corporate governance functions.

5.19 The ATO advised us in May 2001 that, as part of the PoA project, it has recently made a number of changes to its processes and systems to improve the controls for private rulings significantly.

Reference sources of procedural advice for staff

5.20 Procedure manuals, specific technical instructions in the form of practice statements and procedural checklists serve as sources of procedural advice for staff working on rulings. We found that the information sources were, in some instances, incomplete and the manuals required updating. These deficiencies impair the ATO's efforts to obtain optimal processing efficiency and quality in rulings.¹⁸⁶

5.21 One of the crucial purposes of a procedural manual is to promote consistency in processes, and efficiency and quality in research and decision making by promoting as standard practice the steps most likely to produce good results. A manual may also prompt staff to undertake the complete administrative processes required, including the data required for the information systems which are designed to track and support the production of rulings. One of the ways in which a procedural manual promotes quality is as a compliance tool. A current, clear and accessible procedural manual supports the identification of areas of non-compliance in administrative practice. Without a current and comprehensive reference source of procedures (either mandatory or recommended procedures), it is more difficult to identify and rectify those compliance problems and address any resultant flaws in quality and overall efficiency.

5.22 Neither the Income Tax Advice Manual (ITAM)¹⁸⁷ nor the Public Rulings Manual is up to date. ITAM was last issued in 1996 and the Public Rulings Manual was last revised in 1998. This means that these procedure guides do not accurately reflect the current organisation and systems, the current risk environment, fraud controls and tax reforms.

¹⁸⁶ Quality has been defined as the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs (ISO 8402 quoted in Quality Management and Quality Systems Part 2: Guidelines for Services ANZ Standard, ISO 9004-2:1991).

¹⁸⁷ ITAM is an internal ATO document designed to guide officers providing technical advice (including public and private rulings) on the procedures and considerations relevant to that work.

Consequently the manuals cannot properly fulfil their role of providing detailed and authoritative advice in a consolidated source to staff undertaking rulings work (or provide the source of control over processes that they might otherwise do).

5.23 Having relevant procedural advice in a consolidated form facilitates use and understanding. The ANAO acknowledges that sources of information other than the outdated procedural manuals instruct ATO staff on the correct procedures. Practice statements, on the job training and procedural checklists all serve an important function. However, the role envisaged for the manuals is unique and cannot be met adequately by officers having to draw on multiple and discrete sources.

5.24 We found that the ITAM and Public Rulings Manuals were discrete documents. ITAM states that it incorporates the Private Rulings Manual. However, it does not mention the Public Rulings Manual, even though the Public Rulings Manual would have contextual relevance to officers drafting private rulings. In one case, in relation to product rulings, it was not clear which manual was the appropriate reference source for staff.¹⁸⁸

5.25 Dispersed sources of partial information, guidance and instruction increase the likelihood that officers will not obtain the complete and accurate information so necessary to inform their research and decision making processes. The absence of accurate and current manuals undermines the capacity of staff engaged in rulings to perform their duties efficiently and effectively. This diminishes the strength of the corporate framework being promoted by other ATO processes and structures. The ATO explained to us that work on tax reform matters and resource constraints delayed the drafting of the manuals.

5.26 The Sherman report observed that a concerted effort was required to bring the ITAM up to date and develop manuals in technical areas currently lacking manuals. It suggested that manuals be incorporated into the IT system to facilitate their use by officers. The ATO responded by stating that consolidated corporate rules would be placed on the ATO Intranet by 31 March 2001. The ATO advised us that this was done in May 2001. It also advised that the ITAM is being extensively rewritten in view of the ATO's changed processes around the provision of interpretative advice and that it will be issued in the near future as the ATO Advice Manual.

¹⁸⁸ The *Product Rulings A guide for Authors* and the *Product Rulings Guide* are both procedural guides for product rulings, however the ATO advised us that the *Product Rulings Guide* replaced the other manual.

5.27 We support this measure and re-emphasise that there is a keen operational need for the ATO to ensure that the new ATO Advice Manual is kept up to date and easily accessible, to promote sound and efficient rulings work. It is not sustainable administratively to take over three years to update key procedural manuals such as the ITAM or the Public Rulings Manual. In our view, keeping the new ATO Advice Manual up to date in a streamlined way is particularly important in view of the changing environment of the rulings system. We note, in this context, for example, the several significant changes in the structural framework of rulings in the last two years or so, resulting in the introduction of some four new types of rulings.¹⁸⁹ This means that the ATO must be able to create and update elements of the ATO Advice Manual readily to meet such changes in the rulings system (and of course relevant changes in rulings processes).

Recommendation No.4

5.28 The ANAO recommends that the ATO ensure that the ATO Advice Manual, which it intends to introduce as the consolidated source of procedural guidance for staff on the provision of interpretative advice, is easily accessible to staff and is able to be readily modified and updated.

ATO response

Agreed.

Compliance with procedural advice

5.29 Electronic technical support systems for the provision of private rulings and public rulings assist staff to provide timely and consistent rulings in an economical and efficient way. Importantly from a corporate governance perspective, electronic technical support systems can enhance the quality of rulings by supporting robust research, leading to consistency in the interpretation of matters across regions and over time (that is, consistency and therefore fairness for taxpayers). The decentralised nature of the ATO's operations make these systems necessary for the preparation of accurate, consistent and timely technical decisions.

¹⁸⁹ Product rulings, GST rulings, oral rulings and class rulings.

5.30 Practice Statement 1998/2 *Mandatory use of electronic technical support systems—reflection in performance agreements* specifies that ATO staff must use certain case management, case actioning and other electronic technical support systems (decision support tools) in undertaking their work.¹⁹⁰ However we found that staff were not complying fully with these instructions. We also found that staff did not always follow other required procedural steps (e.g. completing the ruling case checklists to document that required procedural steps had been followed). These compliance gaps increase the risk of inconsistency in technical decision making. We support the ATO's continuing attention to compliance in this area, given that its own internal reports continue to identify that improvements are necessary. We note, in particular, the ATO advice provided in April 2001, that the PoA project requires the staff preparing the interpretative material to cite the precedent on which the private ruling or other written advice is based.

Corporate support for rulings process controls

5.31 The ANAO reviewed four activities which act as 'corporate support' for rulings process controls. The activities are:

- quality assurance;
- training and skilling;
- security of taxpayer data; and
- fraud control.

Quality assurance – post-issue

5.32 This section reviews the quality assurance (QA) processes for rulings after they have been issued. (The quality control measures that apply within the production processes before rulings are issued are discussed in Chapters 2 and 4 and Appendix 3.)

Private rulings

5.33 For private rulings, the ATO has formal, post-issue QA processes. The post-issue QA is intended to provide assurance of the quality of products, assess staff compliance with ATO procedures and identify skilling and training needs.

5.34 A random sample, comprising at least 30 private rulings cases is selected from the Case Reporting System for review by a national panel. The panel is made up of ATO technical staff and at least two external representatives. The panel uses the Judgement Model as the framework for the QA process.

¹⁹⁰ Business service lines are required to monitor the level of compliance in using the required case and electronic technical support systems.

5.35 The Judgement Model has four components, specifically focussing on:

- the client's question, (asking whether the private ruling's author understood the client's problems in the private ruling request well);
- the decision, (asking whether the answer was accurate and consistent);
- the reasoning used in the private ruling given, (asking whether the explanations for the answer were sound and well explained); and
- the expression used in the private ruling given, (asking whether the answers were communicated clearly and were readily understandable).

5.36 For each component, the private ruling is graded as 'pass' or 'fail'. Depending on the result, the cases are graded in terms of A, B, C, D and E. A case that satisfies all the criteria is graded an 'A'. The pass mark is a 'C'.¹⁹¹

5.37 The ATO includes interpretative correspondence, disputes and audits in the same post-issue QA process and calculates an overall pass mark for the quality of technical decision making for each product type. Each business line is required to conduct its own technical quality assurance processes and to report its performance on the quality of technical decision making to the Professional Excellence Branch in the OCTC.¹⁹²

5.38 The report of the QA technical review exercise presents, among other things, the statistical results of the QA review, the problems and issues observed from the review and the remedial action and improvements being implemented by the business and service lines. Testing and report are also required to indicate whether the mandatory procedural requirements were followed and, where necessary, reasons and remedial measures being adopted in response to the identified problems.¹⁹³ Feedback on the results of the technical quality review is provided to staff individually or collectively.

¹⁹¹ A 'C' is obtainable where, at the minimum, the question is understood and the decision was accurate and consistent, a 'D' where only the question is understood, and an 'E' where none of the components are met.

¹⁹² The review process (initially involving annual reviews) was initiated in mid 1998. The current Technical Quality Review process involves reports being completed every 4 months (and used for performance pay purposes). The reports are also used as input to the Corporate Assurer's reporting process involving a biannual report to the Commissioners on a number of issues, including technical quality.

¹⁹³ For example use of electronic support systems, correct escalation procedure, correct signoff of all private rulings, and mandatory pre-issue and post-issue quality reviews by the relevant team member/ leader.

5.39 The ANAO considers that the framework for post-issue quality assurance for private rulings is well structured. This supports the corporate governance principle of 'integrity'. The involvement of external reviewers is a particularly good measure and this supports the corporate governance principle of 'openness'. We note that there are many players involved in the process of seeking to assure technical quality in the ATO (e.g. case officers, the person who cleared the private ruling, senior management of the business line and the Professional Excellence Branch in OCTC). However accountability for the technical quality of private rulings is a business service line responsibility and the specific authorising officer has the delegation to sign off the private ruling and is accountable for its technical quality.

5.40 The foundation for the QA framework is the sampling of cases. The sample size and selection must be rigorous if the case sample (and all the analysis that follows) is to be valid. The importance of sound sampling is underscored by the ATO's experience for the QA review for the period February–May 2000. The ATO found later that the initial results of that review were incorrect because of a sampling error. Correction of this error improved the results for GST technical quality (from a pass rate of 69 per cent to that of 78 per cent).¹⁹⁴

Results of reviews

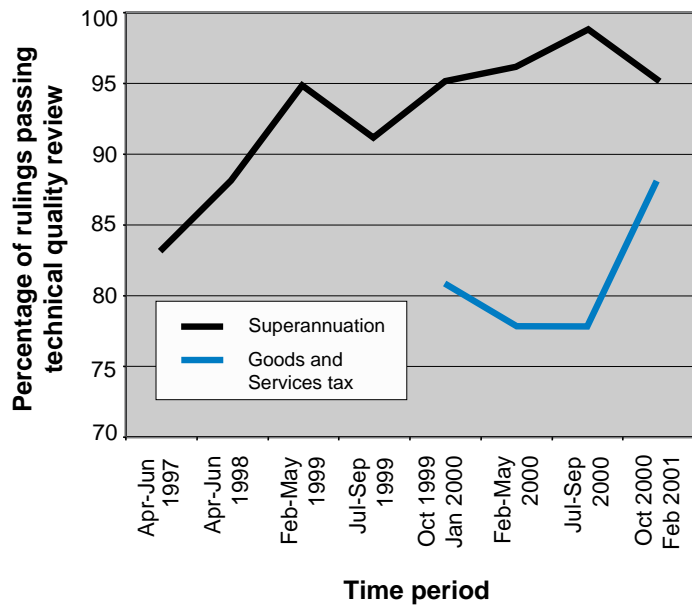
5.41 The results of the ATO's QA processes conducted between 1997 and 2001 are outlined Figures 9a and 9b.

¹⁹⁴ Sherman Report p. 13 and Commissioner's speech 'The integrity of the Private Binding Rulings System' 15 November 2000.

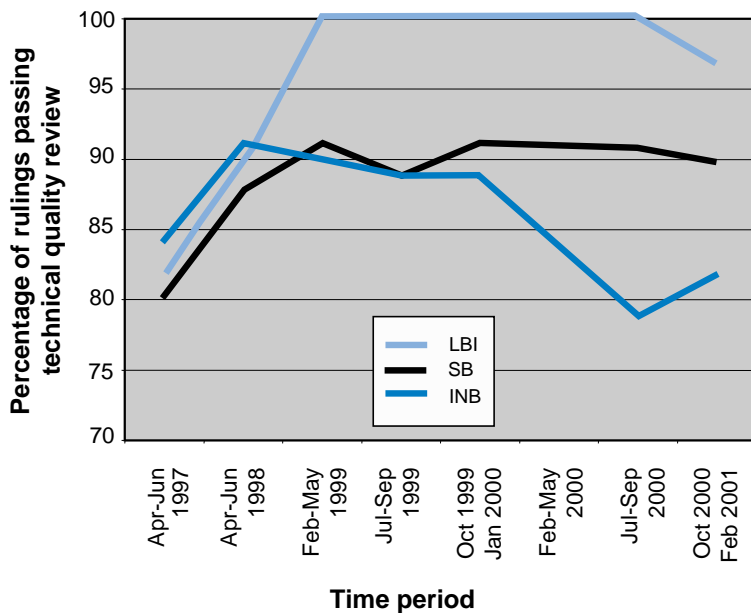
Figure 9a

Results of Technical Quality Review by Pass Percentage

Goods and Services Tax and Superannuation



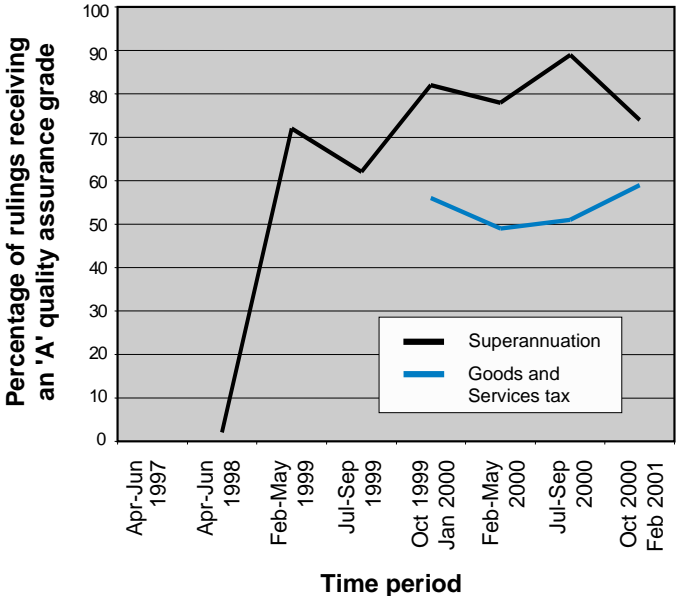
Individuals Non-Business, Small Business and Large Business and International



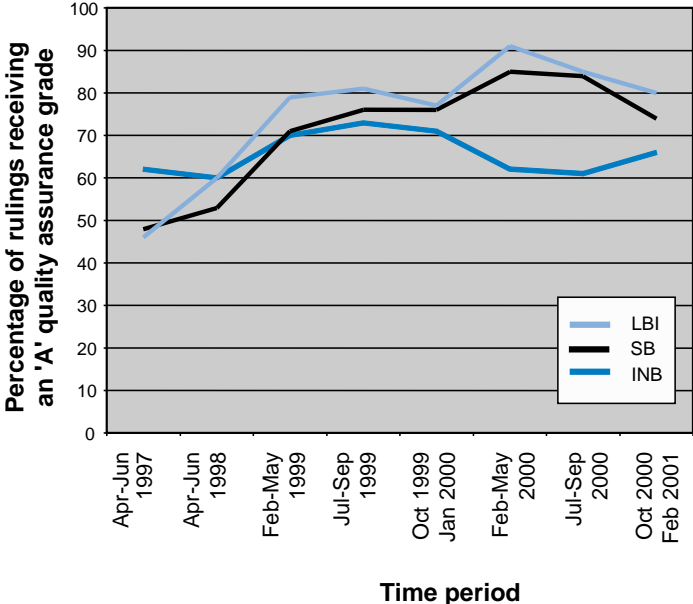
Source: ATO data

Note: the results cover not only private rulings but also, for example, interpretative correspondence, disputes and audits.

Figure 9b
Results of Technical Quality Review by A Grading Percentage
Goods and Services Tax and Superannuation



Individuals Non-Business, Small Business and Large Business and International



Source: ATO data

Note: the results shown in both figures cover not only private rulings but also, for example, interpretative correspondence, disputes and audits. GST results for July 2000 to September 2000 include a mixed sample of cases relating to GST, PAYG and ABN matters. Results for previous periods only included GST cases (namely, Replyin5 and Industry segment cases).

5.42 The results in Figure 9a show that, with the exception of GST and INB, a high level of sampled cases obtained a ‘pass’ grade under the Judgement Model. We note that Figure 9a shows that, on average, approximately 14 per cent of the cases sampled in INB and 19 per cent of the cases sampled in GST have been assessed as not passing the QA assessment—i.e. on the assessment of the reviewers they should not have been issued. To the extent that these ‘failed’ cases include private rulings, this means that taxpayers’ formal requests for technical advice have not been adequately met, with problems with at least the decision, the reasoning, the expression and possibly even with the understanding of the taxpayers’ questions.

5.43 As shown in Figure 9b, consistently much smaller proportions of the cases sampled achieved the more demanding ‘A level’ grading. We suggest that the low levels and/or declining trends in the A level grading for the cases sampled in INB, GST and SB would be worthy of ATO attention.

5.44 Overall, the ANAO sees these QA results as being generally positive ones for the ATO and a sign that the processes underpinning the quality of technical decision making are reasonably sound. The QA results show that in broad terms there has been a significant improvement in quality since 1997 when SB, INB and LB&I identified the quality of technical advice as a high-risk area. However the results illustrate a level of variability which we consider merits the ATO’s continued attention.

5.45 We are aware of the significant challenges the ATO faced in implementing the Government’s tax reform initiatives and appreciate that these challenges have had significant staffing impacts across the ATO. Nevertheless, the ATO should pay continued attention to improving technical performance in the future with better support and training for staff. Improved support for staff could come from identifying precedential cases and providing assistance and peer support for case officers and improved skilling practices. We consider ATO training and skilling activities in the following section.

5.46 The ATO advised, in response, and we acknowledge, that it provides peer support to case officers. Mechanisms include senior technical networks within business lines, the Tax Counsel Network and a network of 14 business tax reform Centres of Expertise as a key strategy to implement tax reform successfully. The Centres of Expertise focus on major business tax reform topics and having acquired high levels of technical expertise in their areas of specialisation provide invaluable technical advice both internally and externally. The ATO also advised in May 2001 that it has implemented a new system to identify precedential cases.

Product rulings

5.47 Product rulings are subject to a QA process post-issue similar to that applying to private rulings, outlined above. The process was introduced in October 2000 and has the following features:

- the QA is held twice yearly (October and April);
- a sample of approximately 20 per cent of product rulings issued, withdrawn and refused to rule is drawn from cases during the six month period prior to the QA exercise;
- the QA process follows the Judgement Model decision making process (outlined above); and
- the QA panel comprises an author, the product rulings National Business manager, a Senior Tax Counsel and an external party.

Public rulings

5.48 The ATO does not have a formal QA process by which it assesses public rulings post-issue. However, taxpayers can comment on public rulings issued because they are released publicly. That is, taxpayers can comment to the ATO through the ATO web-site or to the ATO directly, on matters such as a public ruling's relevance, accuracy, the reasoning and expression used¹⁹⁵ or any other concerns they may have. Such issues may also be canvassed in the ATO's consultative groups, such as the National Tax Liaison Group which has a cross section of representation from tax and professional associations. These groups can be conduits for comments that may be made from time to time about issues in public rulings.

5.49 These sources of feedback are very useful. In addition to having these sources, we consider that there would be merit in the ATO assessing periodically the administrative effectiveness of its processes in producing income tax, FBT and GST public rulings. The assessment of selected public rulings after issue, with input from within the ATO and external stakeholders, could focus on the production process and the effect this process has had on the timeliness, relevance, logic and clarity of expression of these rulings. This would contribute to continuous improvement in the ATO public rulings system.

¹⁹⁵ For private rulings, these issues are the ones canvassed in the technical reviews conducted by the ATO (see text earlier in this section).

Recommendation No.5

5.50 To support the ATO's continuous improvement in the process of producing public rulings, the ANAO recommends that the ATO assess periodically, the timeliness, relevance, logic and clarity of expression of its income tax, FBT and GST public rulings, after they have been issued.

ATO response

Agreed.

Training and skilling

5.51 General skilling, on the job training and systems training in the ATO are administered by ATO Corporate and the business lines.¹⁹⁶ In practice, ATO Corporate is corporately responsible for the ATO's skilling plans. Technical training in taxation matters is the responsibility of the Professional Excellence Branch in the OCTC. Business lines also have specific training initiatives to address their specific needs in, say, a particular area of tax administration. The ATO has established a Professional Excellence Forum with ATO and external representation for strategic review and input regarding measures to improve professional excellence in the development, interpretation and application of the law.¹⁹⁷

5.52 In July 2000, the ATO's Professional Excellence Forum endorsed an ambitious professional skilling and workforce planning strategy involving the business and service lines, ATO Corporate and newly-created centres of expertise in OCTC.¹⁹⁸ The strategy involves the development and delivery of training in a variety of forms, including electronic-based training as well as seminars, to facilitate participation and effective learning. According to the strategy, full implementation is expected to take 12–18 months.

¹⁹⁶ An example of a major corporate training initiative in the ATO is the staff skilling on business tax reform. A team has been assigned to undertake work and produce products on business tax reform measures. These activities include the preparation of overview material, awareness level sessions and training presentations, fact sheets and training case studies, plus products such as videos and a CD-ROM. The network of business tax reform Centres of Expertise was also established, in part, to contribute to the ATO's skilling on business tax reform measures.

¹⁹⁷ The Professional Excellence Forum guides the ATO's work on developing and implementing measures to improve professional excellence in the formulation, interpretation and application of taxation laws. Membership comprises the Chief Tax Counsel, senior executive representatives from all business lines and three key external stakeholders.

¹⁹⁸ The centres of expertise are the skilling centre of expertise and the workforce planning centre of expertise.

5.53 The increasing complexity of taxation law, the changing nature of the tax system and the consequential changes to administrative practices have increased the pressures on the ATO to ensure it is building a viable professional workforce in the tax discipline. ATO technical training, skilling (and recruitment) are key measures to ensure that staff have the technical skills required to provide authoritative and clear advice to clients. The Sherman report advocated that officers involved in preparing rulings have relevant tertiary qualifications in law, accountancy or other related disciplines or have completed appropriate external and internal training in taxation law interpretation. The ATO advised that it has a comprehensive graduate recruitment program to ensure a constant supply of officers with appropriate qualifications. Since 1997, the ATO has recruited more than 700 graduates with relevant qualifications.

5.54 There are several other imperatives for effective technical and operational training of staff. One is the ATO initiative to publish private rulings after the removal of details that would identify taxpayers. This adds a new priority to the ATO's need for solid technical skills and accuracy of advice.¹⁹⁹ That initiative creates an increased need for the expression used in the private ruling to be clear and accessible to the public.²⁰⁰ This puts an extra demand on the skills of ATO staff preparing rulings. The ATO advised that in its view, the extra demand on the skills of ATO staff will be in the editing process, plus the preparation of the ATO Interpretative Decision,²⁰¹ where necessary.

5.55 The ATO advised that, in preparation for these measures, it has provided training and technical instructions²⁰² and has established a corporate Practice Management Unit to support staff regarding the editing of rulings and the production of ATO Interpretative Decisions.

¹⁹⁹ This was recognised by the Commissioner in his speech to the Taxation Institute of Australia, titled *Integrity of the Private Binding Rulings System*, 15 November 2000.

²⁰⁰ We appreciate that the main reason for publication of private rulings is to enhance transparency and integrity and that the public listing is not intended as a precedential database for taxpayers.

²⁰¹ ATO Interpretative Decisions summarise decisions on interpretative issues and replace Case Decision Summaries. See also Appendix 2.

²⁰² Practice Statements PS 2001/7 and PS 2001/8.

5.56 Evidence from the ANAO survey of perceptions of public and private rulings underlines the need for good skills and highlights the significance of this current challenge for the ATO. While we recognise that a public ruling is not designed, and cannot be expected, to answer all taxpayers' possible questions, we note that around half (48 per cent) of private sector tax professional respondents considered that the last public ruling that they consulted only partially answered their questions and a further nine per cent considered that it did not answer their questions at all. As to private rulings, almost half (46 per cent) of private sector tax professional respondents rated private rulings as 'good' or 'very good' in terms of their overall clarity. Some 44 per cent rated their overall clarity as 'average' and 10 per cent rated them as 'poor' or 'very poor' on this basis. (We also refer to the survey results in Chapter 3 and outline the results of the survey in greater detail in Appendix 6.)

5.57 In similar vein, the results of the ATO's own post-issue QA process for private rulings, although positive, as noted above, also highlight areas requiring remedial action (including training). We found that a recurrent theme in several QA technical reports was the need for the private ruling to be more pertinent and better expressed.

5.58 In November 2000, the ATO also announced a new training impetus for staff involved in private rulings in response to the Sherman report. Of particular note in the context of the ATO's enhancements to professional development is the Workforce Capability Assurance Program, which is one component of the ATO's wide-ranging PoA project (described in Chapter 4 and Appendix 4). The Program (involving both accreditation and assessment processes) is designed to be the framework for assessing the capability of officers engaged in providing binding written technical advice (i.e. private rulings and public rulings). It is to be trialed and implemented by mid 2002.

5.59 The ANAO considers that the ATO has established a sound framework for the strategic control and delivery of professional skilling in the ATO. The Professional Excellence Forum is a valuable vehicle to provide strategic direction and a measure of scrutiny and accountability. The skilling and workforce planning strategy harnessing the efforts of stakeholders across the ATO makes for a relevant and balanced training and skilling program. We are also supportive of the skilling impetus in the Workforce Capability Assurance Program.

5.60 In supporting these measures to enhance professional skilling (covering tax law and policy, for example), we consider that a major challenge will be the implementation of the Workforce Capability Assurance Program, as intended. We also urge the ATO to pay continued attention to other, important additional measures encouraging appropriate work practices and good client service. In our view the results of the ATO's QA technical reviews, our survey of the users of rulings and our discussions with stakeholders during the audit suggest wider management challenges for the ATO than just the level of technical expertise of staff. We suggest that the areas in which the ATO should continue to seek improvement lie in the areas of work practices, processes and systems, interpersonal skills and management skills, to improve the operational environment, and even productivity of ATO staff, and enhance service for taxpayers.

Security of rulings taxpayer data

5.61 The ATO has a legislative requirement to protect taxpayer data to safeguard taxpayer privacy. It is also ATO policy that information held by the ATO must be protected according to its degree of sensitivity. The ATO classifies its sensitive taxpayer information in three categories (in-confidence, protected and highly protected) and provides guidance as to the correct classification of information.

5.62 The IT systems that support private and product rulings administration contain sensitive taxpayer information, including Tax File Numbers in many cases, or commercially sensitive information in respect of applications submitted by promoters for product rulings. On the basis of the ATO Guide to Information Security, we consider that the nature of the private rulings data and product rulings data before the ruling is made public, on the IT systems should be classified, at a minimum, as 'protected'.²⁰³

²⁰³ We make this assessment based on the tests in the ATO's Guide to Information Security. Among the tests for the protected classification in the ATO's Guide to Information Security is that unauthorised access could cause serious harm to the community, any individual or entity. Supporting our assessment, the ATO document also outlines in the test for protected material, the example of material containing consolidations of client information such as Tax File Number and name and address details or other sensitive information and compilations of information which individually may be classified in confidence but which collectively should be classified protected.

5.63 It is ATO IT security policy that data classified above the 'in-confidence' level must only be stored within the ATO mainframe system, because 'with few exceptions, it is the only IT&T platform in the ATO secure enough to satisfy the various ATO policy requirements applying to the security of data classified above the level of 'in-confidence.'²⁰⁴ The ATO Information Security Guide notes in particular that highly protected and protected information should not be kept on TAXLAN.²⁰⁵

5.64 Currently, all rulings databases are located on TAXLAN which is contrary to the Information Security Guide. Consequently, the ATO needs to align its data security practice with its policy requirements. We are aware that the ATO has various measures operationally to promote the security of its rulings databases, such as a system of IT access privileges. We are also aware that the ATO is reviewing the appropriate storage of taxpayer data.²⁰⁶

Recommendation No.6

5.65 The ANAO recommends that, to improve the security of taxpayer data relating to private rulings and product rulings prior to issue, the ATO align its taxpayer data security for private and product rulings with its policy requirements to protect information according to its degree of sensitivity.

ATO response

Agreed.

Fraud control

5.66 In examining fraud control, we directed our attention to the processes in place, and measures taken by the ATO at a systemic level, in relation to the rulings system (i.e. private and public rulings systems). The ATO's approach to fraud control is an important part of the corporate governance framework supporting the management of private rulings.

²⁰⁴ *ATO Security Manual* s. 6.10.1. Also contained in a document under consideration, *ATO IT Security Policy* (Interim) p. 14.

²⁰⁵ TAXLAN is the ATO's Wide Area Network that connects principal components of the ATO's IT system. The components include the ATO mainframe computers and numerous IT networks contained on the Microsoft Windows NT and Unix operating systems. The rulings IT systems (e.g. DWMS, CWMS and CASES) are located on the Microsoft Windows NT operating system.

²⁰⁶ Auditor-General, Performance Audit No. 16, 2000–01 *Australian Taxation Office Internal Fraud Control Arrangements*, November 2000.

5.67 As part of its 1999–2001 Fraud Control Planning process,²⁰⁷ the ATO undertook a comprehensive risk assessment on all aspects of its operations. The principal focus of this risk assessment was the risk of fraud occurring in its systems. Two business lines, LB&I and SB identified inherent risks associated with their ‘advisings’ functions (which incorporate the private rulings systems described in Appendix 3 Diagrams 4 and 3 respectively).

5.68 During 1999–2000, LB&I re-evaluated its processes and systems with regard to private rulings, in the light of allegations of misuse of private rulings by a former senior executive in that area of the ATO.

5.69 In 2000, the ANAO conducted a performance audit into the ATO’s fraud control arrangements.²⁰⁸ We found that the ATO had put significant resources into the development and ongoing maintenance of its fraud control plan. The ANAO also noted that although the ATO does not report regularly on fraud control risks as part of its regular corporate governance processes, it has established a committee to monitor all fraud risks on a quarterly basis.

5.70 The ANAO considers that the ATO’s fraud control plan is an effective method of identifying and monitoring the fraud risks associated with the ATO’s private rulings system. We recognise that no planning and control framework (nor indeed staff integrity checking procedures)²⁰⁹ can remove the possibility of fraud occurring. The objective of a fraud control plan is to minimise its risk by putting in place appropriate procedures, checks and balances. We consider that the fraud planning approach is sound, but that improvements could be made in the information on risk management provided to the ATO Executive to better support the corporate governance principles of ‘integrity’ and ‘accountability’.

²⁰⁷ Annually, the Commonwealth Attorney-General’s Department requires Commonwealth agencies to submit a fraud control plan. An agency’s fraud control plan should contain procedures for implementing the Government’s requirements in relation to: fraud prevention; detection; investigation; prosecution; and recovery and civil rights privacy processes.

²⁰⁸ Auditor-General, Performance Audit No. 16, 2000-01 op.cit.

²⁰⁹ In response to the Sherman report, the ATO undertook to review its staff integrity checking procedures, see the Commissioner’s speech *Integrity of the Private Binding Rulings System*, op.cit.

5.71 We also consider that it would be worthwhile for the ATO to ensure that there are adequate risk management procedures in place for the fraud risks that may arise in the private rulings IT systems (and, in particular, the IT systems relevant to the production of private rulings). This is particularly relevant in light of the changes to the IT systems as a result of the PoA project.²¹⁰

5.72 We also consider that monitoring and reporting on relevant fraud risks in the regular corporate governance reporting on private rulings at the business line level, would enhance corporate governance²¹¹ by improving the information on which management scrutiny occurs.²¹² An increased emphasis on the private rulings fraud risks and the controls to minimise those risks, as part of the ATO's corporate governance reporting process, is particularly relevant given the allegations associated with the misuse of private rulings as noted above.

Recommendation No.7

5.73 The ANAO recommends that:

- the fraud risks identified in the ATO Fraud Control Plan are amended, where necessary, to take account of the changes made to private rulings systems including changes resulting from the Provision of Advice project; and
- for better management and accountability of the private rulings system, all relevant ATO business and service lines expand the internal reporting regimes for private rulings to include relevant fraud risks and other process control matters, identified either in the ATO Fraud Control Plan, or other fraud risk assessment mechanisms.

ATO response

Agreed.

²¹⁰ The ANAO acknowledges that the ATO has a 'certificate of compliance' process to ensure that fraud controls have been introduced into the ATO's new IT systems. The ATO undertook (in response to the Auditor-General Report No. 16, 2000–2001, *Australian Taxation Office Internal Fraud Control Arrangements*) to extend its certificate of compliance process to non-financial systems, which would include the systems affected by the PoA project.

²¹¹ by making monitoring more frequent and more specific in focus. The ATO formal monitoring of the Fraud Control Plan occurs on a quarterly basis, as noted above.

²¹² As noted earlier, LB&I and SB have identified their private rulings fraud risks in the ATO Fraud Control Plan. At the time of the audit, INB and GST had not identified in the Fraud Control Plan 2000–2001, any fraud risks associated with the production of private rulings. Given that the systems INB and GST use to produce their rulings are similar to the other two business lines, any fraud risks identified by INB and GST relating to the production of private rulings should also be considered in regular corporate governance reporting.

Performance of the taxation rulings system

5.74 The ANAO examined two key issues relating to rulings performance information. These are assessing performance within the context of the ATO's established performance standards and examining the other dimensions of performance that underpin a well-managed ruling system. We use the term 'rulings system' to refer to the collective administrative system encompassing public and private rulings.

Performance standards and assessment

5.75 The Taxpayers' Charter outlines taxpayers' legal rights and the standards they can expect from the ATO. Among the rights and standards, the ATO has undertaken to: treat taxpayers fairly and reasonably; be accountable; act consistently; offer professional services and assistance to help taxpayers understand and meet their obligations; give advice that the taxpayer can rely on; and help minimise costs in complying with the tax laws.

5.76 One way the ATO attempts to achieve these goals is to provide benchmarks and service standards. The Charter establishes a performance standard for private rulings. The performance standard specifies that the ATO will finalise private rulings applications within 28 days of receiving all information. If the ATO cannot meet this deadline, the Charter allows the ATO to negotiate with the taxpayer to extend the deadline.

5.77 The Taxpayers' Charter constitutes a key part of the ATO's corporate governance framework, setting out important values and behaviours for which the ATO must strive and establishing measures and standards for accountability purposes.

Public rulings performance standards

5.78 The Charter does not outline a service or performance standard for public rulings and the ATO does not specify a target time for the completion of public rulings other than 'the completion of all the public rulings program.'²¹³ The situation for product rulings, is somewhat different. Product rulings are discussed in the next section.

²¹³ The program is monitored by the National Tax Liaison Group.

Product rulings performance standards

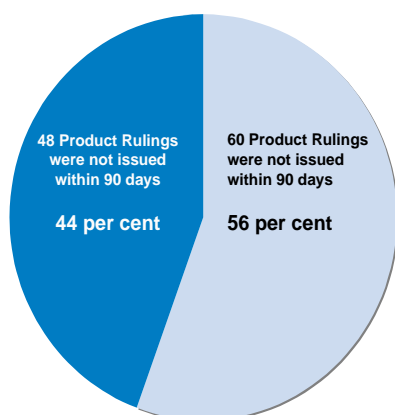
5.79 Although the Charter does not outline a service or performance standard for product rulings, the ATO aims to release the product rulings within 21 days of the receipt of all necessary information. The ATO has advised us that as an ideal, it aims to complete product ruling requests within 90 days of the product ruling request.

5.80 The ATO collects and reports some performance information relating to the time taken to produce product rulings.²¹⁴ This information is reported regularly to the ATO executive through ATO corporate governance processes.²¹⁵ The figure below shows the ATO's performance in achieving its ideal of a 90 day turn around time for the production of product rulings, since the inception of product rulings in 1998.

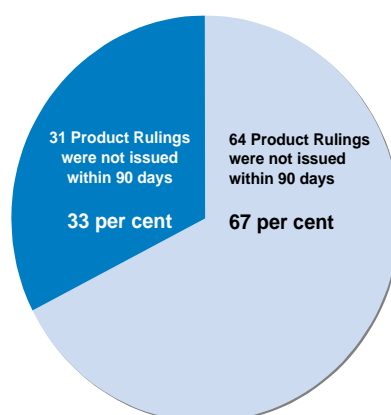
Figure 10

Timeliness of product rulings processed 1998–99 and 1999–00

Numbers of product rulings issued within 90 days
(between 1 July 1998 - 30 June 1999)



Numbers of product rulings issued within 90 days
(between 1 July 1999 - 30 June 2000)



Source: ATO data

²¹⁴ The product rulings National Business Manager maintains a summary spreadsheet containing, for example the numbers of product rulings, average numbers of days for finalisation from date of receipt and date of receipt of all information. There is also a year to date product rulings report including monthly statistics and issues.

²¹⁵ The Small Business business line reports to the ATO executive on a monthly and half-yearly basis.

5.81 The figure shows that although the ATO has improved the overall timeliness of it issuing product rulings, over 30 per cent exceed the 90 day standard. The ANAO notes that in 1999–2000, the ATO introduced some initiatives to reduce the amount of time it takes to produce a product ruling. These initiatives include:

- improved lodgment forms and education material for product rulings applicants. This reduced the number of instances where the ATO had to request additional information from product ruling applicants on their ‘product’;
- increased number of education seminars on product rulings for tax agents and advisers;
- improvements to the ATO web-site for product rulings. This now includes further information for lodging applications as well as relevant forms and tips to help applicants. It also includes a listing of product rulings in various categories and warnings about the possible impact of new legislation on product rulings.

5.82 These measures focus on the steps of the process *outside* the ATO. The measures are good ones and we expect that they will help to improve the timeliness of product rulings in the future by improving the quality of the original applications. We consider that to improve timeliness further, it would be appropriate to complement these measures with ones focussing on processes *inside* the ATO. In this regard, there is merit in the ATO continuing to focus on measures to improve product rulings project management, such as the task deadlines for staff contributing to the preparation of the product ruling. We are aware that the ATO records data on numbers and timeliness of product rulings that permit comparisons across regions and over time. It would also be useful in the context of more formalised project management, for the ATO to supplement this data with data identifying the resources applied to the product ruling. This information on the steps, time and resources could be a good basis on which to establish some benchmarks to support analysis across regions and over time.

Private rulings performance assessment

5.83 As noted earlier, the Taxpayers' Charter's performance standard for private rulings is that the ATO will finalise private rulings applications within 28 days of receiving all information, with scope to negotiate an extended deadline, if necessary. The Charter standard of 28 days is met if: advice is provided within 28 days of receiving all necessary information (additional information is to be requested by the ATO within 14 days); or if the ATO negotiates an extension of time with the taxpayer (e.g. in complex cases) and the ATO provides that advice in the extended timeframe. The ATO's corporate governance reporting for private rulings includes reports on performance against the Charter standards. These reports show that for private rulings, performance against the Charter standard has improved over time and that the ATO achieves a high level of performance, on this measure.²¹⁶

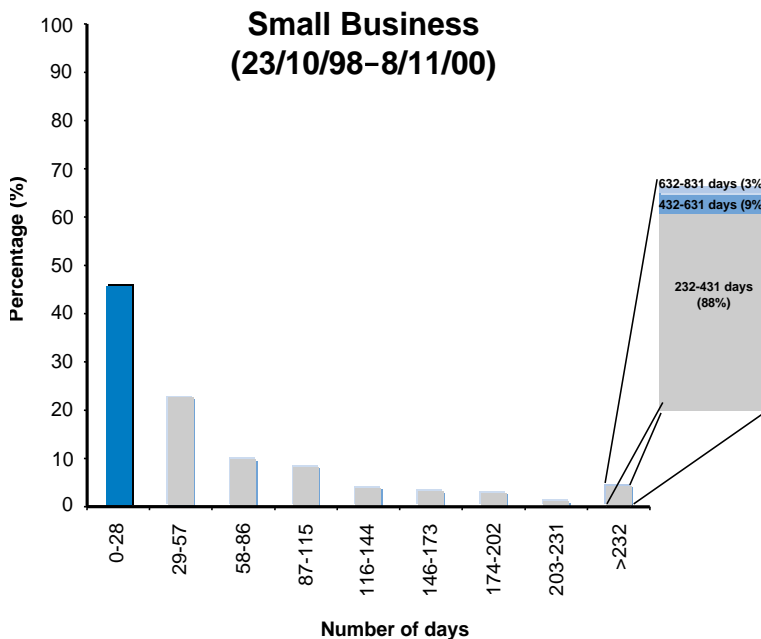
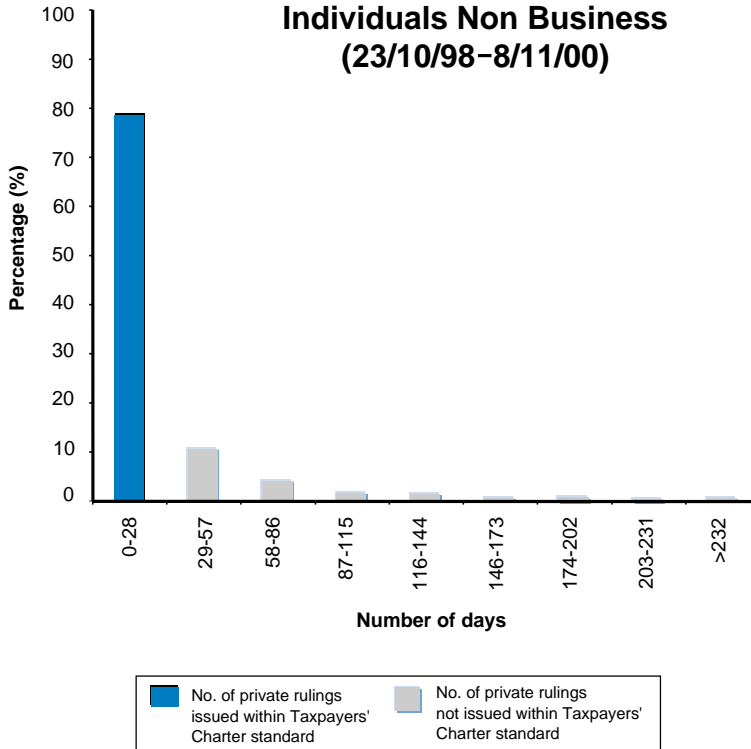
5.84 In addition to the established Taxpayers' Charter timeliness standard, we consider that there is another potentially useful timeliness standard. Bearing in mind that one of the objectives of private rulings (and public rulings) is to increase taxpayer certainty, 'elapsed time' from the initial application is another potentially useful performance measure. 'Elapsed time' from the initial application, which is the amount of time between receipt of the ruling application and completion of the ruling, is a different concept from that assessed in the Charter standard. Elapsed time is relevant because taking an extended period to obtain a response to a private ruling request generates uncertainty for the taxpayer. Even if there is close liaison between the taxpayer and the ATO to clarify the information and ensure all information is obtained, taking an extended period of time to complete the ruling does not assist taxpayer certainty (although we note that the delay may have been caused by taxpayers not providing all relevant information with their request).

5.85 We examined the timeliness with which the ATO issues private rulings by analysing the number of days taken to issue a private ruling from when the application was received in the ATO to when it was issued to the taxpayer. The results of our analysis of private rulings finalised in the INB, GST, SB, LB&I and Superannuation business lines are displayed in the following figure.

²¹⁶ The Commissioner of Taxation, *Annual Report 1999-2000*, p. 48 indicates that performance against the standard of finalising the case within 28 days of receiving all information or within the negotiated extended timeframe was met for 79.2 per cent of cases in 1997-98, 90.0 per cent in 1998-99 and 92.3 per cent in 1999-00.

Figure 11

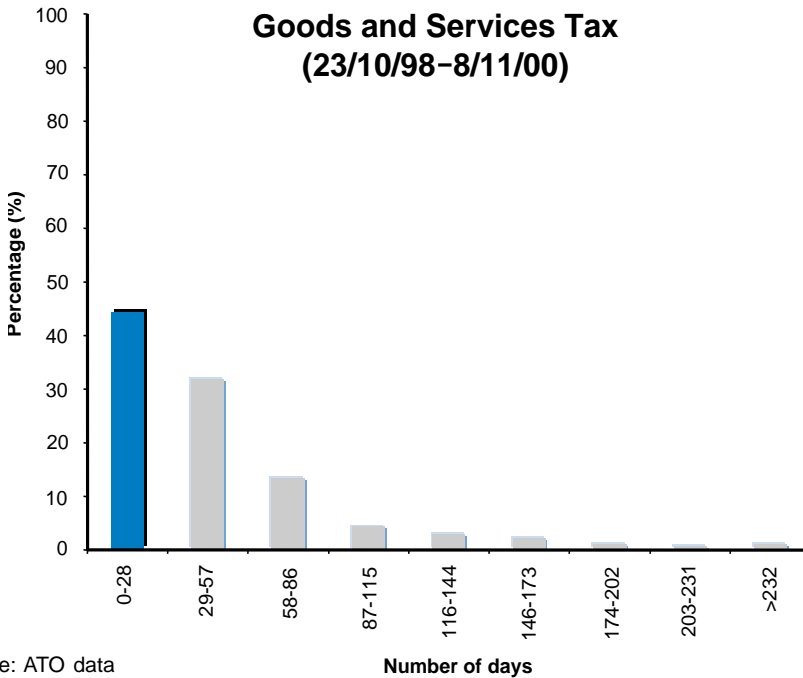
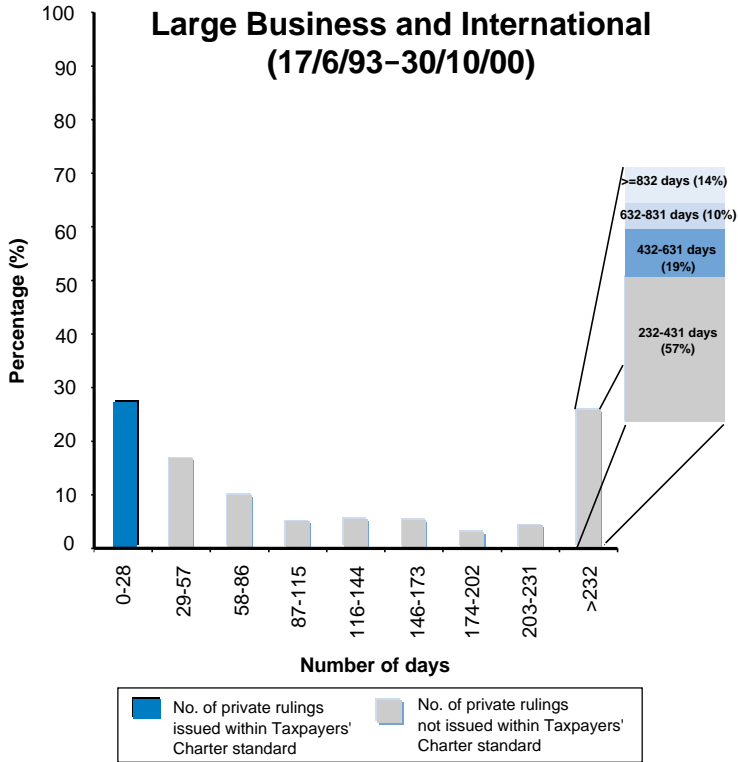
Breakdown of time taken to issue private rulings in INB, SB, LB&I, GST and Superannuation business lines



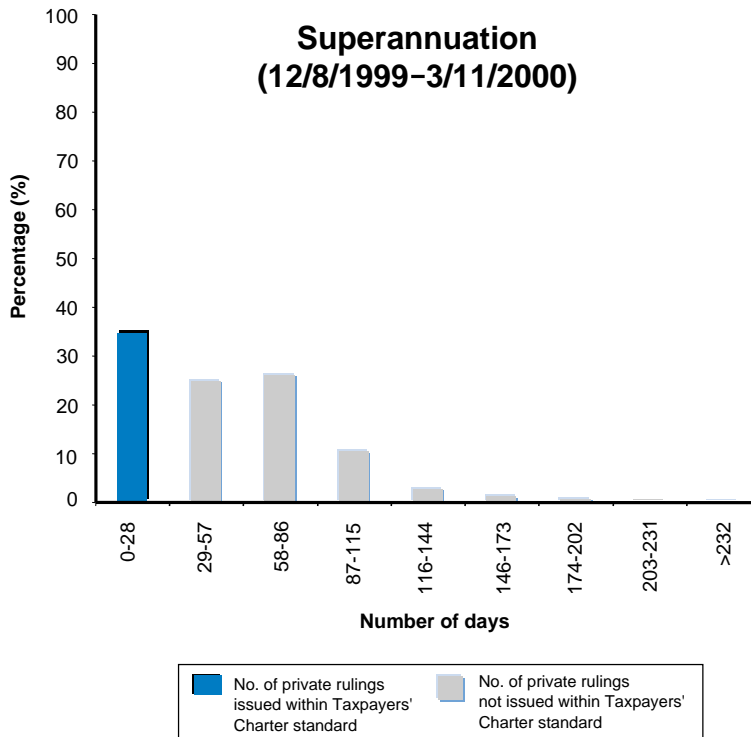
Source: ATO data

Figure 11 (continued)

Breakdown of time taken to issue private rulings in INB, SB, LB&I, GST and Superannuation business lines



Source: ATO data

Figure 11 (continued)**Breakdown of time taken to issue private rulings in INB, SB, LB&I, GST and Superannuation business lines**

Source: ATO data

5.86 For INB, 79 per cent of the private rulings applications finalised in the period were finalised within 28 days of the receipt of the application. This compares to 44 per cent for GST, 46 per cent for SB and 27 per cent for LB&I. In considering these statistics, it should be noted that there are significant differences in the levels of complexity of private ruling applications.²¹⁷

5.87 We note that the Charter standard for the timing on private rulings work has little relationship with the 'elapsed times'²¹⁸ taken for

²¹⁷ In very broad terms, private ruling applications in INB can be characterised by high volume, low complexity. Private ruling applications in LB&I on the other hand tend to be highly complex but relatively low volume. Private ruling applications in SB tend to occupy the middle ground between INB and LB&I in terms of volume and complexity.

²¹⁸ We note that data on the number of days undertaken to complete private rulings over the last 4 years from the LB&I case management and reporting system (CASES), suggest that most were in the vicinity of 14.5 to 15 work days on average. Clearly the particular difficulty in terms of the timely processing of private ruling applications is the length of time it takes the ATO to be able to apply this work effort.

many private rulings (particularly the ATO's complex private rulings). The more detailed analysis of the time taken to process private rulings shows this. For example, some 13 per cent of the private rulings finalised in the period in LB&I took longer than one year to complete. Of these, approximately 20 per cent took over 977 days (two years and eight months) to complete. In SB, five per cent of the private rulings finalised in the period took longer than one year to complete.

5.88 Given the probable long lead-time between receipt of the private ruling application and the ATO response, the ANAO considers that there may be merit in the ATO reviewing the Charter standards and specifying a more realistic target for complex private rulings. Although we note the benefits of having a common benchmark against which to view processes and an administrative goal to which to aim, we are also aware that unrealistic deadlines can have negative consequences for both ATO staff and taxpayers.

5.89 Unrealistic standards can lead to incorrect assessments of performance and then inappropriate management decisions (for example in terms of resourcing requirements or effectiveness of processes and people) because they are based on inappropriate key performance indicators. Furthermore, unrealistic standards can affect staff morale and may also affect the perceptions held by taxpayers of the credibility of the process (particularly regarding the timeliness of issue of private rulings). In the latter context we note also that the 'negotiated extended timeframe' under the Taxpayers' Charter is a limited target or standard by which timeliness performance can be assessed. Some stakeholders we consulted indicated that they felt they had little choice but to agree to the ATO's proposed extension of time for satisfying the private ruling request.

Recommendation No.8

5.90 The ANAO recommends that:

- for improved performance monitoring and enhanced public credibility of the process, the ATO review the Taxpayers' Charter standards in respect of responses to private rulings requests; and
- for improved internal performance monitoring of private rulings, consider supplementary existing internal performance standards (for example, the timing standard that includes the negotiated extension of the deadline) with a standard reflecting the total elapsed time taken to issue private rulings.

ATO response

Agreed.

Other dimensions of performance and relevant performance information

5.91 We recognise that attention to the timeliness of rulings (especially the timeliness of private rulings implicit in the Charter) is reasonable, because timeliness has an important bearing on taxpayers' satisfaction with ATO services, the maintenance of community confidence and 'certainty'. However, we do not consider that focusing *exclusively* on this aspect does justice to the task of the proper management and executive review of the rulings system. There is additional performance information for rulings that we think managers require if they are to manage the taxation rulings systems properly and thereby deliver the ATO's strategic objectives for rulings and the ATO as a whole (as outlined in Chapter 1).

5.92 A more comprehensive framework (such as one modelled on the International Standard on Quality Systems ISO9000)²¹⁹ would give increased prominence to:

- resource planning and timetables (e.g. with critical dates and resource budgets);
- a quality management system (e.g. with a quality policy; designation of responsibility and authority to particular people; assignment of resources and people to the task of producing quality rulings and ensuring the quality of the taxation rulings systems). This system would support and develop the framework of the ATO's Judgement Model, which is well developed for private rulings; and
- performance indicators to assess quality (e.g. effectiveness of the service, timeliness and clarity of the rulings).

5.93 Application of this framework prompts consideration of the objective of the rulings system, plans and intended results of the system, and the measures and the data required to assess activities. We consider that this framework provides a good reference point to consider the good management of the rulings system and the performance information that supports that good management process.

5.94 Based on the documentation we reviewed, we consider that the ATO has in place well-developed, formal processes for organisational planning and review at the overall level (producing relevant plans and reports on a regular basis). We consider, though, that these plans and reports are not achieving the corporate governance purposes they might otherwise do because they are not adequately supported with information

²¹⁹ Quality Management and Quality Systems Part 2: Guidelines for services ANZ Standard, ISO 9004-2:1991.

by which to assess the efficiency of processes (e.g. quantity and cost of inputs)²²⁰ or with due regard to trying to assess the effect of the processes.

Public rulings performance information

5.95 The ATO has only limited performance information on public rulings (essentially revolving around the tracking of the numbers of rulings in progress and completed). The performance material we examined for public rulings does not allow the ATO to manage the taxation rulings systems in an integrated way to provide a rulings service of good quality. For example, the audit was not able to establish how the ATO assures itself that it has identified and assessed priorities in its activities or functions, and that it allocates resources to meet those priorities while taking account of the necessary trade-offs between time, cost and quality in the taxation rulings it produces and the functions it maintains.

5.96 The ATO could not provide information about the cost of preparing public rulings or managing the public ruling system in terms of staffing allocations and other costs such as those attaching to the use of experts on the various rulings panels.²²¹ The ANAO considers that although the ATO's production system for public rulings is strong in technical terms, the ATO is not able to manage the provision of the service (the preparation and publication of public rulings) in an optimal manner, taking account of the trade-offs between timeliness, quantity, quality and cost of public rulings.

5.97 Management requires information about the key performance characteristics of public rulings, for example the time taken to produce the number of rulings, the types of issues for which draft public rulings should be prepared, quality attributes of rulings in relation to clarity, certainty, technical correctness and other features covered by the ATO's Judgment Model, and the cost of producing rulings. Using that information, management could set targets, or at least some parameters, regarding the quantity, quality, timeliness and cost of public rulings for the year or two ahead. Management would then be in a position to make more informed decisions about the allocation of resources among competing priorities (e.g. other interpretative work or other ATO activities), recognising the necessary trade offs in the time, cost, quality and quantity of the activities performed.

²²⁰ We recognise that INB measures the cost associated with the time on its private rulings and public rulings work via its INBUCA system. INBUCA is discussed in Chapter 4.

²²¹ The costs of consultants engaged for the ATO's public rulings panels appear in the Commissioner of Taxation's Annual Report. However the ATO does not attribute those rulings' consultancy costs to rulings themselves.

5.98 The ATO has not comprehensively defined, nor does it report on, the performance of its public rulings system in its corporate governance reporting processes. The reports to the Executive update progress against key tasks, but do not provide information on timeliness, quality or current cost of the public rulings system.

5.99 The ANAO considers that, in order for the ATO to better manage the public rulings system, it must specify and report more explicitly its objectives, plans, intended results, measures of performance and the data required to track such performance.²²² To determine whether its public rulings system is operating efficiently and effectively, it needs to develop performance indicators relevant to its plans and intended results, and report upon these indicators to the ATO Executive as part of its regular corporate governance processes. The type of quantitative and qualitative information needed to determine the performance of the public rulings system could include the:

- cost of administering the public rulings system;
- timeliness of producing public rulings. This could include performance indicators such as the numbers of rulings produced and the length of time it takes to produce them; the numbers passed to the various rulings panels and the duration of their involvement; and
- quality of public rulings produced. This could include obtaining information on the technical quality of the rulings from the rulings panels when the rulings are being drafted as well as receiving stakeholder feedback on the clarity of public rulings once finalised and publicly released.

Recommendation No.9

5.100 The ANAO recommends that, to improve the management of the public rulings system, including product rulings, the ATO take a holistic approach to its performance information and reporting regime for the production of public rulings by developing appropriate standards and monitoring performance, taking due account of the trade-offs between: timeliness; cost; quantity; and quality.

ATO Response

Agreed.

²²² We note again here that the ATO does compile and review data on the timeliness and quality of product rulings.

Private rulings performance information

5.101 The ATO has readily available to it only limited performance information on private rulings. The corporate governance reports specify the proportion of private rulings meeting the Taxpayers' Charter timeliness standard and the periodic technical reviews specify the results of the quality samples taken in each business line. The private rulings assurance and performance reporting material we examined do not demonstrate that the ATO manages the private rulings system in an integrated way to provide a rulings service of good quality. For example, it is not clear how the ATO assures itself that it identifies and assesses priorities in its activities or functions, that it considers its processes and allocates resources to meet those priorities while taking account of the necessary trade offs between time, cost and quality in the rulings it produces and the other functions it undertakes.

5.102 Resource allocation and costing information is basic to any meaningful attempt to manage resources efficiently, to allocate resources to priority areas. The ATO is not able to identify accurately the cost of the administrative systems it operates for private rulings. When we sought information on the resources (staffing numbers and staffing costs) devoted to rulings, the ATO was unable to provide data that would allow the composition of a reliable cost figure for private rulings, overall.²²³ Nor is it able to identify measures of the effect of its private rulings work.

5.103 Useful information for corporate governance/ performance reporting purposes would be resource information in sufficient detail to examine the resource flows to taxation rulings. Similarly, the introduction of a time recording system which calculates the application of staff costs to rulings (perhaps by tracking time or calculating time on a sampling basis) would be a good start in devising a system to monitor resource usage. Such a time recording system may be able to support useful analysis about the relative efficiencies of regions in a particular business line, help to identify better practice and make the judgements in resource allocation decisions more explicit and accountabilities more sharp.

5.104 The ATO indicated in April 2001 that the reporting function within CWMS and DWMS is being addressed under the PoA project in that a range of 11 reports has been identified and that five of these that are Taxpayers' Charter reports have been devised although they are not yet

²²³ Nothing was made available by the ATO with regard to public rulings, and the business lines each did separate and discrete exercises to estimate the staff numbers involved in private rulings. These exercises took two months to complete and were each done on a different estimating basis, making it inappropriate to try to aggregate the results.

being prepared. The ATO advised that the creation of the other identified reports will be part of Phase 2 of the PoA project. The ATO responded to our comments about performance information on the resource flows (especially staff costs), that Phase 2 of the PoA project also includes the development and implementation of a corporate-wide system to track costs and time associated with private rulings.

5.105 Our recommended measures to improve the management of the private rulings system, mirror those for public rulings, specified in the previous Recommendation.

Recommendation No.10

5.106 The ANAO recommends that, to improve the management of the private rulings systems, the ATO take a holistic approach to its performance information and reporting regime for the production of private rulings by developing realistic standards and monitoring performance, taking account of the trade-offs between: timeliness; cost; quantity; and quality.

ATO response

Agreed.

The scope and effect of the rulings system

5.107 During the audit, we sought to identify the scope and revenue significance of the rulings system. By 'scope' we mean, for example, the numbers and key characteristics of the taxpayers affected, the relevant areas of tax law and current revenue significance. By 'effect' we mean the potential revenue impact of rulings. We found that the ATO had very little information on these aspects of the taxation rulings system that it administers. We found that the ATO did not regularly undertake exercises, either before or after rulings were issued, to estimate the revenue effect of the public rulings it issues. For private rulings, we found that although the ATO required officers to record the estimated revenue effect of the private ruling applications under consideration, the data was so partial and indeterminate as to make it unsuitable for any meaningful analysis.²²⁴

²²⁴ For example, the data fields in SIGNUM did not specify whether the revenue involved in the issue estimated by the taxpayer and recorded by the ATO officer was a positive or negative, thereby making the analysis of this data of very limited value. In other instances the estimate was 'lots'.

5.108 It is standard practice for the ATO Revenue Analysis Branch to do regulatory impact statements for changes in legislation or administration but it does not do this in respect of rulings. We consider that analysis of the possible revenue effect of rulings would provide important accountability and performance information, by allowing the ATO to appreciate the parameters/‘revenue value’ of the area it administers and the impact of the interpretative advice it offers. These issues are of particular relevance to the ATO and stakeholders with a direct interest in the potential revenue effect of particular interpretations of tax law (for example, the State revenue agencies which are likely to take a very keen interest in GST rulings because they will have an impact on the amount of GST revenue available to the States). These issues would also be relevant from the view of the ATO seeking to manage the revenue risk of issuing ‘wrong’ or ‘incorrect’ rulings.²²⁵

5.109 In making this comment regarding estimating the potential revenue consequences of rulings, we acknowledge that some rulings (especially public rulings) may not have a revenue effect. We also recognise that the ATO’s rulings are not creating ‘new law’ – but merely seeking to interpret and apply the established law to taxpayers’ particular circumstances, or to clarify areas of law deemed to require improvement. However, we consider it is appropriate that the ATO seek to estimate the potential revenue effect of this clarification or specification, just as it might estimate the possible revenue consequences associated with fixing a possible legislative or administrative loophole in the income tax and FBT laws. We emphasise, however, that the ATO’s interpretation of the law should not be determined by the estimated revenue implications that might flow from that interpretation. In our view the interpretation of the law and subsequent issuing of taxation rulings should be separate from the analysis of potential revenue impact. However the analysis of potential revenue or compliance impact should still be undertaken by the ATO.

²²⁵ We note in this context, that some parties have publicly asserted that the ‘cost’ of wrong PBRs given during the 1990s to promoters of controlling-shareholder superannuation schemes and employee benefit trusts could amount to billions of dollars. See Michael Lawrence, ‘Time for Carmody to tell all?’ *Business Review Weekly*, 24 November 2000. Regardless of the specific estimates of the cost or effect of rulings (while noting that PBRs are only binding in respect of the specific taxpayer to whom the ruling is given and then only if the arrangement is implemented as represented in the ruling request), it is indisputable that the cost to the Commonwealth of the ATO getting a taxation ruling wrong in law could have a significant impact on revenue and possibly taxpayer confidence in the taxation system.

5.110 To be able to make these analyses, the ATO would need to improve significantly the quality of the data it currently maintains on private rulings and conduct broad analyses of the effect of public rulings. In respect of product rulings, the analyses would be based on the features of the product being promoted and the broad tax profiles of the taxpayers purchasing that product. In respect of public rulings analyses would need to cover the relevance of the provisions being considered to the various categories of taxpayer.

5.111 We did see the results of some analysis by the INB business line relating to the possible impact of some public rulings they issued. In 1994 and 1995 the ATO released a series of public (occupational) rulings and other information such as brochures and fact sheets on work related expenses entitlements for specific occupational groupings—e.g. teachers, hairdressers and airline pilots. INB also undertook a range of compliance activities over the period and analysed the pattern of claims over time for income tax deductions for work related expenses.

5.112 We recognise that it might be very difficult to separate the effects of any ruling from the effects of all the other measures or environmental factors bearing on the behaviour of taxpayers.²²⁶ However, we commend such analysis in particular areas of tax administration as a way to gain information on the possible impact of taxation rulings. This information and analysis provides a good basis for the ATO to consider the types of compliance action (further education, visits and possibly audits) that might be necessary to manage the area appropriately and assist with feedback that might help to improve rulings processes.

5.113 We do not consider it necessary that the ATO identify the potential revenue effect of each ruling it issues, only those where it considers the revenue consequences to be potentially large. We acknowledge that the potential revenue effect of a private ruling is limited to the particular taxpayer, in respect of the particular transaction specified in the ruling. This means that the potential revenue effects of the ruling are limited in scope, but they may nonetheless be very large in the case of some of the private rulings provided to clients of the LB&I business line. In the case of public rulings, the possible revenue or compliance effects may be very broad in scope because that ruling applies to any taxpayer in similar circumstances.

²²⁶ We note that the results of the ATO's analysis of work related expenses claims over time for a number of the occupational groups which were the focus of attention did not show that the claims for these tax deductions declined or were more accurate.

The difficulties in measuring or quantifying the revenue or compliance effect of rulings were also highlighted in the ATO's report of its evaluation of its Compliance Enforcement Strategy 1994-1996, but the report did propose some qualified estimates.

5.114 In response to our comments about the desirability of the ATO having an appreciation of the scope and revenue significance of the rulings system, including by undertaking exercises to estimate the revenue effect of the rulings it issues, the ATO advised that analysis of potential revenue implications is done for some significant public and private rulings. We observe again here, that the ATO has obligations under the GST Inter Governmental Agreement to consult with the States and Territories on all GST public rulings that impact on the revenue base, which in practical terms covers most GST public rulings.

Recommendation No.11

5.115 The ANAO recommends that, for better management of the taxation rulings systems, the ATO analyse the impact of taxation rulings on the Australian taxation system, including the potential revenue effect of significant private and public rulings.

ATO response

5.128 Agreed.

Other issues in managing rulings

5.116 The ANAO reviewed two issues in the management of rulings as part of corporate governance, because they are important matters relating to the effective management of rulings, including deriving the best value from rulings in terms of the information they might provide. These issues are:

- compliance activity and assessment of compliance risks; and
- using private rulings as a source of intelligence.

Compliance risks for rulings

5.117 By and large, compliance activity occurs after the ATO has provided the ruling to the taxpayer, to assess whether the taxpayer has abided by the ruling.²²⁷ The compliance activity itself is outside the scope

²²⁷ The compliance requirements differ depending on the type of ruling. There is no obligation on the taxpayer to comply with the Commissioner's interpretation of the law in a public ruling. However a taxpayer may be subject to penalty tax where they have not taken a reasonably arguable position (RAP) on a particular issue. A public ruling is an 'authority' for the purposes of determining whether a taxpayer has adopted a RAP, however just because a public ruling may be contrary to the taxpayer's view does not mean that the taxpayer's view is not reasonably arguable. For private rulings a taxpayer is not bound to follow a private ruling. However the law currently provides for a penalty tax of 25 per cent if a taxpayer has a tax shortfall as a result of disregarding a private ruling.

of this audit.²²⁸ However identification and analysis of risks (with the collection and analysis of relevant information on compliance risks) in relation to private rulings and public rulings impact on an assessment of the management of the taxation rulings systems by the ATO.

5.118 The selection of topics or areas on which to undertake compliance work is made within the business service lines by the area with that particular responsibility. The selection is made based on a risk management approach, balancing the relative risk to compliance (especially revenue compliance) and resourcing available to undertake compliance work. The ANAO supports this approach because it is designed to focus effective action on the areas of highest risk. However, for this approach to succeed, the ATO must have processes to identify and assess risk areas.

5.119 One of the compliance risk factors in the private rulings process is that the taxpayer may not adhere to a private ruling provided by the ATO. Another compliance risk is that the taxpayer seeking the private ruling may withdraw the ruling application before it has been issued by the ATO, fearing that the ruling will not be favourable. By withdrawing the application, the taxpayer seeks to avoid the penalty tax the taxpayer otherwise incur if the ATO assesses that there is a tax shortfall as a result of their not following the relevant private ruling.²²⁹ The ANAO found that one segment of the LB&I business line had undertaken a review in 1997 which investigated taxpayer compliance with private rulings which did not favour the applicant and the INB business line had undertaken a review relating to compliance with private rulings in 1999.²³⁰ With the exception of these reviews, the ANAO could not find evidence of the ATO assessing and acting on these particular risks for private rulings. The ATO advised in May 2001 that the SB business line also undertook an extensive survey of compliance with unfavourable private rulings in 1998.²³¹

²²⁸ The ANAO examined the use of audit in compliance management of individual taxpayers in the INB business line in Auditor-General, Performance Audit Report No. 37, 2000-1 *The Use of Audit in Compliance Management of Individual Taxpayers*, May 2001.

²²⁹ The ATO advised in July 2001 that this is a structural feature of the legislation and that it monitors this risk. The ANAO was unable to obtain evidence of this monitoring.

²³⁰ LB&I—*Adverse Mining PBRs Project Final Report*, February 1998 and INB—*1999-2000 Risk Assessment Project Compliance with PBRs*, June 1999. The INB review found high levels of compliance.

²³¹ The ATO advised that the SB survey in 1998 found that the overall level of compliance was high.

5.120 We found that there was an established compliance risk assessment process for product rulings. This approach involved risk rating of each product ruling issued and based on this rating, reviewing a sample each year.

5.121 The ANAO considers that the risk management of private rulings would be improved if the ATO were to undertake a more structured approach to identifying, assessing and treating rulings compliance risks, supported by empirical information. We understand that an internal review being undertaken in the ATO of the product rulings system identifies and examines a range of risk factors and compliance matters. We consider that this sort of analysis is indicative of the sort of information collection and analysis required for private rulings.

Recommendation No.12

5.122 The ANAO recommends that, for improved compliance management of rulings, the ATO apply documented and structured approaches to identify, assess, prioritise and treat identified compliance risks for private and public rulings, including product rulings, after issue.

ATO response

5.137 Agreed.

Using private rulings as a source of intelligence to identify risks and opportunities

5.123 A structured approach to considering risk factors or characteristics apparent in private rulings (in terms of compliance or revenue) presupposes an effective way of collecting and maintaining information. As noted above, some proportion of the taxpayers seeking a private ruling might have particular characteristics, or engage in transactions that represent compliance risk factors. It is important that the ATO is able to record and monitor those factors and that it has the ability to take these into account when planning its future activities in response (e.g. possible education, interpretative or clarification work or audit activities).

5.124 The notion of having taxpayers indicate their use of rulings when preparing their tax returns²³² is consistent with the goal of strengthening the information links between taxpayers' use of rulings and ATO

²³² For example, in early 2000 the Joint Committee of Public Accounts and Audit (JCPAA) indicated in correspondence to the Auditor-General relating to the conduct of this performance audit, that there may be 'merit in tax return forms requiring submitters to provide information on any private binding rulings or other rulings that form part of their tax return'. The JCPAA comment is similar to one made in the Ralph report (p. 143) that the ATO should give consideration to implementing a cost-effective system which would require taxpayers to indicate in their tax return whether or not they have complied with a ruling.

compliance activities. The ANAO considered the notion of a possible ‘rulings flag’ on tax returns as a way to improve information available to the ATO for information gathering and compliance purposes. On balance we think that a specific rulings flag on tax returns would not be a cost-effective way of monitoring risks, given the very keen competition in the ATO for space for a label on the tax return, the potential compliance burden on taxpayers but only the very limited assistance it would be likely to provide to the ATO.²³³

5.125 We consider that there is a better approach to meeting the information and compliance concerns that motivated the ‘rulings flag’ suggestions. That would be for the ATO to ensure that it has an effective way of capturing intelligence and information relating to possible compliance concerns (across its full span of activities—not just rulings) and using this across the ATO span of activities (e.g. regarding possible compliance measures or possible areas of tax law requiring clarification or reform).

5.126 Currently the ATO does not have a coherent process to ensure it captures, analyses and uses, if appropriate, the intelligence (in terms of market information or risk information) that private rulings can elicit. Neither the SIGNUM database nor the recently introduced ATO *intelligence* icon (described later in this section) are effective ways of capturing information across the ATO and analysing risks.

5.127 Currently, the SIGNUM database can provide some information and intelligence on important tax interpretation matters relevant to the activities of the Tax Counsel Network and the ATO indicates that its Strategic Intelligence and Analysis Unit in LB&I regularly examines the SIGNUM database to monitor trends. However this database is not a suitable vehicle for wide-ranging and integrated intelligence gathering and risk assessment. Robust risk analysis is currently not possible given the quality of the data on that database. (Chapter 4 discusses data integrity problems among various systems the ATO uses in administering private rulings.)

²³³ A rulings flag or rulings label on a tax return would not, of itself, markedly increase the information available to the ATO to assess the risks associated with a particular taxpayer’s return. Such detail as might assist the ATO’s risk management in processing tax returns may impose compliance burdens on the taxpayer that are inconsistent with the philosophy of self-assessment (see Chapter 1 and Appendix 1 for information on the self-assessment system). Furthermore, the compliance effectiveness of the ‘rulings label’ has some important practical limitations. For example, even ignoring the problems of non-compliant taxpayers not marking the flag as required in order to hide their affairs from the ATO, there are other difficulties with the label idea advanced by the JCPAA. The rulings label suggested would not require the taxpayer to indicate if they had disregarded a private ruling, or to indicate whether, having sought and obtained a private ruling, they had then legitimately proceeded with a transaction which was materially different from the one on which they sought the private ruling. Both of these situations would be ones that the ATO would wish to examine from a risk management point of view.

5.128 The ATO *intelligence* icon installed onto the computers of all ATO officers is designed to encourage them to record issues that may impact on ATO operations or threaten the collection of revenue.²³⁴ However, there are some major constraints that prevent the effective use of ATO *intelligence* for intelligence gathering and use for compliance purposes, at this stage of its implementation. One constraint is that ATO *intelligence* does not have an interrogation capacity for staff. This means that staff who may want to seek information on a particular matter cannot search the system for that. Another constraint on the effective use of ATO *intelligence* is the nature of the information retained on it. Information reported by staff is collated and synthesised by ATO analysts and is sanitised to remove anything (e.g. names, Tax File Numbers) that would identify taxpayers. Details are removed because ATO *intelligence* is not on a secure IT system. Collectively these features mean that ATO *intelligence* cannot be used directly to guide specific ATO compliance work.

5.129 We support the integrated rulings system that the ATO intends to develop to manage private rulings better (see Chapter 1 and Appendix 4 for an outline of the elements). The ANAO considers that the ATO should also support this initiative, and its public rulings system, by ensuring it has an effective intelligence capability. Such a capability should have the capacity to record information/ intelligence gained and ensure that this is readily available to other areas of the ATO for integrated and informed taxation administration.

5.130 The ANAO recognises that the ATO has several IT systems which are used to gather intelligence for individual business lines and branches. The ATO also has various forums which are designed to share intelligence throughout the ATO. However, we consider that ATO officers responsible for drafting taxation rulings should have access to an integrated network of intelligence systems. Ideally, this integrated intelligence network should:

- have the ability to capture relevant intelligence from numerous intelligence systems throughout the ATO;
- be user-friendly; and
- produce timely and relevant reports.

²³⁴ ATO *intelligence* is intended to collect information on a wide range of matters such as unusual behaviours of taxpayers, unclear areas of the law or ATO policy, the economic environment, tax schemes, other tax planning arrangements or opportunities and interesting issues.

Taxation rulings in the wider context of tax administration

5.131 Our previous discussion in this report focussed on the ATO's administration of taxation rulings. In this final section of the report, we place taxation rulings in the wider context of tax administration, recognising that although our audit has a specific focus, the administration of taxation rulings falls into a much larger context in the overall administration of the taxation law and there are necessarily links between the administration of taxation rulings and other areas of ATO activity.

5.132 This section does not attempt to describe, much less assess the many, interrelated elements that comprise the larger context of tax administration for the ATO. It seeks to describe how the administration of taxation rulings may be *influenced by* elements in the wider context of tax administration and also how rulings administration *may influence* the wider context of tax administration. In making the latter observations, we are not postulating that the administration of rulings is necessarily a key driver or determinant of the broad topics of tax administration we highlight (topics such as compliance management, electronic service delivery and strategic management). We are suggesting, however that there are some linkages which are worth noting.

5.133 We noted earlier the audit finding that the ATO is not managing aspects of the taxation rulings system for taxpayers well. Although we appreciate that the ATO has taken steps in a range of areas (relating to systems, processes and people),²³⁵ the ATO cannot comprehensively identify:

- the parameters of what it is managing, e.g. the broad revenue or compliance effect of the rulings system the ATO administers (e.g. the revenue attributable to private rulings and product rulings);
- the resources that are being used or the resources needed for the service, taking account of the time, cost and quality aspects of the service;
- the quality of the product or service provided (not just in terms of technical quality but also other aspects of a quality product or service such as timeliness, reliability, responsiveness and usefulness); and/ or
- the potential revenue effect of the ruling.

²³⁵ For example, as noted in Chapter 4 in relation to private rulings, the ATO implemented an IT system to draft private rulings and share information about private rulings in 1996; formalised quality assurance review processes in 1997; and implemented measures to minimise duplicate keying by ATO staff, in 1999. The ATO considers that it has taken further significant measures as part of the PoA project in 2001 to ensure that weaknesses with private rulings have been rectified. The ATO also established the Professional Excellence Forum in 1998 to obtain improved technical decision making across the ATO.

5.134 Another challenge for the ATO is to ensure that the administration of rulings takes full account of the wider context of ATO tax administration. So not only should the problems with the various administrative systems in rulings be remedied and management disciplines be applied more vigorously, but also the necessary linkages and interdependencies to broader tax administration must be better recognised and addressed.

5.135 It is important that the administration of rulings by the ATO pay particular regard to the work practices in other areas also providing tax interpretation advice and the interrelationships with other parts of the ATO. The interrelationships are numerous and are expressed in practice in the intelligence gathering, tax return processing and compliance management activities of the ATO, for example. Examples are the integrated IT and intelligence systems that allow the ATO to share relevant information across parts of the organisation easily and providing relevant services to taxpayers in formats and using forms of technology that facilitate their use. In this way the future for rulings is necessarily linked to the ATO's other strategic and operational imperatives, such as client service and compliance management. We recognise that the ATO has activated such linkages, for example via its compliance strategies to deal with aggressive tax planning. We consider the ATO should continue to support and to use fully linkages such as those between taxation rulings, compliance management and client service in order to manage the rulings system optimally and to use it to best effect in the context of the tax administration.

5.136 Application of the following principles will help to guide the future development of the rulings system as a whole, to facilitate its enhancement in ways that are congruent with the overall goals of the ATO. Important principles bearing on both taxpayers and the ATO are:

- accessibility and usefulness of services for taxpayers;
- transparency and integrity of processes for taxpayers;
- consistency, accuracy and quality of ATO decision making;
- support for ATO staff from the systems they use;
- capability of ATO staff;
- relevance and timeliness of management reporting for planning, and control; and
- support for, and support from, the activities necessary for the ATO to achieve its required outcome and outputs.²³⁶

²³⁶ The ATO's specified outcome for 1999–2000 is '*effectively managed and shaped systems that support and fund services for Australia and give effect to social and economic policy through the tax system*'. The ATO's required outputs are 'provide revenue', 'provide transfers', 'contribute to policy advice and legislation' and 'support other agencies'.

Conclusion

5.137 Good corporate governance in rulings administration would apply the key operating principles of ‘openness’, ‘accountability’, ‘integrity’ and ‘leadership’. Consistent with these principles, it would be expected that there would be a robust system of internal controls in place, including accurate and comprehensive sources of procedural guidance, vigorous checks on the quality of rulings made and effective training of staff to ensure that they have appropriate skills and experience. We found that the ATO’s performance against these criteria was mixed. For example, although staff technical proficiency receives considerable attention, (for staff engaged in private rulings but particularly for staff engaged in public rulings), internal controls (for private rulings)²³⁷ and sources of procedural guidance (for private and public rulings) are inadequate because the manuals are incomplete and the guidance dispersed. Although we recognise that the ATO has issued instructions that update procedures, and these are vital process controls, we consider that the incomplete manuals and dispersed guidance make for an inefficient process and inadequate form of control.

5.138 In drawing these conclusions from our audit fieldwork and analysis, we appreciate that the ATO’s PoA project is intended to remedy many of the pressing problems we highlighted in the private rulings system. We note though, that as well as the challenge of implementing the PoA project as comprehensively and as expeditiously as intended, the ATO still has other process control matters to seek to address or to improve. These matters include: periodic review processes for public rulings for continuous improvement; the security of taxpayer data in the ATO relating to private rulings and product rulings prior to the issue; and training for staff working on public and private rulings to complement their professional training programs. Such non-technical training could focus on matters such as effective work management practices, interpersonal skills and management skills.

5.139 Another generally accepted feature of good corporate governance in rulings administration is that the taxation rulings systems should be managed, involving, for example, effective consultation with stakeholders, input from and review by, senior ATO management, consideration of risks and opportunities and how they might be managed, the collection and review of appropriate performance information and reporting of results.

²³⁷ As noted in Chapter 2, we consider that the public rulings system has measures elements that allow the ATO to produce public rulings of high technical quality.

5.140 We found that the ATO discharges aspects of the corporate governance of rulings administration well (for example, the consultation with stakeholders and input from management) and we note again that the ATO has used the taxation rulings system as part of its compliance strategies to deal with aggressive tax planning. Notwithstanding that example of the active application of the taxation rulings system to meet a particular ATO priority, we consider that the key challenge for the ATO is to manage the public and private rulings systems actively (in terms of the particular areas in the business service lines and in terms of their possible relationship with other functions of the ATO). This challenge includes being able to specify adequately the features of the rulings system in terms of timeliness, cost, quality, compliance and potential revenue impact.

5.141 The larger, and more challenging, task for the ATO in its administration of the taxation rulings system is to ensure that the administration of taxation rulings takes full account of the wider context of ATO tax administration, meaning, for instance, that the necessary practical linkages and interdependencies in tax administration are recognised and addressed in a systematic way. In this way, the efficiency and effectiveness of the ATO's administration of the taxation rulings system are necessarily linked to the ATO's other strategic and operational imperatives, such as client service and compliance management. These linkages should be supported and fully used if the rulings systems are to be administered optimally and used to best effect in the larger context of the tax administration.



Canberra ACT
17 July 2001

P. J. Barrett
Auditor-General

Appendices

Appendix 1

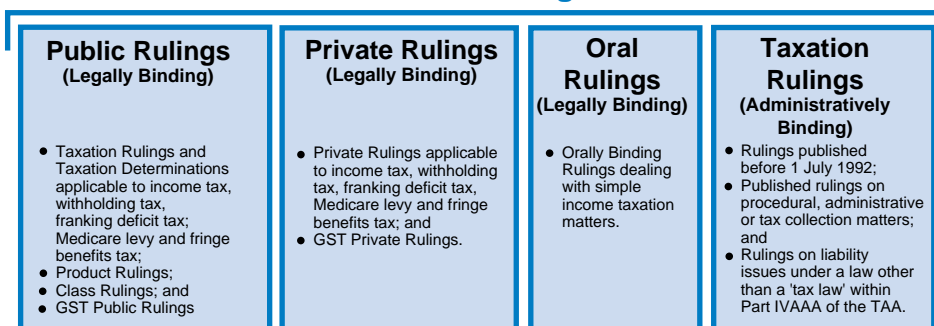
Background and History of Taxation Rulings

1. This Appendix provides an overview of the taxation rulings system from its inception to the present day. It has been divided into three sections:

- 1975–1989: The formation of the taxation rulings system
- 1990–1992: Introduction of public and private rulings
- 1993–2001: Developments in the taxation rulings system—relevant reports

2. Taxation rulings are as defined in the illustration below. Throughout this Appendix, the illustration below will be reproduced to highlight the taxation rulings or taxation rulings series relevant to the discussion. These sections are highlighted in blue ■.

Taxation Rulings



Source: ANAO analysis

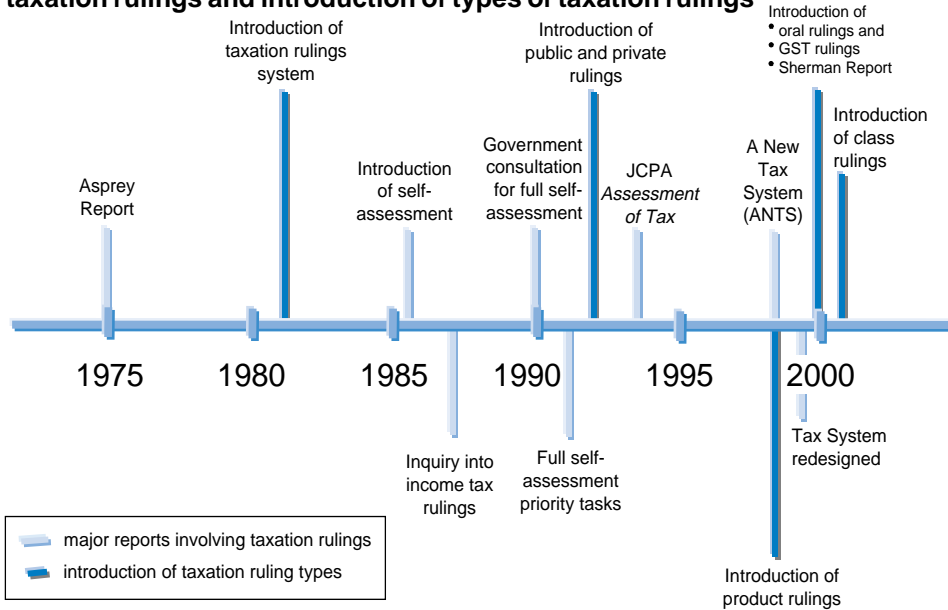
1975–1989: The formation of the taxation rulings system

Background

3. The formal taxation rulings system has evolved continuously since its formal inception in 1982. This evolution has broadened the scope of taxation rulings to include many different types and series of taxation rulings which currently bind the Commissioner either administratively or legally. The following time-line diagram provides an overview of the evolution of the taxation rulings system, making reference to relevant reports and the introduction of major types and series of taxation rulings.

Figure 12

Major reports into the Australian Taxation Office with specific reference to taxation rulings and introduction of types of taxation rulings



Source: ANAO analysis

4. The provision of advice to taxpayers has been an ongoing issue for Governments and the Australian Taxation Office (ATO) since the 1930s.²³⁸ Since that time, the introduction of the *Freedom of Information Act 1982* and a self-assessment taxation system have brought about significant changes to the ATO’s provision of advice to taxpayers. One of these significant changes has been the establishment of the taxation rulings system.

5. Taxation rulings are a method of publishing and disseminating decisions on the interpretation of the laws administered by the Commissioner of Taxation (the Commissioner) to the public. Although the Commissioner has published material as far back as the 1930s, outlining his interpretation of the taxation law, it was not until the 1970s that taxation rulings as they exist today, were considered.

Taxation Review Committee (Asprey Committee) report 1975

6. The ‘Asprey Review’ represented the first major postwar inquiry by an Australian Government into the operation of the taxation system. The inquiry was conducted by the then Taxation Review Committee which was headed by the Honourable Justice K.W. Asprey.

²³⁸ In the 1930s the ATO issued Income Tax Orders as a means of publicising the Commissioner’s interpretation of the Taxation Law.

7. The purpose of the inquiry was to examine the Australian taxation system, to allow the (then) Government to assess Australian taxation policy overall. This included a detailed assessment of the structure and operation of the taxation system. The Committee was also instructed to be mindful of the need to ensure a flow of revenue sufficient to meet the needs of the Commonwealth in a not unduly complex, inconvenient or expensive way and a fair distribution of the burden of taxation across taxpayers.

8. The Full Report of the Taxation Review Committee was tabled in Parliament in January 1975. Amongst other issues, the Committee recommended the establishment of a system of private binding rulings issued on a fee for service basis, modelled on the practice of the Canadian National Revenue Office.

9. The (then) Government responded initially to the report recommendations by stating that they would be taken into account for the 1975 Budget. Further work was carried out in June 1978 when (the then) Cabinet established an Independent Departmental Committee (IDC) to examine the outcome of the Committee's recommendations. The IDC recommended that the Committee's proposal that ATO charge for the provision of private binding rulings should not be pursued further.

10. Although a system of issuing taxation rulings was not adopted by the ATO at this stage, the then Commissioner used an internal system for disseminating his application of the taxation law to his staff. This system was designed to promote consistency in the answers provided by ATO officers to taxpayers and relied heavily on the use of the following internal documents:

- Commonwealth Income Tax Circular Memoranda;
- Income Tax Orders;
- Assessing Manuals;
- Office Minutes; and
- Memoranda and other forms of advice.

11. A small amount of the information contained in these documents was made publicly available (for example, depreciation rates), however the majority of documentation used by the ATO to assess taxpayer taxation liability was for internal use by the ATO.

Freedom of Information Act, 1982

Taxation Rulings

Public Rulings (Legally Binding)	Private Rulings (Legally Binding)	Oral Rulings (Legally Binding)	Taxation Rulings (Administratively Binding)
<ul style="list-style-type: none">• Taxation Rulings and Taxation Determinations applicable to income tax, withholding tax, franking deficit tax; Medicare levy and fringe benefits tax;• Product Rulings;• Class Rulings; and• GST Public Rulings	<ul style="list-style-type: none">• Private Rulings applicable to income tax, withholding tax, franking deficit tax, Medicare levy and fringe benefits tax; and• GST Private Rulings.	<ul style="list-style-type: none">• Orally Binding Rulings dealing with simple income taxation matters.	<ul style="list-style-type: none">• Rulings published before 1 July 1992;• Published rulings on procedural, administrative or tax collection matters; and• Rulings on liability issues under a law other than a 'tax law' within Part IVA of the TAA.

Source: ANAO analysis

12. The introduction of the *Freedom of Information Act 1982 (FoI Act)* had a significant effect on the ATO's administration of the tax laws. Under this Act, the Commissioner is required to make available to taxpayers copies of documents used by his staff to hand down decisions on his intended application of the taxation law.²³⁹ In particular, the Commissioner was required to provide taxpayers with access to records and documents used to assess their taxation liability. In response to this legislation, the Commissioner instituted a system of taxation rulings to propagate his views on the application of the taxation law publicly. These taxation rulings were classified into two series:

1. Income Tax (IT) Taxation Rulings series; and
2. Miscellaneous Tax (MT) Taxation Rulings series.

13. Although 'taxation rulings' at this time did not have any legislative foundation, the Commissioner recognised that issuing taxation rulings provided a service to taxpayers in the best interests of sound taxation administration.

14. With the introduction of the taxation rulings system, the ATO adopted a more consistent approach to reporting the Commissioner's interpretation of tax laws, as well as rationalising the content of taxpayer advice by specifying strict taxation rulings criteria. Income taxation ruling no.1 (IT1), which explains the system of issuing taxation rulings, stipulates that:

A taxation ruling will issue in respect of any decision which satisfies the following criteria:

(a) provides an interpretation, guideline, precedent, practice or procedure to be followed in making a decision that affects the rights or liabilities of taxpayers;

²³⁹ S. 9 *Freedom of Information Act 1982*.

(b) establishes a new or revised interpretation of our administration of the tax laws; and

(c) affects all taxpayers or a selection of the tax-paying community, i.e., not simply an individual instance.²⁴⁰

15. IT1 also specified that taxation rulings were only the Commissioner's interpretation of the law and did not 'supplant the terms of law' or have 'the effect of an estoppel' against the operation of the law.²⁴¹ Therefore, taxation rulings do not form part of the taxation law, and may be overturned by the Australian courts.

16. In 1988, the Commissioner further clarified the definition of taxation rulings in IT 2500. This taxation ruling introduced the broad term of 'rulings',²⁴² and stated that there were two types of rulings the ATO could issue. These were:

- (i) Taxation rulings²⁴³ that provide guidelines for the public and ATO staff in relation to the interpretation of income tax law and to the administration of that law by the Commissioner; and
- (ii) Advance opinions²⁴⁴ given in response to specific requests from taxpayers seeking advice as to the income taxation consequences of proposed transactions.²⁴⁵

17. In addition, the Commissioner also specified how he was prepared to stand by what is said in a taxation ruling and to depart from a taxation ruling only where there are good and substantial reasons.²⁴⁶ The reasons to depart from the advice provided in a ruling are confined to situations where:

- (i) there have been legislative changes;
- (ii) an applicable tribunal or Court overturns or modifies an interpretation of the law on which a taxation ruling is predicated; or
- (i) the approach adopted in a taxation ruling is otherwise no longer considered appropriate.

²⁴⁰ Taxation Ruling Number 1, 6 December 1982.

²⁴¹ Taxation Ruling Number 1, MT 2005.

²⁴² IT 2500 (Preamble).

²⁴³ In 1988, taxation rulings comprised the IT and MT series of taxation rulings.

²⁴⁴ Advance opinions were not examined as part of the ANAO's audit into taxation rulings, as they are outside the scope of the audit. However they are discussed further later in this Appendix.

²⁴⁵ IT 2500 *Taxation Ruling System: Policy Governing Issue of Income Tax Rulings: Status of Rulings: Advance Opinions*.

²⁴⁶ IT 2500, paragraph 6.

18. The ATO's intention to stand by its taxation rulings, except in the situations outlined above, is defined as being 'administratively binding'.

19. Through implementation of the taxation rulings system and the consequent public disclosure of the methodology and reasoning behind the ATO's interpretation of the tax law using taxation rulings, the ATO's accountability to the public with respect to its decisions on taxation liability increased. This increased accountability provided taxpayers with a higher level of certainty that the ATO's decision making is consistent between taxpayers and over time.

1986 Introduction of the self-assessment system of taxation

20. Prior to 1986–87 taxpayers were required to lodge a taxation return with the ATO containing information from which the ATO prepared an assessment of the taxpayer's taxation liability or refund. Following changes to taxation legislation that came into operation on 1 July 1986,²⁴⁷ there was an increased reliance placed on the taxpayer in the preparation of accurate taxation assessments. Although taxpayers were still required to lodge taxation returns containing relevant information and a calculation of taxable income, these returns were no longer subject to the same level of technical and other scrutiny formerly provided by the ATO. This meant that the Commissioner was allowed to make an assessment of a taxpayer's taxation liability based on unverified information contained in a taxpayer's tax return. Specifically, self-assessment legislation allowed the Commissioner to:

- accept the information disclosed in the taxpayer's return for the purposes of making an assessment;
- amend an assessment to correct errors of law detected after the assessment process was completed; and
- exercise any discretion at the time of considering an objection against the assessment and deeming that exercise to have occurred at the time of making the assessment.

21. With an increased reliance placed on taxpayers preparing their taxation assessments accurately, they required a greater knowledge of the taxation law to comply fully with their taxation obligations. To assist with the provision of such information to taxpayers the Commissioner was required under s. 169A²⁴⁸ of the *Income Tax Assessment Act 1936* to

²⁴⁷ Self-assessment applies to original assessments made on or after 1 July 1986 in respect of the 1985-86 and subsequent years of income.

²⁴⁸ s. 169A had effect from 1 July 1986.

provide answers to questions posed by taxpayers about their taxation return, relevant to their tax liability for the particular year. IT 2616 outlined specifically the administrative guidelines that the ATO was required to follow to issue such advice.

1987 Standing Committee on Legal and Constitutional Affairs

22. In May 1987, the Senate Standing Committee on Legal and Constitutional Affairs began an investigation into the nature, function, ambit and adequacy of taxation rulings issued by the ATO, and the process by which the rulings are prepared and distributed. The Committee's report of the inquiry on income taxation rulings was tabled in Parliament on 5 November 1987, and made three specific recommendations for the ATO's rulings system. These were:

1. That each ruling issued by the Commissioner of Taxation contains a caveat that:
 - i. the ruling does not have the force of law; and
 - ii. each decision made within the Australian Taxation Office will be considered upon its individual merits as well as pursuant to any relevant ruling.
2. That the Commissioner makes a practice of including within rulings appropriate cross-references to related rulings; and
3. That the Commissioner devises and makes available an improved index to the rulings.²⁴⁹

23. The Commissioner indicated that these recommendations would be fully and promptly adopted. The Commissioner also made the following statements in response to the first and third recommendations:

Response to recommendation 1: in respect of the conclusion that each ruling issued should not have the force of law, the Commissioner has stated that it is important to note that it is the clear policy of the Australian Taxation Office to stand by what it says in rulings. That is, there will only be a departure from a ruling where the legislation has been changed, where an appellate court overturns that interpretation on which a ruling is predicated or where the ruling is otherwise shown to be wrong.

Response to recommendation 3: in accordance with sub-section 9(2) of the Freedom of Information Act 1982 the ATO maintains both a numerical listing and an alphabetical cross reference to rulings under

²⁴⁹ Senate Standing Committee on Legal and Constitutional Affairs, *Income Taxation Rulings*, November 1987, p. vii.

*subject heading. Quite independently of these indexes, the Commissioner also maintains consolidated internal indexes under references to subject headings, court decisions and income tax legislation. These have been made available on request to inquirers.*²⁵⁰

24. The Commissioner concluded that, with respect to the above responses to the recommendations, there was still room for improvement, particularly in regard to increasing awareness of the existence of the indexes and to improving the layout and format to assist the public's comprehension of rulings.

1990–1992: Introduction of public and private rulings

A full self-assessment system of taxation—A consultative document—13 December 1990

25. On 13 December 1990, the (then) Government announced formally that it intended to revise the self-assessment taxation system. The principal focus of the review was to determine whether the (then) Government should adopt a full self-assessment taxation system. Under a full self-assessment taxation system, the Commissioner does not issue an assessment of a taxpayer's liability at all, rather the taxpayer's tax return is deemed to be the notice of an assessment and is accepted by the Commissioner as being a true assessment of a taxpayer's income. It was considered by the then Government and the ATO, that this approach to the assessment of a taxpayer's liability would reduce processing work by the ATO which added little value to the tax collection process, but which resulted in processing errors.

26. However the (then) Government also recognised that with an increased reliance placed on taxpayers to fully assess their taxation liability under a full self-assessment system, they would need to have access to additional information and advice from the ATO on the application of the tax law to their taxation requirements. To obtain public feedback on the delivery mechanisms the Commissioner should utilise to provide advice to the public, and the potential implications of the new full self-assessment taxation system, the (then) Government issued a consultative document on the operation of a full self-assessment taxation system. This document included suggested changes relating to: authorising the issue of general taxation rulings and private rulings that are binding on the Commissioner of Taxation; and making private rulings subject to review by the Administrative Appeals Tribunal (AAT) or a court.

²⁵⁰ Government response to the report of the Senate Standing Committee on Legal and Constitutional Affairs, *Income Taxation Rulings* (18 December 1987).

27. The (then) Government received submissions on the proposed extension of self-assessment arrangements from various sources including the ATO, Government departments, interested taxpayers, and a number of taxpayer tax professional and business bodies.

Improvements to Self-Assessment—Priority Tasks—An Information Paper August 1991

28. In response to the 1990 consultative document, the (then) Government released a report detailing a series of priority tasks to promote a full self-assessment taxation system. Of these priority tasks, three related to amendments to the current taxation rulings system. The priority tasks relating to the taxation rulings system were:

- (a) a new system of binding taxation and private rulings which was to give taxpayers more certainty about transactions entered into prior to any change in interpretation;
- (b) a new system of reviewable private rulings which was to allow taxpayers to have an adverse private ruling reviewed by the AAT or a court; and
- (c) a modified system of review rights to accommodate reviewable rulings and an extended objection period so as to allow taxpayers to dispute a ruling or a Commissioner raised assessment within a four year period, in line with the Commissioner's amendment powers.

Taxation Laws Amendment (Self-Assessment) Act 1992

29. The Priority Task proposals were formalised in legislation in *Taxation Laws Amendment (Self-Assessment) Act 1992* (SAA), which received Royal Assent on 30 June 1992. In addition to adopting the above-mentioned Priority Task proposals, the SAA made changes to the system of interest payments, lodgement of election notices, and self-amendment processes.

30. The SAA represented a significant change to the way taxation rulings were administered by the ATO. In particular, the Act changed the laws relating to the amount and type of information ATO was required to provide to the public through its taxation rulings system. The specific changes to the taxation rulings system were:

- (a) introducing a new system of binding public rulings applicable to arrangements relating to income tax, Medicare levy, withholding taxes, franking deficit tax and FBT;
- (b) introducing a new system of binding private rulings for transactions or arrangements that were proposed, had commenced or had been completed. The new system was also to apply to income tax, Medicare levy, withholding taxes, franking deficit tax and FBT;

- (c) introducing a new system to have private rulings reviewed by the AAT or a court; and
- (d) limiting objection rights against an assessment to prevent a review of a matter that was already the subject of a review of a Private Ruling.

31. The changes outlined in the SAA changed existing legislation in Part IVAA and Part IVAAA of the TAA (as they relate to income tax and FBT matters).

32. It was considered by the (then) Government that through implementation of a full self-assessment taxation system and the adoption of the full raft of changes under the *Priority Task Initiatives* there would be:

*...real benefits to taxpayers by making the [taxation] system fairer and more certain.*²⁴⁹

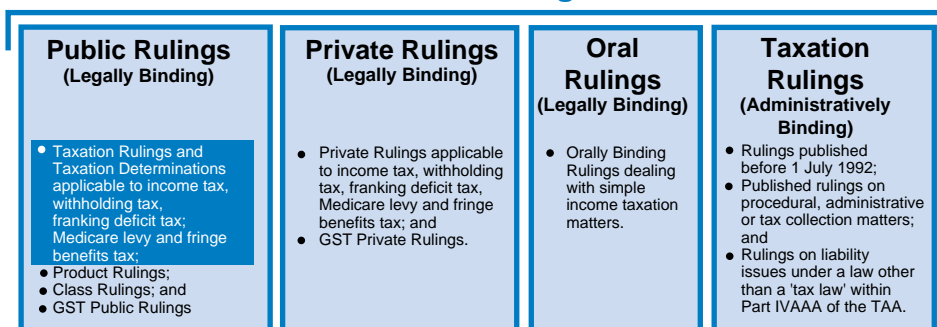
The impact of the introduction of public rulings and private rulings as part of the taxation ruling system

33. As noted above, the SSA introduced two new and markedly different types of taxation rulings, which were public rulings and private rulings. The following discussion describes these types of rulings and outlines what responsibilities the Commissioner has with respect to providing advice under these rulings.

Public Rulings (1992)

34. Public rulings are a specific type of taxation ruling that exists under the rulings provisions contained in Part IVAAA of the TAA. The diagram below highlights public rulings introduced in 1992.

Taxation Rulings



Source: ANAO analysis

²⁴⁹ P. Baldwin, Second Reading Speech *Self-Assessment Bill 1992*, op. cit.

What is a public ruling?

35. Public rulings are the considered and decided position of the Commissioner on the interpretation of the laws relating to income tax²⁵² and FBT. Although the Commissioner can issue a public ruling on a wide range of income and FBT matters on the extent of liability of these taxes, a public ruling can only set out the Commissioner's opinion on the way a 'tax law' applies to:

- a person in relation to a class of arrangements;
- a class of persons in relation to an arrangement; or
- a class of persons in relation to a class of arrangements.²⁵³

36. The Commissioner may not issue a public ruling to a person in relation to a single arrangement, however, he is able to issue a private ruling in these circumstances (see later in this Appendix for a description of private rulings).

37. Public rulings apply to all income/FBT arrangements be they past, present or future arrangements. The exception to this rule is any arrangement that began to be carried out before 1 July 1992. These arrangements are not subject to public rulings, however they are subject to the other taxation rulings (i.e. the IT and MT series) issued prior to 1 July 1992.²⁵⁴

38. To distinguish them from the taxation rulings issued prior to 1992, the Commissioner introduced a new series of rulings, which related primarily to income tax and FBT public rulings. This series is known as the TR (Taxation Ruling) and the MT (Miscellaneous Taxation ruling) series.²⁵⁵

39. The Commissioner also wished to create a new classification of public rulings that dealt with smaller, more specific issues. These public rulings were called taxation determinations (the TD series) and are designed to complement the longer and more complex public rulings in the TR and MT series. As taxation determinations are public rulings, they are subject to the same conditions for issue as those public rulings in the TR series.

²⁵² Income tax law is defined under the TAA to mean a law under which is worked out the extent of liability for income tax, withholding tax, mining withholding tax, Medicare levy, or franking deficit tax.

²⁵³ An arrangement is defined broadly as a scheme, plan, action, proposal, course of action or conduct, transaction, agreement, understanding, promise or undertaking.

²⁵⁴ 1 July 1992 was the date public rulings legally came into force (see later in this Appendix for the treatment of taxation arrangements before 1 July 1992).

²⁵⁵ Note: there is a difference between MT taxation rulings issued pre 1 July 1992 compared to post 1 July 1992. MT rulings issued pre 1 July 1992 are not legally binding on the ATO. MT rulings issued post 1 July 1992 are legally binding on the ATO.

40. Since 1992, the Commissioner has issued three further series of public rulings. These are:

- Goods and Services Tax Rulings (GSTR);
- Product Rulings (PRs); and
- Superannuation Guarantee Rulings (SGRs).

Differences between public rulings and taxation rulings issued prior to 1 July 1992

41. The public rulings (TR and TD series) are in many respects similar to taxation rulings (IT and MT series) issued prior to 1992, as both articulate the Commissioner's interpretation of the income tax and FBT laws. Broadly the principal difference between taxation rulings issued prior to 1992 and public rulings, relates to the degree to which the advice contained in the ruling is binding on the Commissioner.

42. Unlike taxation rulings issued prior to 1992 which were 'administratively binding' on the Commissioner,²⁵⁶ public rulings are 'legally binding'²⁵⁷ on the Commissioner (note that public rulings are legally binding on the Commissioner only as to the way in which a tax law applies to a person or a class of persons in relation to an arrangement or a class of arrangements). The criteria used to assess whether a taxation ruling is legally binding are outlined later in this Appendix. The difference between 'administratively binding' and 'legally binding', and hence the difference between public rulings and taxation rulings issued prior to 1992 is discussed below.

43. Under a legally binding ruling, in the event that there is a change in the law, or the ATO's position in relation to a particular matter changes, the taxpayer is protected in respect of what he or she has done up to the date of that change. This means that if a taxpayer relies on a legally binding ruling that has later been changed and, based on the earlier legally binding ruling, underpaid taxation, the taxpayer **will not** be liable for the shortfall prior to the later, legally binding ruling.

²⁵⁶ 'Administratively binding' is described later in this section of the Appendix.

²⁵⁷ 'Legally binding' means that the Commissioner is bound under legislation to adhere to the advice contained in his public, private and oral rulings. This issue is discussed further later in this section of the Appendix.

44. Technically, under a taxation ruling that is ‘administratively binding’, if a taxpayer relies on an administratively binding ruling that has later been changed and, in reliance on the earlier administratively binding ruling, underpaid taxation, the taxpayer **may** be liable for the shortfall prior to the later legally binding ruling. However in practice, the Commissioner has not generally exercised his option to retrospectively collect underpaid taxation in this situation.

45. Consequently, there is little difference in practical terms between public rulings and taxation rulings issued prior to 1 July 1992.

Taxpayers’ public ruling responsibilities

46. Taxpayers are not bound to follow public rulings in preparing their returns, as public rulings are simply the Commissioner’s interpretation of the tax law. However, a taxpayer may be subject to penalty tax if there is a tax shortfall where they have made a false or misleading statement, not taken a reasonably arguable position²⁵⁴ on a particular issue, or if they had applied to the Commissioner for a private ruling and made a statement treating an issue in a different way than the private ruling.

47. A taxpayer is not able to directly object to a public ruling. This is because public rulings are not specific to a particular person in relation to a specific arrangement. However, if a taxpayer disagrees with a public ruling that applies to them, he or she can request a private ruling on how the law applies to his or her particular circumstances and, if the ruling is adverse, pursue the objection and appeal rights available in respect of private rulings.²⁵⁵ A further option is for a taxpayer to lodge an objection against the relevant assessment.

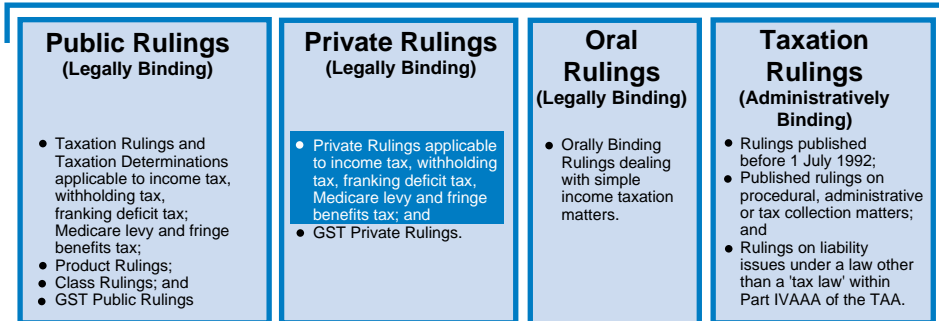
²⁵⁴ A matter is reasonably arguable if it would be concluded, in the circumstances and having regard to relevant authorities, that what is argued for is at least as likely to be correct as incorrect. A relevant authority includes: an income tax law; material for the purposes of s. 15 AB(1) of the *Acts Interpretation Act 1901*; a decision of a court; or a public ruling. Source: 2001 Master Tax Guide.

²⁵⁵ s. 14ZAZA of the TAA. The ATO advised that it had advice from the Attorney-General’s Department to this effect.

Private Rulings (1992)

48. Private rulings are a specific type of taxation ruling that exists under the rulings provisions contained in Parts IVAAA and IVAA of the TAA. The diagram below highlights private rulings introduced in 1992.

Taxation Rulings



Source: ANAO analysis

What is a private ruling?

49. A private ruling is the Commissioner's written opinion on the way in which the tax laws apply to an arrangement a taxpayer has entered into after 1 July 1992, or proposes to enter into after 1 July 1992. Private rulings were originally introduced to:

*assist taxpayers who are uncertain about the tax effect of an arrangement that is proposed, commenced or completed and who wish to obtain a ruling from the Commissioner on this question before the assessment process is complete. It enables taxpayers to order their affairs with a degree of certainty about their tax implications before they embark or whilst they are embarking, upon courses of conduct, the tax implications of which may not be known for a considerable time.*²⁶⁰

50. The essential difference between a public ruling and a private ruling is that private rulings deal with specific arrangements that are proposed, or have been entered into or completed by a particular taxpayer (the 'rulee'). Accordingly, the matters covered by a private ruling are specific to the:

- rulee;
- tax law;
- year of income; and
- arrangement dealt with in the ruling.

²⁶⁰ *FC of T v McMahon & Anor* 97 ATC 4986 at 4989 per Lockhart J.

51. Conversely, public rulings can be applicable to large numbers of taxpayers and can cover numerous taxation arrangements (see earlier section on public rulings).

52. Unlike public rulings, the Commissioner will only issue a private ruling in response to a taxpayer's request for a ruling on a specific income or FBT arrangement. The Commissioner is required to respond to a taxpayer's application for a private ruling, except in the following circumstances:

- where there is an existing private ruling on the matter sought to be ruled on;
- where the matter sought to be ruled on has been decided for the purposes of an assessment issued by the Commissioner;
- where a tax audit, of which the rulee has been informed, is being carried out and the Commissioner will be required to decide the matter sought to be ruled on;
- where the application is frivolous or vexatious or the rulee does not seriously contemplate carrying out the arrangement in question;
- where the rulee has not given sufficient information; and
- where, in the Commissioner's opinion, it would be unreasonable to comply with the application.

Taxpayers' private ruling responsibilities

53. Taxpayers are not bound to follow private rulings in preparing their returns, as private rulings are simply the Commissioner's interpretation of the tax law in relation to a particular arrangement for a particular taxpayer. However, a taxpayer may be subject to penalty tax if there is a tax shortfall where they have made a false or misleading statement, not taken a reasonably arguable position on a particular issue, or had made a statement treating an issue in a different way than the private ruling given by the Commissioner.²⁶¹

²⁶¹ See earlier footnote for an outline of Reasonably Arguable Positions.

54. A taxpayer (to whom a private ruling has been issued) may object against an unfavourable private ruling in the same way as an objection can be lodged against an assessment.²⁶² This is provided that an assessment has not already been made in respect of the arrangement in the year of income to which the ruling relates.²⁶³ If an assessment has been issued already on the arrangement, the issues covered in the ruling are reviewable by objecting to the assessment. In both of these circumstances, if the objection is disallowed, the rulee may seek review of the objection decision by the AAT or appeal to the Federal Court against the decision.²⁶⁴

Other types of public and private rulings

Product rulings (1998)

Taxation Rulings

Public Rulings (Legally Binding)	Private Rulings (Legally Binding)	Oral Rulings (Legally Binding)	Taxation Rulings (Administratively Binding)
<ul style="list-style-type: none"> • Taxation Rulings and Taxation Determinations applicable to income tax, withholding tax, franking deficit tax; Medicare levy and fringe benefits tax; • Product Rulings; • Class Rulings; and • GST Public Rulings 	<ul style="list-style-type: none"> • Private Rulings applicable to income tax, withholding tax, franking deficit tax, Medicare levy and fringe benefits tax; and • GST Private Rulings. 	<ul style="list-style-type: none"> • Orally Binding Rulings dealing with simple income taxation matters. 	<ul style="list-style-type: none"> • Rulings published before 1 July 1992; • Published rulings on procedural, administrative or tax collection matters; and • Rulings on liability issues under a law other than a 'tax law' within Part IVAAA of the TAA.

Source: ANAO analysis

55. Product rulings²⁶⁵ are public rulings that set out the Commissioner's opinion on the tax consequences of schemes marketed to groups of taxpayers as tax-effective arrangements. These rulings were designed to provide some level of protection to taxpayers, by providing certainty that the tax-effective arrangements proposed by promoters comply with the Commissioner's interpretation of the taxation law. However, product rulings were not designed to give taxpayers comfort regarding the commercial viability of the arrangements.

²⁶² That is, using the procedures set out in Part IVC of the TAA (see subsection 14ZAZA(1)). If the ruling relates to a proposed arrangement and the year in which the arrangement was to have taken place has come and gone, no right of objection is available as the ruling will no longer be capable of having legal effect and hence the rulee cannot be 'dissatisfied' with the ruling within the meaning of subsection 14ZAZA(1) (*CTC Resources NL v FC of T 94 ATC 4072* (Federal Court)).

²⁶³ See subsection 14ZAZA(2) of the TAA.

²⁶⁴ See s. 14ZZ of the TAA. The tribunal or court is limited to the facts that constitute the arrangement as identified by the Commissioner in the ruling in considering the correctness or otherwise of the objection decision. If the facts as identified are inadequate to permit this determination, the matter must be referred back to the Commissioner for the Commissioner to make further enquiries and issue a new ruling on the basis of the information obtained (see *CTC Resources NL v FC of T 94 ATC 4072* (Federal Court), *Payne v FC of T 94 ATC 4149* (Federal Court), *FC of T v McMahon & Anor 97 ATC 4986* (Federal Court)).

²⁶⁵ Product rulings are identified as the PR series of public rulings.

56. Prior to 1998, investors relied heavily on a promoter's assessment on the tax consequences of a taxation arrangement. However, if the Commissioner's view of the law did not accord with the promoter's assessment, the investors and not the promoter would receive tax penalties. The intention of product rulings was to provide both promoters and investors with certainty about the taxation consequences of particular investment products and schemes.

57. In July 1998, the Commissioner introduced product rulings to rule publicly on the availability of claimed tax benefits from 'products'. A 'product' refers to an arrangement in which a number of taxpayers individually enter into substantially the same transactions with a common entity or a group of entities. For example a 'product' may be described as a primary production scheme, investment, arrangement, a tax effective arrangement, a financial arrangement, or an insurance arrangement. Often the 'product' is offered to the general public by a promoter²⁶⁶ through a memorandum or prospectus, but may be forwarded to individuals on an invitation basis.²⁶⁷

58. Although product rulings are a type of public ruling they also have specific features that distinguish them from public rulings set out in the TR and TD series. These differences include:

- a promoter, or the persons involved as principals in carrying out the arrangement (but not the participants), make written applications for a product ruling relevant to their particular scheme;²⁶⁸
- the Commissioner will not issue a product ruling for a period exceeding three years from the end of the income year in which it was made, unless exceptional circumstances exist;
- product rulings are prospective. Therefore, product rulings only apply to arrangements entered into after the date the ruling is made; and
- product rulings specify the date they are to be withdrawn and cease to have effect.²⁶⁹

²⁶⁶ A promoter is the person responsible for formulating and promoting the product to the product participants. The promoter must not be a participant in the product (PR 1999/5).

²⁶⁷ PR 99/95 *Income tax and Fringe Benefits Tax: product rulings system*.

²⁶⁸ PR 99/95.

²⁶⁹ A product ruling applies to all persons within a specified class who enter into the specified arrangement during the term of the ruling. Thus a product ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to the withdrawal of the ruling, (PR 99/95).

59. The Commissioner will not issue a product ruling in the following circumstances:

- the application is frivolous or vexatious;
- insufficient information has been provided to the Commissioner about the product despite a request by the Commissioner for additional information; and
- in the opinion of the Commissioner it is unreasonable to comply with the application given the extent of resources available or other relevant matters.²⁷⁰

60. The Commissioner may withdraw a product ruling if the arrangement is materially different from the arrangement outlined in the original product ruling application. In any event, if the arrangement is implemented in a way that is materially different from the way it was represented in the product ruling request, the product ruling provides no protection to the participants.

Class rulings (2001)

Taxation Rulings

Public Rulings (Legally Binding)	Private Rulings (Legally Binding)	Oral Rulings (Legally Binding)	Taxation Rulings (Administratively Binding)
<ul style="list-style-type: none"> • Taxation Rulings and Taxation Determinations applicable to income tax, withholding tax, franking deficit tax; Medicare levy and fringe benefits tax; • Product Rulings; • Class Rulings; and • GST Public Rulings 	<ul style="list-style-type: none"> • Private Rulings applicable to income tax, withholding tax, franking deficit tax, Medicare levy and fringe benefits tax; and • GST Private Rulings. 	<ul style="list-style-type: none"> • Orally Binding Rulings dealing with simple income taxation matters. 	<ul style="list-style-type: none"> • Rulings published before 1 July 1992; • Published rulings on procedural, administrative or tax collection matters; and • Rulings on liability issues under a law other than a 'tax law' within Part IVA of the TAA.

Source: ANAO analysis

61. During the course of the audit, the ATO indicated that it intended to issue a new type of public ruling. These rulings, known as class rulings,²⁷¹ enable the Commissioner to provide legally binding advice in response to a request from an entity seeking advice about the application of the tax law to a large number of persons in relation to a particular arrangement. They are designed to meet a need to provide rulings to people in circumstances that were not readily met by the established private rulings systems.

²⁷⁰ This provision would not usually apply except in the case of protracted and very time-consuming matters to which the Commissioner cannot devote resources.

²⁷¹ Class rulings are identified by the CR series.

62. As at February 2001, there had not been any class rulings issued.

GST public and private rulings (1999)

Taxation Rulings

Public Rulings (Legally Binding)	Private Rulings (Legally Binding)	Oral Rulings (Legally Binding)	Taxation Rulings (Administratively Binding)
<ul style="list-style-type: none"> • Taxation Rulings and Taxation Determinations applicable to income tax, withholding tax, franking deficit tax; Medicare levy and fringe benefits tax; • Product Rulings; • Class Rulings; and • GST Public Rulings 	<ul style="list-style-type: none"> • Private Rulings applicable to income tax, withholding tax, franking deficit tax, Medicare levy and fringe benefits tax; and • GST Private Rulings. 	<ul style="list-style-type: none"> • Orally Binding Rulings dealing with simple income taxation matters. 	<ul style="list-style-type: none"> • Rulings published before 1 July 1992; • Published rulings on procedural, administrative or tax collection matters; and • Rulings on liability issues under a law other than a 'tax law' within Part IVAAA of the TAA.

Source: ANAO analysis

63. Unlike other types of public and private rulings which derive their legislative authority from Part IVAA and Part IVAAA of the TAA, GST public and private rulings have their legislative foundation in s. 37 of the TAA. As GST taxation rulings operate under their own separate piece of legislation,²⁷² there are significant differences between GST private and public rulings and other public and private rulings.

64. For example, the definition of a public versus a private GST ruling is far broader than under the income and FBT system, which has specific criteria for issuing and reviewing public and private rulings (see earlier in this Appendix). Under the GST rulings system a private ruling is defined to mean a ruling issued to a particular entity, while a GST public ruling is defined as any GST ruling other than a GST private ruling. The criteria common to both GST private and public rulings that need to be met for a GST ruling to be legally binding are:

- it has to alter a previous ruling that applied to a taxpayer; and
- relying on the previous ruling, the taxpayer must have either underpaid indirect tax, or been overpaid, a refund before the alteration; and
- the taxpayer did not contribute to the giving, or continuing in force of the earlier ruling by a misstatement or by suppressing a material fact.

65. The GST ruling is made legally binding by underpaid indirect tax ceasing to be payable or an overpaid refund being taken to have been payable.

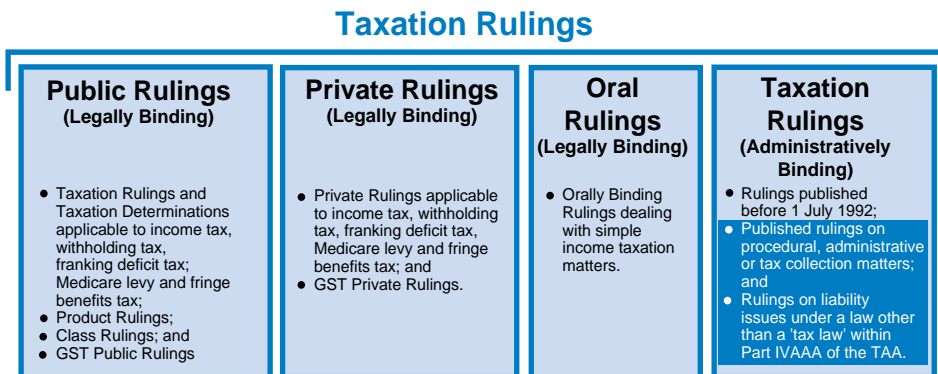
²⁷² The GST rulings system is closely based on the old sales tax rulings provision. This provision was made defunct with the implementation of the GST.

66. In practice, GST taxation rulings are far broader than other taxation rulings. All written advice given or published on the GST by the ATO is binding. The exceptions are the provision of oral advice, and a taxation assessment.²⁷³ This means that material such as GST fact sheets, information booklets, advice manuals, bulletins and product manuals bind the Commissioner as GST public rulings. In addition to this binding advice, the ATO has established two series of ‘formal’ GST public rulings. These are:

- Goods and Services Tax rulings (the GSTR series); and
- Goods and Services Tax determinations (the GSTD series).

67. The systems and processes used to produce these two series of taxation ruling, closely resemble those used for taxation rulings dealing with income and FBT taxation rulings.

Other Administratively Binding Taxation Rulings



Source: ANAO analysis

68. Apart from the public rulings which are legally binding on the Commissioner, and taxation rulings issued prior to 1992 which are administratively binding, there are two other categories of administratively binding public rulings. These are as follows:

- *Published rulings on procedural, administrative or tax collection matters.* Any taxation ruling that comments specifically on the ATO’s administration of the taxation rulings system, that is, a taxation ruling which deals with procedural, administrative or tax collection matters, is administratively binding on the Commissioner. Also, any part of a TR or GST public ruling that deals specifically with a procedural,

²⁷³ GSTR 1999/1. An addendum to this ruling states that GST practice statements and case decision summaries will not be rulings for this purpose.

administrative or a tax collection matter is also considered to be administratively binding on the Commissioner.²⁷⁴

- *Rulings on liability issues under a tax law other than a 'tax law' within Part IVAAA of the TAA.* The Commissioner is able to publish a taxation ruling on liability issues on any of the laws he administers. This includes areas such as superannuation, and used to include the Child Support Agency. However, he is only able to publish legally binding public rulings on the laws covered by Part IVAAA of the TAA (i.e. the laws governing public rulings).²⁷⁵ As a consequence, all taxation rulings issued by the Commissioner that do not fall under Part IVAAA, and are not GST taxation rulings,²⁷⁶ are considered to be administratively binding. The series of current taxation rulings that fall into this category include: Miscellaneous Taxation Rulings (MT); Superannuation Contribution Determinations (SCD); Superannuation Contribution Rulings (SCR); Superannuation Guarantee Determinations (SGD); and Superannuation Guarantee Rulings (SGR). The processes to produce these taxation rulings are similar to those of TR and TD public rulings.

Taxation Rulings

Public Rulings (Legally Binding)	Private Rulings (Legally Binding)	Oral Rulings (Legally Binding)	Taxation Rulings (Administratively Binding)
<ul style="list-style-type: none"> • Taxation Rulings and Taxation Determinations applicable to income tax, withholding tax, franking deficit tax; Medicare levy and fringe benefits tax; • Product Rulings; • Class Rulings; and • GST Public Rulings 	<ul style="list-style-type: none"> • Private Rulings applicable to income tax, withholding tax, franking deficit tax, Medicare levy and fringe benefits tax; and • GST Private Rulings. 	<ul style="list-style-type: none"> • Orally Binding Rulings dealing with simple income taxation matters. 	<ul style="list-style-type: none"> • Rulings published before 1 July 1992; • Published rulings on procedural, administrative or tax collection matters; and • Rulings on liability issues under a law other than a 'tax law' within Part IVAAA of the TAA.

Oral Rulings (2000)

Source: ANAO analysis

²⁷⁴ This is because of the legally binding nature of rulings related to liability.

²⁷⁵ The areas of taxation law covered by Part IVAAA of the TAA relate to income tax and fringe benefits tax issues.

²⁷⁶ As noted earlier, GST taxation rulings are defined under a separate piece of legislation to other taxation rulings. This is s. 37 of the TAA.

69. In August 1998, the Government announced plans to provide taxpayers with a legal right to rely on oral advice provided by the ATO. Oral rulings were introduced in mid 2000. At this stage, oral rulings are only issued to taxpayers with simple income tax affairs, in regard to a simple taxation inquiry. Taxpayers excluded from applying for oral rulings are business taxpayers, taxpayers who withhold tax, and taxpayers whose assessable income includes an amount in respect of a non-cash benefit. It is also expected that oral rulings will be restricted to the Individuals Non-Business and Superannuation business lines.

70. The recipient of an oral ruling is not able to directly challenge the ruling.²⁷⁷ However, the taxpayer may apply for a private ruling on how the law applies to their particular circumstances and, if the ruling is adverse, pursue whatever review rights are available in respect of the private ruling.

71. The binding oral advice system comprises two information technology (IT) systems. These are as follows:

- Online Reference Material System (ORMS). This system uses a strict set of procedures, questions and criteria to ensure an ATO officer is able to issue binding oral advice based on the facts provided by the applicant (taxpayer). The system also provides checks to ensure that the ATO officer is authorised to issue an oral ruling. Proof of identity checks of the taxpayer are also carried out using this system, to ensure the oral ruling is issued to the correct taxpayer.
- Binding Oral Advice System (BOARS). This is the system used by ATO officers to finalise and issue the oral ruling. Data input into ORMS is transferred automatically to BOARS. BOARS is based on the ATO mainframe and generates an eight-digit number which is provided to the taxpayer to indicate an oral ruling has been issued. This control is designed to safeguard the ATO and the taxpayer, as it provides assurance that the oral ruling has been correctly issued in accordance with all procedures and controls.

72. As at November 2000, the ATO had generated only one oral ruling, in the INB business line.

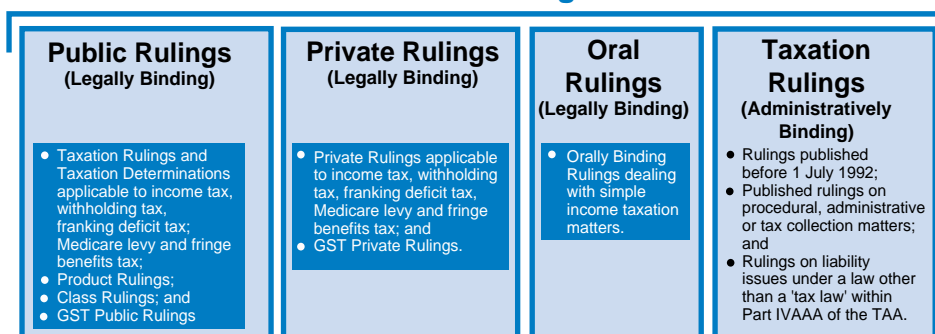
²⁷⁷ See s. 360-120(4) of the TAA which provides that an oral ruling is not a taxation decision for the purposes of Part IVC of the Act.

73. The ANAO notes that the oral ruling system has several better practice features including well-structured systems controls, automatic taxpayer identity checks and the generation of a unique number to ensure the validity of an oral ruling. We also note that the ATO has designed specific training for staff and has developed supporting material regarding the operation of the IT systems.

The extent to which public, private and oral rulings are binding on the Commissioner

74. Advice published by the Commissioner in either a public, private or oral ruling is ‘legally’ binding on the Commissioner. This represented a change to the taxation rulings system prior to 1 July 1992. The diagram below illustrates the taxation rulings that are legally binding.

Taxation Rulings



Source: ANAO analysis

75. As discussed earlier in this Appendix, the Commissioner has stated that he is ‘bound administratively’ to the advice he provides in his taxation rulings. It is ATO policy to stand by what it has said in taxation rulings issued prior to 1 July 1992.²⁷⁸ However, since the introduction of SAA legislation in 1992, Part IVAA and Part IVAAA of the TAA bind the Commissioner ‘legally’ to the advice contained in his public, private and oral taxation rulings.

²⁷⁸ With the exceptions outlined earlier in this Appendix.

76. Like taxation rulings issued prior to 1 July 1992, specific criteria must be met before a public, private or oral taxation ruling is considered to be binding on the Commissioner. Advice on income and FBT matters contained within a public private or oral taxation ruling is legally binding on the Commissioner, if the ruling is favourable to a taxpayer²⁷⁹ and provided there have been no changes in the taxation law. That is, if:

- the public ruling applies to a person in relation to an arrangement; and
- the tax law applies to the person in relation to the arrangement in a different way; and
- the final income tax or FBT under an assessment would (apart from the effect of the public ruling provisions) be more than it would have been if that law applied in the ruled way;

the assessment and the final income tax or FBT must be what they would have been if the law applied in the ruled way.²⁸⁰

Extent to which public rulings are binding -issues specific to public rulings

77. Public rulings are legally binding on the Commissioner only as to the way in which a tax law applies to a person or class of persons in relation to an arrangement or class of arrangements. A public ruling is not legally binding on the Commissioner in relation to the principles or reasoning stated in it.²⁸¹

Extent to which private rulings are binding—issues specific to private rulings

78. A private ruling does not bind the Commissioner on the way in which the tax law applies to any other person in relation to an arrangement. Furthermore, a private ruling does not bind the Commissioner where the actual facts of the arrangement entered into by the rulee are materially different from those facts covered by the ruling.

²⁷⁹ If there are conflicting rulings, or a taxation ruling conflicts with the taxation law, the Commissioner is bound to assess in accordance with a ruling that would result in a lesser tax liability than an assessment in accordance with the terms of the law or another ruling.

²⁸⁰ s. 170BA and s. 170BD of the *Income Tax Assessment Act 1936* and s. 74A of the *Fringe Benefits Tax Assessment Act 1986*.

²⁸¹ *Bellinz Pty Limited v FC of T* 98 ATC 4399 at 4413 (Federal Court) per Merkel J.

1993–2001: Developments in the Taxation Rulings System Reports

79. In our discussion of reports and proposals in this section, we refer only to recommendations dealing with taxation rulings.

Report No. 326 of the Joint Committee of Public Accounts (JCPA)—An Assessment of Tax

80. In November 1993 the JCPA²⁸² tabled Report No. 326, *An Assessment of Tax*. The report detailed the findings of the Committee's wide-ranging review of the administration and operation of the ATO. The JCPA's review had been in response to changes in tax administration during the previous seven years, including the move to full self-assessment, the expansion of taxpayer audits, and public disclosure of administrative problems within the ATO. The JCPA report included 148 recommendations for legislative, policy or administrative changes, sixteen of which related to the ATO's rulings system. Appendix 2 focuses specifically on the implementation of these recommendations.

'Tax reform not a new tax a new tax system', The Howard Government's Plan for a new tax system (August 1998)

81. The Government's report *Tax Reform: not a new tax a new tax system* (called the ANTS Report), outlined a series of comprehensive changes to the taxation system. A major conclusion of the ANTS report was that 'the current system of binding rulings has several shortcomings'²⁸³ and the report made the point that it was the Government's intention for the rulings system to be made more comprehensive and its scope more certain. It was stated also that Government would examine a system of user charges for private rulings and other binding advice given to large business taxpayers in complex cases, an idea that was first raised in the Asprey report of 1975 (see earlier in this Appendix). The report concluded that the proceeds of the charges should be re-invested into the rulings function.

²⁸² With the establishment of the *Auditor-General Act 1997*, the Committee became the Joint Committee of Public Accounts and Audit. Prior to that time, it was known as the Joint Committee of Public Accounts.

²⁸³ *Tax reform not a new tax a new tax system: The Howard Government's Plan for a New Tax System*, op. cit.

82. Specifically, the ANTS report proposed measures to improve the certainty and reliability of ATO advice. These measures included:

- introducing a system of binding oral rulings on simple matters that can be resolved for taxpayers over the telephone or via electronic mail;
- broadening the scope of public and private rulings provisions to allow the Commissioner to give a ruling on procedural, administrative or collection matters;
- examining the feasibility of a system of user charges for private rulings given to large business taxpayers in complex cases; and
- improving communication facilities between the ATO and the community, including enhanced use of electronic facilities and modern technology.

Review of Business Taxation—A Tax System Redesigned (September 1999)

83. In August 1998, the Government established a Review of Business Taxation, chaired by Mr John Ralph AO, to consult with business and industry on the possible reforms of the business tax system. A report on the findings of the review (called the *Ralph Review*) was released by the Government on 21 September 1999, along with the Government's decisions on many of the measures covered in the report.

84. The Ralph Review examined, amongst other things, implications of ANTS for Australia's tax administration as well as recommending the Government introduce fee charging for the provision of product rulings and more complex Private Binding Rulings. The recommendations relating to taxation rulings provided, among other things, for:

- The scope of the private and public rulings systems to be expanded to allow the Commissioner to issue rulings on matters of:
 - administration, procedure and collection (a measure consistent with the position outlined in ANTS);
 - ultimate conclusions of fact; and
 - to give the Commissioner a specific power to issue rulings on the potential application of the general anti-avoidance rules set out in Part IVA of the *Income Tax Assessment Act 1936*.
- The ATO to charge a fee for the provision of selected rulings (also a measure proposed in ANTS);
- The ATO to publish, in a form protecting taxpayer privacy and confidentiality, technical decisions and other administrative advice; and

- The penalty provisions to be amended so that taxpayers who decline to follow a private ruling are subject to the same penalty regime as those who decline to follow a public ruling.

85. The report went on to outline that by adopting a ‘fee for service’ rulings system, the ATO would be able to:

- recover some of the resource and administrative costs involved in producing rulings for more complex arrangements;²⁸⁴ and
- develop a more specialised approach that will provide more timely, accurate and consistent rulings.²⁸⁵

86. The Government has not responded to these Ralph Review recommendations. We note though, that the publication recommendation has been overtaken by events in that the ATO has agreed to do this, and more, in light of the recommendations of the Sherman report (discussed below).

Report of an Internal Review of the Systems and Procedures relating to Private Binding Rulings and Advance Opinions in the Australian Tax Office, (August 2000)

87. In May 2000, the Commissioner of Taxation commissioned an independent review of the quality, consistency and integrity of private rulings systems and procedures. This followed the laying of charges against a former senior executive, and media criticism of aspects of the private rulings system. The review was conducted by Mr Tom Sherman, AO.

88. The terms of reference for the review were to assess:

- a. the adequacy of current systems and procedures to achieve consistency and appropriate levels of quality of private rulings;
- b. the adequacy of current systems and procedures to guard against fraud, as outlined in the current ATO Fraud Control Plan; and
- c. to recommend improvements to systems and procedures in order to assure community confidence in the integrity of those systems and procedures.

²⁸⁴ Review of Business Taxation, op. cit., p. 144.

²⁸⁵ *ibid.* p. 145.

89. The report issued publicly on 7 August 2000 made 13 recommendations to improve the ATO's private rulings system. The key recommendations of the Sherman report²⁸⁶ are that the ATO should:

- develop as a matter of urgency a single corporate IT system for ATO technical work that encompasses both management information and authorship requirements;
- issue all private rulings through a central exit registry with each ruling given an identifying number in the one series of numbers for each year;
- publish all private rulings (with taxpayer identifiers deleted) on a public database. This is designed to enhance the transparency of the private rulings system and provide a means to check the authenticity of private rulings;
- only allow authorised officers (with the necessary skills and experience) to prepare and issue private rulings; and
- simplify the Income Tax Advice Manual and bring it up to date as quickly as possible and develop (and keep up to date) equivalent manuals in other areas of tax law.

90. Mr Sherman indicated that all of his recommendations should be implemented by 1 January 2001, with the exception of the implementation of the envisaged IT system. The ATO advised that this IT system should be operational by 30 March 2001 and an end-to-end process for the provision of advice to taxpayers by September 2001.

91. The Commissioner responded to the recommendations in a speech to the Taxation Institute of Australia in November 2000. The ATO is currently implementing a series of changes to processes and controls relating to the provision of taxation advice by the ATO to the public. These changes are described fully in Appendix 4.

Other Taxation Reviews and Review Bodies

Commonwealth Ombudsman

92. In April 1995, the Commonwealth Ombudsman established the position of Special Tax Adviser to investigate complaints about the ATO. One investigation revealed a number of administrative problems with the ATO's rulings systems and processes and prompted the ATO to refine aspects of its taxation rulings administrative processes.²⁸⁷

²⁸⁶ T. Sherman, *op. cit.*

²⁸⁷ Commonwealth Ombudsman, *The ATO and Budplan*, 1998.

Senate Economics References Committee: Inquiry into mass-marketed tax effective schemes and investor protection

93. On 29 June 2000 the Committee commenced an inquiry of mass-marketed tax effective schemes and investor protection. The inquiry focused on: measures designed to promote investor understanding of the financial and taxation implications of tax effective schemes; adequacy of measures for controlling tax effective scheme designers, promoters and financial advisers; and the ATO's approach towards and role in relation to mass marketed tax effective schemes.

94. The Committee released an interim report on 25 June 2001. The Committee's interim report considers the rise of mass marketed schemes in Australia and the ATO's responses. It also explored the ATO's subsequent dealings with the participants of those schemes, especially regarding its use of the anti-avoidance provisions of Part IVA of the *Income Tax Assessment ACT 1936*. The Committee intends to table a final report in the latter part of 2001.

House of Representatives Standing Committee on Employment, Education and Workplace Relations 'Shared Endeavours: An inquiry into employee share ownership in Australia' (September 2000)

95. The Committee examined, among many other issues, the role of the public and private rulings system in aggressive tax planning arrangements, and made a number of recommendations regarding the ATO's system of public and private rulings. The Committee identified a need for:

- any legislation providing for employee share plans to contain a preamble clearly articulating the public policy goals intended by Parliament and for the Commissioner to be required to take notice of, and give effect to, the preambles to such legislation in his rulings in respect of employee share plans (Rec. 17);
- the Government to re-examine the underlying policy of private rulings, and consider options for increasing the transparency of such rulings (Rec. 21); and
- consideration of the feasibility of posting 'sanitised' rulings relating to employee share plans on ATO's Web-site (Rec. 21).

96. As at July 2001, the Government had not responded to the Committee report.

Appendix 2

ATO Implementation of JCPA Recommendations, Report No. 326, 1993—*An Assessment Of Tax*

Introduction

1. On 17 November 1993 the then Joint Committee of Public Accounts²⁸⁸ (JCPA) tabled its Report 326, *An Assessment of Tax*,²⁸⁹ detailing the findings of its inquiry into the operations of the ATO. Sixteen of the Committee's recommendations directly addressed the income tax rulings system (Recommendations 28 to 43 inclusive). A minority report contained alternative views and three recommendations regarding tax rulings.

2. This Appendix outlines the results of the ANAO review of the ATO's implementation of the Report's recommendations relating to the tax rulings system. We recognise the status of the minority report and that the ATO was not required, nor indeed empowered²⁹⁰ to implement recommendations that were not endorsed by Government. (None of the recommendations of the minority report was endorsed by Government.) We took the opportunity to review the minority report's relevant recommendations and the ATO has provided information in relation to those recommendations and issues.²⁹¹ The JCPAA requested that as part of the performance audit, the ANAO report on ATO's implementation of the Report's recommendations pertaining to the rulings system.

²⁸⁸ As noted earlier, the Joint Committee of Public Accounts became the Joint Committee of Public Accounts and Audit in 1998 when it assumed the functions of the Audit Committee of the Parliament and thereby took on a formal role in relation to the activities of the Auditor-General and the ANAO.

²⁸⁹ Joint Committee of Public Accounts, *op. cit.*, p. 3.

²⁹⁰ The ATO also advised us that, in its view, it had no Government mandate to implement the minority report recommendations, as many of these were considered to be outside the scope of the Committee's terms of reference, and inconsistent with the recommendations of the main inquiry.

²⁹¹ We emphasise that the ATO's information should not be interpreted as the ATO's judgement on the merits of the minority committee's policy and legislative recommendations to Government; the Government responded to those recommendations at the time. The ATO information explains the administrative approaches it currently adopts on these matters.

JCPA Recommendations

3. The main conclusions of the Committee in relation to the rulings system were that the Commissioner needed to be more accountable for rulings, and that the fundamental status of rulings as ‘simply the Commissioner’s view of the law’ needed to be affirmed. The Committee’s recommendations addressed issues of policy, legislation and administration. The Government responded to the recommendations on rulings policy and legislation on 23 August 1994 and the ATO responded to the recommendations relating to administration on 20 October 1994.

4. The ATO periodically provided updates on the progress of its implementation of recommendations to the JCPA. The last status report on ATO implementation²⁹² was submitted to the JCPAA on 20 October 1998.

Assessment of status of recommendations

5. The ANAO’s assessment of the implementation status of the relevant recommendations of Report 326 is depicted in Table 4 below. We then discuss each recommendation in detail, thus providing for ease of understanding:

- the original recommendation and the initial response by Government and/or the ATO;
- each recommendation’s implementation status as given in the ATO’s last status report; and
- ANAO comment on the current status of the recommendation and a brief statement of any relevant issues.

6. The final section of the Appendix summarises the results of our review.

²⁹² Entitled *Final Report on the Implementation of the Recommendations of Report 326*.

Table 4**Summary of implementation status of Report 326's recommendations relating to income tax rulings system**

JCPA Rec No	Type of Rec *	Current ATO Implementation Status			
		Full	Partial	None	N/A **
28	Admin	✓			
29	Admin	✓			
30	Admin	✓			
31	Policy				✓
32	Policy	✓			
33	Policy	✓			
34	Admin	✓			
35	Policy	✓			
36	Admin		✓		
37	Policy				✓
38	Admin				✓
39	Policy				✓
40	Policy				✓
41	Policy	✓			
42	Admin		✓		
43	Admin		✓		
MINORITY REPORT					
1	Legislation				✓
2	Legislation				✓
3	Legislation				✓

* The JCPA recommendations for the income tax rulings system involved changes being made to policy and legislation, or ATO administration.

** Recommendations classified as 'N/A' (i.e.; not applicable) were not supported by the Government or by the ATO and the Government, and therefore were not required to be implemented.

Recommendation 28 *The Commissioner of Taxation acknowledge in a public ruling the existence of alternative interpretations of the law to that which has been taken in the Ruling.*

Recommendation 29 *Where an acknowledgment of alternative interpretations of the law is included in a public ruling, the Commissioner of Taxation outline the basis of those alternative views.*

7. ATO supported these recommendations, stating that steps were being undertaken to formalise a methodology to implement them in 1994–95. The last status report stated that the Taxation Rulings Manual had been amended to include instructions to public rulings authors and approving officers, which reflected the recommended practices.

8. ANAO investigations verified that these recommendations have been implemented. We found that the current Taxation Rulings Manual which is a guide for authors of public rulings contains comprehensive instructions for providing alternative interpretations in public rulings, where appropriate. We also saw examples of recent public rulings acknowledging alternative views.

Recommendation 30 *Where the Commissioner of Taxation is provided with arguments evidencing a serious doubt as to the validity of an interpretation in a ruling, the Commissioner refrain from making a public Ruling pending the clarification of the law.*

9. ATO partially supported the recommendation. It said that it would not usually refrain from issuing a ruling on the grounds that the correct application of the relevant law is contentious, but that it would inform Government of instances where the policy intention of the law is unclear or where the ATO's view is inconsistent with the policy intention.

10. The last status report indicated that the Taxation Rulings Manual outlined the ATO policy on this matter and indicated that the recommendation had been put into effect.

11. During the audit the ATO advised that where taxpayers have raised equally tenable positions about the interpretation or application of the law, but which differ from the Commissioner's, the Commissioner usually seeks to have the issue clarified in the courts. We also note that there have been some circumstances²⁹³ where the Commissioner has refrained from issuing a public ruling, pending clarification of the specific issue.

12. On the basis of the ANAO's examination of the Manual and field work examination we conclude that the recommendation has been implemented.

Recommendation 31 *All public rulings be subject to formal approval by the proposed Australian Taxation Commission prior to their release.*

13. This recommendation was made redundant by the Government's decision not to accept the Committee's recommendation to establish the Australian Taxation Commission. The ATO stated, however, that the recommendation's purpose, to establish high level supervision of the public rulings program and to facilitate external advice on highly contentious subjects, would be met by new arrangements for settling public rulings.

²⁹³ An example is the matter of the value of trading stock, as discussed in the ATO Practice Statement PS 1999/6.

14. In the audit we found that the drafting and approval processes for public rulings were exhaustive. The drafting and approval processes involved wide consultations with affected taxpayers and/or their representatives and in some cases examination by the relevant public rulings panel (whose membership consists of very senior technical officers in the ATO and eminent external tax professionals). Overall, ANAO concludes that the ATO has undertaken significant measures to ensure that the process of preparing and issuing public rulings provides for extensive technical review and community consultation. We consider that the intent of the recommendation has been met.

Recommendation 32 *For the purposes of Section 14ZAAJ of the Taxation Administration Act 1953, a public ruling be defined to have been published only when notice of the ruling is published in the Commonwealth Gazette.*

Recommendation 33 *A notice of publication for the purposes of the gazettal of public rulings include the reference number and subject heading of the ruling, together with a brief general description of the ruling's effect, along the lines of the current head note to public rulings.*

15. The Government accepted the recommended changes to the policy for publishing public rulings. In October 1998 the ATO indicated that amendments to the *Taxation Administration Act* implementing Recommendations 32 and 33 were included in the *Taxation Laws Amendment Act (No 1) 1995*, and had taken effect from 1 July 1995.

16. The audit verified that the ATO's processes for issuing public rulings involve publication of the ruling in the *Commonwealth Gazette*. As recommended, the ATO notices of rulings publication include the reference number, subject heading of the ruling, and a brief description of the ruling's effect. The ANAO considers that Recommendations 32 and 33 have been implemented.

Recommendation 34 *The Australian Taxation Office make available, on subscription, access to the information database on which the Commissioner's public rulings are maintained.*

17. The ATO supported this recommendation and agreed to implement it as far as possible, given that at the time only the most recent rulings were retained on an electronic database. The ATO noted administrative changes being made to facilitate greater internal access to a range of technical and legal information and expressed some misgivings about possible security implications of allowing public access to ATO information databases. As a result, the ATO considered external access to its technical and legal information an issue for resolution in the long-term.

18. In its last status report, the ATO informed the JCPAA that Recommendation 34 had been implemented in full. As of April 1997, the ATO had included on its Web site public access, free of charge, to its database of all draft and final public Rulings. This access enabled taxpayers to identify and view, in full, all public rulings issued by the ATO. According to the ATO, research had identified that, compared with subscription databases and other electronic methods, the provision of public Rulings information through an advanced search facility on its Web-site would be the most efficient and cost-effective method of enabling public access to this material.

19. ANAO examined the public rulings information database currently available to the public via the ATO Web-site (covering public rulings, GST public rulings and product rulings)²⁹⁴, and agrees that the ATO has fully implemented this recommendation. ATO has promoted the user-friendliness of its web-site search facilities for public rulings and the accessibility of the information on public rulings with clear guidelines to assist users to navigate their way. As to the accessibility of public rulings, we also draw attention to the results of the ANAO survey of the clarity of rulings. One of the questions we asked users of public rulings was how readily accessible rulings were. The survey results are set out in Appendix 6 and are mentioned, where relevant, in Chapter 3.

20. Legally, GST general public information is classified as a public ruling. We note that much of this general public information is accessible to the public on the ATO Web-site, in accordance with the spirit of Recommendation 34.

Recommendation 35 *Full versions of all public rulings issued by the Commissioner of Taxation be tabled in Parliament within five sitting-days of notice of their publication being included in the Commonwealth Gazette.*

21. The Government endorsed this recommendation, but increased the protection to the authority of the Commissioner by making the tabled rulings not subject to disallowance by the Parliament. In 1998, the ATO indicated in its last status report that all public rulings gazetted after 1 July 1995 had been tabled in both Houses of Parliament within five sitting days of gazettal.

22. The ANAO confirmed the mechanisms for the tabling of public rulings (public binding rulings, GST public rulings and product rulings) in Parliament within five sitting days of gazettal. The ANAO considers that Recommendation 35 has been implemented.

²⁹⁴ Product rulings were introduced in 1998 and GST public rulings were introduced in 2000. Refer to Appendix 1 of the audit report for an outline of the context and evolution of the rulings system.

23. As mentioned earlier, in formal terms all general, public information on GST is a public ruling. This ‘information type’ of GST public ruling is quite different in form from the formal GST public ruling prepared by the ATO involving the GST public rulings panel, for example. The ANAO notes that the ‘information type’ of GST public ruling is not gazetted or tabled in Parliament.

24. We recognise that the introduction of the GST public rulings regime postdated Recommendation 35 which was designed to facilitate Parliamentary and public awareness and scrutiny of public rulings—and therefore accountability of the Commissioner. We do not consider it appropriate that the ATO be required to table in Parliament and publish in the Commonwealth Gazette its publicly-released information relating to GST (its ‘information type’ of GST public rulings). Given the extent to which the ATO makes its publicly-released GST information accessible to the public, we consider that the ATO has adequately met, in practical terms, the Recommendation’s intent for GST public rulings.

Recommendation 36 *All private rulings be maintained upon a computer database and made readily accessible to the public in a format which does not identify the individual taxpayer.*

25. The ATO supported the underlying notion for administrative changes to publicise private rulings, but expressed a number of concerns over possible implications of publishing ‘sanitised’ private rulings. First, the process of placing all private rulings on a database was viewed as time and resource intensive, with little potential to add considerably to the existing body of knowledge available to the public. Thus, the ATO viewed only the most important and precedential of the private rulings as warranting placement on a reference database, even for internal use. Second, the ATO was concerned to protect the identity of taxpayers when disclosing the contents of private rulings.

26. In the last status report ATO informed the JCPAA that this recommendation had been partially implemented. ATO advised that it continued to refine the system that captures issues and decisions arising in private rulings, and had planned to introduce processes to ensure the consistency and accuracy of rulings information. The ATO argued, however, that it was unable to release private rulings information to the public until it was confident that the information was consistent and accurate, and did not compromise the privacy of rulees.

27. The ATO advised that progress to that stage included plans for: summaries of private rulings decisions to be available on *ATO law*, an internal database; final stages of development of a ‘gatekeeper’ to ensure that decisions placed on the database were correct; and a proposal for public access to a subset of the material on *ATO law*. The expected completion of these plans was December 1998. The ATO advised the

ANAO in April 2001 that the system of Case Decision Summaries (summaries of decisions on ATO interpretative issues—including private rulings—with precedential value) commenced in 1998.

28. Since the last status report (October 1998), the ATO has made little progress for public access to private rulings. The ATO has produced, in relatively small numbers, Case Decision Summaries. These are published internally on *ATO law* and, unless not prudent to do so, are made available to the public on the ATO web-site *ATO assist*. The ANAO notes that between 30 June 1998 and 1 October 2000, there have been 23 422 private rulings registered on its Case Reporting System.²⁹⁵ However, the Sherman report found that between the date the ATO began producing Case Decision Summaries in November 1998 and when the report was completed in early August 2000, only 379 had been recorded on *ATO law*. Even recognising the selective nature of Case Decision Summaries (because they focus on precedential cases), the ANAO believes this is an inadequate response to the above recommendation.

29. At the time of the audit and prior to the implementation of the PoA project initiatives, the ANAO found that the ATO had serious weaknesses in its information systems which may have adversely affected the integrity of private rulings and the ATO's ability to manage the private rulings system effectively. We found problems such as dispersed, inefficient and unreliable information systems, production control weaknesses and insufficient integrity measures, all undermining the robustness of the ATO's private rulings system.²⁹⁶

30. At the time of the audit, given the weaknesses in information systems, we consider that the ATO was not in a position at that time to implement the recommendation.

31. However the ATO advised that through the PoA project it has undertaken initiatives to satisfy recommendation 36. As part of these initiatives, the ATO stated that it has introduced a range of integrity measures and technical enhancements to improve the information systems supporting private binding rulings. The ATO advised further that it intends to have measures in place by May 2001 to publish ATO interpretative decisions via the ATO legal database on the ATO web-site. ATO Interpretative Decisions summarise decisions on interpretative issues and will replace Case Decision Summaries. Key elements of the initiatives are outlined in Chapter 4 and in Appendix 4 of the report.

²⁹⁵ The systems used in preparing private rulings, including the Case Reporting System, are discussed in Chapter 4 and Appendix 3.

²⁹⁶ See Chapter 4 of the report.

32. As noted in Chapters 4 and 5, the ANAO welcomes the PoA measures. We consider that they will add considerably to the integrity of the system. They will also be the impetus for the ATO to respond actively to a need for better public information and disclosure about private rulings, identified by the JCPA some seven years ago.

33. The ATO advises that as part of the PoA project, Recommendation 36 has now been implemented.

Recommendation 37 *The Income Tax Assessment Act 1936 be amended to remove the imposition of an administrative penalty for a taxpayer who assesses their taxation liability in a manner which is not consistent with a private ruling that has been issued to them, providing the taxpayer indicates in their annual tax return that their private ruling has not been followed.*

Recommendation 38 *Income tax return forms be amended to allow taxpayers to indicate where they have not followed a private ruling.*

Recommendation 39 *The Australian Taxation Office have the discretion to charge for the provision of private rulings on significant hypothetical issues where under Section 14ZAN of the Taxation Administration Act 1953, the Commissioner of Taxation would otherwise determine that insufficient resources existed to provide the requested ruling.*

Recommendation 40 *Culpability penalties not apply to taxpayers who fail in their assessment to follow a Determination issued by the Australian Taxation Office.*

34. The Committee had several motivations for making these four recommendations. First, given that the Courts had overruled the position of the ATO in some of its rulings decisions in the past, the Committee argued that the public should not be required (by way of administrative penalty for non-compliance) to honour private rulings decisions where there was a risk that in future they may be shown to be incorrect.

35. Second, the Committee considered that the removal of administrative penalties for non-compliance with private rulings would align the rulings system with other forms of ATO taxation advice and legal interpretation, thus increasing the system's integrity and fairness. Third, the Committee recognised the considerable demand placed on the ATO's resources in issuing rulings on complex hypothetical or speculative arrangements, and considered the charging of fees for processing such complex and time-consuming rulings requests would be an appropriate avenue by which the ATO could recover these costs.

36. The Government did not support the changes to policy and legislation contained in Recommendations 37 or 40. The Government did not support Recommendation 37, arguing against it on the grounds that taxpayers have appropriate avenues for contesting rulings through the Administrative Appeals Tribunal or the courts, and that the existing penalty arrangements acted as a deterrent to taxpayers ignoring the ATO's position as stated in a private binding ruling. The Government declared Recommendation 40 unnecessary because penalties associated with a taxpayer's failure to follow a Taxation Determination did not exist.

37. The ATO rejected Recommendation 38 on the basis that it was linked to Recommendation 37, which the Government had not supported. The ATO rejected Recommendation 39 on a number of grounds. First, the ATO contended that charging for rulings was unlikely to improve significantly the speed of responses to rulings requests because quick and consistent advice was more influenced by the technical ability of the rulings staff and the quality and detail of the ruling request itself, than the availability of funds. Further, the ATO viewed the 1992 introduction of the private binding rulings regime as generating ongoing improvements in the quality and timeliness of private rulings, and stated it was encouraging taxpayers to improve the timeliness and quality of their rulings requests.

38. The ANAO appreciates the ATO's position regarding the implementation of Recommendations 37, 38, 39 and 40, given the Government's decision to not endorse them. Recommendation 38 deals with an issue that has been raised again since Report 326, that is, amending tax return forms to allow taxpayers to indicate where they have not followed a private ruling. We discuss this issue below.

39. During the audit, we canvassed with the ATO the feasibility of having an appropriate private ruling label on the income tax return form as a compliance tool. ATO was not supportive of the idea arguing that given the many and strong competing demands to have extra labels on the income tax return form as a compliance measure, the case for such a label for private rulings was not sufficiently strong given its limited compliance effectiveness. In the ATO's view the compliance risk was not people seeking a private binding ruling and then choosing not to follow it. It was likely that if a person had obtained a ruling and disregarded it, they would be unlikely to record that accurately on any new label on the income tax form. For the ATO, the greater compliance risk was people not seeking a private ruling at all, but taking an aggressive tax position on the basis of what they assert is a Reasonably Arguable Position (RAP). RAPs are mentioned in Chapter 5 and Appendix 1 of the report.

40. We note that the Review of Business Taxation,²⁹⁷ tabled in Parliament in July 1999, recommended changes to the ATO rulings system, including some which quite closely followed those of the Committee, such as the removal of administrative penalties for non-compliance with a private ruling, and charging fees for selected rulings. The Review of Business Taxation also suggested the ATO give consideration to implementing a system where taxpayers are required to disclose on their income tax returns whether they have complied with a ruling.²⁹⁸

41. In light of the recommendations of the JCPA Report and the Review of Business Taxation, the ANAO explored with the ATO the matter of a possible 'flag' or label in tax returns for taxpayers to identify their use of rulings. A rulings flag would not, of itself, markedly increase the useful information available to the ATO to assess the risks associated with a particular taxpayer's return and such detail that might assist the ATO's risk management in processing tax returns may impose substantial compliance burdens on the taxpayer. These issues are discussed in more detail in Chapter 5.

Recommendation 41 *There be an annual Taxation Clarification and Technical Corrections Bill to facilitate the simplification and technical correctness of the Income Tax Assessment Act 1936 and associated legislation.*

42. The Government agreed to the proposal for a Technical Corrections Bill, but objected to the proposal for a Taxation Clarification Bill. The Government argued that it is inappropriate to amend the law when the Commissioner issues a ruling, as rulings reflect only the Commissioner's view of the law.

43. In the last status report, ATO informed the JCPAA that the Taxation Laws (Technical Amendments) Bill was introduced on 4 December 1997 and received Royal Assent on 4 June 1998, and that the next Technical Amendments Bill was being collated in preparation for a submission to Government.

44. During the audit, the ATO advised that a new mechanism was introduced instead of the Committee's recommended annual Taxation Clarification and Technical Correction bills. The new mechanism sought to address the need to make required technical corrections promptly, given the competing drafting and legislative priorities because of the demands of tax reform issues. Technical corrections (technical

²⁹⁷ Review of Business Taxation, *Report*, op. cit., pp. 143, 144.

²⁹⁸ *ibid.*, p. 144.

amendments) are now either introduced in subject-related bills (to make corrections to previously introduced bills on the subject) or in omnibus taxation laws amendment bills. The ANAO considers that the ATO has implemented the recommendation.

Recommendation 42 *The Australian Taxation Office review its issued private and public rulings and determinations for the purposes of determining the continued validity of all rulings.*

45. The ATO supported the recommended changes to administrative processes. In relation to public rulings, ATO stated in the last status report that it had conducted a review prompting the withdrawal of all public Income Tax or Miscellaneous Tax Rulings that were no longer legally or administratively valid. The ATO also reported that it had consulted with external bodies²⁹⁹ to settle priorities for the ongoing updating of public rulings to align them with new or amended laws in a timely manner. The ATO also advised that the TAA had been amended to extend the application of existing legally binding rulings and determinations to rewritten laws, and that in July 1997 it released Ruling TR 97/16³⁰⁰ that achieved the corresponding result for administratively binding rulings and determinations.

46. During the audit the ATO provided examples of exercises showing it continues to review the validity of public rulings. Examples were review exercises conducted and being conducted in the context of the Tax Law Improvement Project and Business Tax Reform initiatives. We also note that having public rulings in the public domain also constitutes a mechanism to review their continued validity.

47. For private rulings, the ATO stated in the last status report that Recommendation 42 had been fully implemented by virtue of the fact that the currency of a private ruling is specified in the document itself. When the law on which a ruling is given is changed, the ruling is overruled and ceases to have effect. Given the relatively short duration of most private rulings (usually no longer than four years), a review of the continued validity of private rulings and determinations is inherent in the administrative process by which they are issued and operate.

²⁹⁹ ATO cited the National Tax Liaison Group (NTLG) and the Tax Law Improvement Project Consultative Committee (TLIPCC) as external bodies it had consulted with to review the validity of public rulings. ATO stated in an internal status report on ATO progress on the JCPA rulings recommendations, that both committees had received updated progress reports on this work at each meeting.

³⁰⁰ ATO has issued an Addendum to TR 97/16, numbered TR 97/16A.

48. During the audit, the ATO also outlined the quality assurance process it applied to a sample of finalised cases (including finalised private rulings). The ATO indicated that such a review process contributes to the process of assessing the validity of private rulings. The post-issue quality assurance (QA) process the ATO uses for private rulings is examined in Chapter 4 of the report. While we agree that the review process may contribute to assessments of the validity of a private ruling, we note that the QA process, as a once off assessment of a private ruling after the event, does not directly address the matter at hand in the Recommendation (being the continuing validity of the private ruling).

49. In view of the ATO's response in respect of private rulings, the ANAO considers that the ATO has partially implemented Recommendation 42.

Recommendation 43 *All private and public rulings and determinations of the Australian Taxation Office be consolidated and referenced in a form which facilitates easy access by taxpayers.*

50. The ATO accepted this recommendation though qualified its support by stating that the issue of access to private rulings raised in the recommendation would be considered in the context of the ATO response to Recommendation 36. Public rulings would be made publicly available at all ATO enquiry sites, and it would try to identify ways of increasing the accessibility of this information to the public. The ATO also indicated that it endeavoured to conduct ongoing reviews of the validity of public rulings, and to investigate future opportunities to consolidate existing rulings.

51. The ATO's last status report stated that, for public rulings and determinations, Recommendation 43 had been fully implemented. According to the ATO, an index of all public rulings and determinations had been prepared and was being maintained, and the index was made available to taxpayers on request.

52. The ANAO agrees that the recommendation has been implemented for public rulings, noting that all draft and final versions of public rulings are available via the ATO web-site, and are accessible to the public through the use of the advanced search facility. As discussed in relation to the implementation of Recommendation 34, the ATO web-site provides convenient access to public binding rulings, product rulings, determinations, and other information to facilitate public awareness and understanding of a wide range of taxation matters.

53. With regard to the consolidation and listing of all private rulings, the ATO asserted in its last status report that aspects of Recommendation

43 had been subsumed by actions taken in relation to Recommendation 36, and no further action was required in relation to private rulings in respect of Recommendation 43. The ANAO accepts this point. Our comments concerning the ATO's partial implementation of Recommendation 36 are relevant, however.

Minority report recommendations

54. The minority report sought to supplement the recommendations of the JCPA Report to maximise the 'sovereignty of the taxpayer'.³⁰¹ The main concerns of the minority report relating to rulings were:

- an inability of taxpayers to object directly to public rulings in the same manner as private rulings under existing legislation;
- a lack of definition of what constitutes a 'disadvantage' or 'other person' in the context of the Commissioner's ability to withdraw a private ruling on forming the opinion that it creates a disadvantage for other persons;
- the Commissioner's ability to decline to issue a private ruling, which may deny some taxpayers an avenue to seek relief from the burden of having to interpret complex tax law;
- the apparent potential for abuse of the private rulings system presented by issuing rulings for longer than one year's duration; and
- a perceived need for public rulings to be subject to tabling and disallowance in Parliament so that the procedures for enacting public rulings is consistent with the procedures for enacting other regulations.

55. The minority report recommended that the relevant Commonwealth Tax Acts be amended:³⁰²

- *to provide that general (public) rulings be issued as regulations under the taxation laws and subject to tabling and disallowance in the Parliament;*
- *to enable persons dissatisfied with a general (public) taxation ruling to object to it in the same manner that the legislation now provides for persons to object to a private ruling; and*
- *to provide that, where a private ruling applies to more than one year, the acceptance of the private ruling by the person to whom it was issued trigger off the appeal procedure.*

³⁰¹ Joint Committee of Public Accounts, op. cit., p. 400.

³⁰² *ibid.*, p.420

56. We appreciate that the ATO was not required, nor empowered, to act on these recommendations, because they were not endorsed by Government. While accepting this position, our request of the ATO for information relating to the recommendations has usefully provided an opportunity for the ATO to set out current information in relation to the recommendations and the underlying concerns of the minority report. As noted earlier, the ATO's information, however, should not be interpreted as the ATO's judgments on the merits of the minority report's policy and legislative recommendations to Government; but simply explains the administrative approaches it currently adopts on these matters.

Regulations

57. The ATO said that to have public rulings as regulations disallowable by Parliament would not be appropriate because it was not intended, given the purpose of the public rulings system, that public rulings take the form of delegated legislation such as the minority report recommended. The ATO advised that the purpose of public rulings is to allow the ATO to publish and disseminate decisions on the interpretation of laws administered by the Commissioner which require clarification. It also noted, in support of its position, that the legislative framework for public rulings recognises that a public ruling is no more than the Commissioner's interpretation of the existing law and does not purport to impose that view on taxpayers who may decide to adopt an alternative view that is reasonably arguable under the law.³⁰³

Objections to public rulings

58. The ATO informed the ANAO of the objections process available to taxpayers in respect of public rulings.

59. A taxpayer is not able to object to a public ruling made under Part IVAAA of the TAA. However, a taxpayer affected by a public ruling who wishes to challenge the Commissioner's interpretation of the tax law as expressed in the public ruling, can apply for a private ruling on how the law applies to their particular circumstances. If the private ruling is adverse, the taxpayer can object against the private ruling to the Commissioner. If the taxpayer is dissatisfied at the Commissioner's

³⁰³ As noted earlier, to the extent that the content of a ruling is a public ruling for the purposes of the TAA, it is legally binding on the Commissioner. That means that if an assessment of a taxpayer in accordance with a public ruling would result in a lower amount of final tax for the taxpayer than an assessment in accordance with the law or another ruling, the Commissioner must assess the taxpayer in accordance with the terms of the public ruling. However a taxpayer is not legally bound to follow the Commissioner's interpretation of the law.

decision, the taxpayer can then apply to the Administrative Appeals Tribunal for review of the decision or appeal to the Federal Court against the decision.

Appeal trigger

60. The recommendation reflects a concern that a private ruling that applies to more than one year offers scope for abuse of the private rulings system. The ATO explained that the Commissioner can make a private ruling on the same arrangement for more than one year of income. It also recognised that there were risks in giving advice covering a long period (in terms of possible risk to revenue or possible risk to the taxpayer). The risk to the taxpayer arises because over time the tax law or the facts of the case may change, meaning that the ruling may not apply and it will not provide the protection originally envisaged. The ATO explained that it seeks to manage the risks³⁰⁴ and considered that such assessments on a case by case basis were more appropriate than introducing compulsory reviews of the decision by a court or tribunal.

Minimisation of the potential for abuse of private rulings

61. The ATO outlined some of the key provisions of private rulings constraining the potential for abuse. Among these are that private rulings are given to specific taxpayers in relation to actual transactions or transactions that are seriously contemplated (and the transactions must be specified in sufficient detail to the ATO). The ATO describes the private ruling system as a legislative exercise in risk management. It admits that it is aware that some private rulings have been improperly used to promote aggressive tax planning arrangements without warnings being given to taxpayers that they are not protected by such a ruling and without information about the qualifications or assumptions underpinning the particular rulings.

62. It points to the introduction of product rulings (a form of public ruling) as a way of providing certainty to potentially a large number of taxpayers about the taxation consequences of entering into a particular marketed arrangement (the implication of the ATO's information being that this is another compliance risk management tool).

³⁰⁴ It considers, for example, the stability of the law or policy in the area of the ruling request, the likely stability of the facts of the case and the likelihood that the taxpayer would become aware of the effects of law changes on their private ruling or that their circumstances would change materially.

Disadvantage and withdrawal

63. The ATO pointed out that the disadvantage rule applies only to private rulings. It explained that the Commissioner could withdraw a private ruling without the consent of the rulee only in limited circumstances, for example, if in the opinion of the Commissioner:

- another person would be (economically) disadvantaged if the ruling were not withdrawn; and
- the economic disadvantage would be much greater than any economic disadvantage to the rulee of having the ruling withdrawn.

64. The ATO provided an extract from its Income Tax Advice Manual indicating the meaning of the terms ‘disadvantage’ and ‘other person’ and the possible circumstance in which the provision could apply, noting however that the assessment must depend on the circumstances of the particular case.

Declining to issue a private ruling

65. The ATO indicated the circumstances (under the TAA) in which the Commissioner can decline to rule or is not required to comply with an application for a private ruling. The circumstances include:

- the correctness of the private ruling would depend on assumptions;
- there is already a private ruling on the matter sought;
- the application is frivolous or vexatious;
- it is unreasonable for the Commissioner to comply, having regard to the resources that would be required to comply; or
- insufficient information has been given.

66. We note that the circumstances specified, in which the ATO would decline to issue a private ruling, would not reduce the chance of a taxpayer obtaining the required certainty concerning taxation issues (because, for example, the ruling is based on crucial assumptions, a ruling already exists or because the application is frivolous).

Summary of implementation of Report 326

67. In summary, we find that, with three exceptions (Recommendations 36, 42 and 43), the ATO has implemented all the recommendations required of it (i.e., those that the Government and the ATO supported and which the ATO committed itself in 1994 to act).

68. Recommendation 36 concerning the public access to summaries of private rulings has only been partially implemented. Our audit analysis shows that at the time of the audit (up until March 2001), the ATO was not in a position to implement the recommendation. However, the ATO's PoA project initiatives responding to the Sherman report (discussed in Chapters 4 and 5 and outlined in Appendix 4), mean that it will publish income tax private rulings for applications received after the end of March 2001. The partial progress on Recommendation 36 means that the similar part of Recommendation 43 relating to access to private rulings has also not been implemented, as a consequence. Recommendation 42, concerning reviews to determine the continuing validity of private and public rulings has only been partially implemented, because of the limitations of the review action in respect of private rulings.

69. The ATO considers that as part of the PoA project, Recommendation 36 has now been fully implemented. It also agrees that Recommendation 42 has been fully implemented for public rulings and partially implemented for private rulings.

70. It is worth noting that changes have occurred in the rulings policy framework.³⁰⁵ One important tax policy change was the introduction in mid 2000 of the GST and the development of GST public rulings and GST private rulings (that formally sit outside the income tax rulings system which was the subject of Report 326). Some of the other changes in administrative policy have resulted in the reconsideration, and in some cases acceptance of, positions adopted by the Committee earlier.³⁰⁶

³⁰⁵ For example, summaries of sanitised private rulings are to be made accessible to the public and new forms of taxation rulings (product rulings, oral rulings and class rulings) have been introduced. In other instances, other reviews have made recommendations similar to those of the Committee (e.g. disclosure on an income tax return whether a private ruling has been followed, removal of administrative penalties for non-compliance with a private ruling and the charging for rulings in some circumstances).

³⁰⁶ Reconsideration, for example, of positions regarding protection for taxpayers with the introduction of product rulings, and acceptance of the position regarding public access to private rulings.

Appendix 3

ATO Taxation Rulings Process Maps

Diagram 1

Public Rulings Production Process

Stage 1 Issue Identification

1. Business and service lines (BSLs) identify important taxation issues that may require a taxation ruling or determination to clarify aspects of taxation legislation. Part of this process includes consultation with taxpayers and community and professional groups, to ensure that the taxation issues selected reflect issues of concern to taxpayers. Important taxation issues may also be identified through a range of consultative forums and technical groups operating throughout the ATO.

Stage 2 Issue Prioritisation and Handling

2. The relevant BSL determines the importance of the proposed ruling/determination topic based on other ATO priorities, and feedback from taxpayers, and community and professional groups. The BSL then specifies and manages the resources needed to complete the ruling/determination. A large proportion of these resources is devoted to drafting the ruling, which is completed by the following ATO officers: an author(s) (from the BSLs); a Tax Council Network (TCN) peer reviewer; and a TCN approving officer. A ruling/determination issue date is also established. The TCN approving officer reviews the BSL submission and refers the proposed draft ruling/determination topic to the Tax Rulings Unit (TRU) for further comment. The ATO senior executive (i.e. the Chief Tax Counsel, Deputy Chief Tax Counsel and Assistant Commissioner (TRU)) consults with the Tax Rulings Panel where appropriate.

Stage 3**Preparation of Draft Ruling**

3. The author liaises with the TCN approving officer and other ATO specialists when preparing the draft ruling. Further consultation with relevant taxpayers and community and professional groups also occurs. This consultation involves the provision of feedback on the quality of the draft ruling by these groups. The TRU provides further advice on the content of the draft ruling where necessary. The Assistant Commissioner (TRU) is consulted on the draft ruling where necessary.

Stage 4**Approval of Draft Ruling**

4. Once drafted, the TCN approving officer subjects the draft ruling to a technical quality review. When satisfied with the quality of the draft ruling, the TCN approving officer endorses the draft and provides the draft ruling and accompanying documentation to the TCN peer reviewer. The TCN peer reviewer reviews the ruling and discusses issues with the TCN approving officer. If the TCN peer reviewer and approving officer determine that the matter warrants further review, the draft ruling is given to the Tax Rulings Panel, which often makes further alterations. Following the provision of advice by the Tax Rulings Panel, the author, in consultation with the TCN approving officer, makes alterations to the draft ruling. If necessary, a brief on the draft ruling is prepared for the Commissioner of Taxation (the Commissioner) and Assistant Treasurer. The ATO senior executive is consulted on relevant publicity and media strategy in relation to the draft ruling where necessary.

Stage 5

Draft Ruling Release

5. The TRU receives the ruling, oversees quality control, provides further quality assurance on the ruling, and in conjunction with the author and TCN approving officer and peer reviewer, formulates a media strategy. If required the TRU briefs the Commissioner and the Government on issues relating to the draft ruling. If the Government is briefed, a community impact analysis is conducted. The draft ruling is then placed onto the ATO public rulings database and is released to the public (the draft ruling is placed on the ATO Web-site and may be publicised through other means, for example media releases). The ATO is required to acknowledge receipt of all public comment received on the draft public ruling in writing. An ATO contact officer monitors the reaction to the release of the draft ruling and provides the ATO senior executive with advice on the progress of the draft ruling. A post-draft review of the quality of the ruling is conducted.

Stage 6

Preparation of Final Ruling

6. Consultation with taxpayers and community and professional groups occurs throughout the preparation of the final ruling. The author and TCN approving officer examine and consider all formal responses by taxpayers, and make amendments to the draft ruling where required (note: if the information provided by taxpayers and community and professional groups demonstrates that the ruling is no longer relevant, the draft ruling may be withdrawn). The author then prepares the final ruling.

Stage 7

Approval of Final Ruling

7. The process for approving the final ruling is identical to that used for the draft ruling (see stage 4).

Stage 8

Final Ruling Release

8. The process for the release of the final ruling is the same as the release of the draft ruling (see stage 5). The final ruling is also published in the *Commonwealth Gazette* and tabled in Parliament.

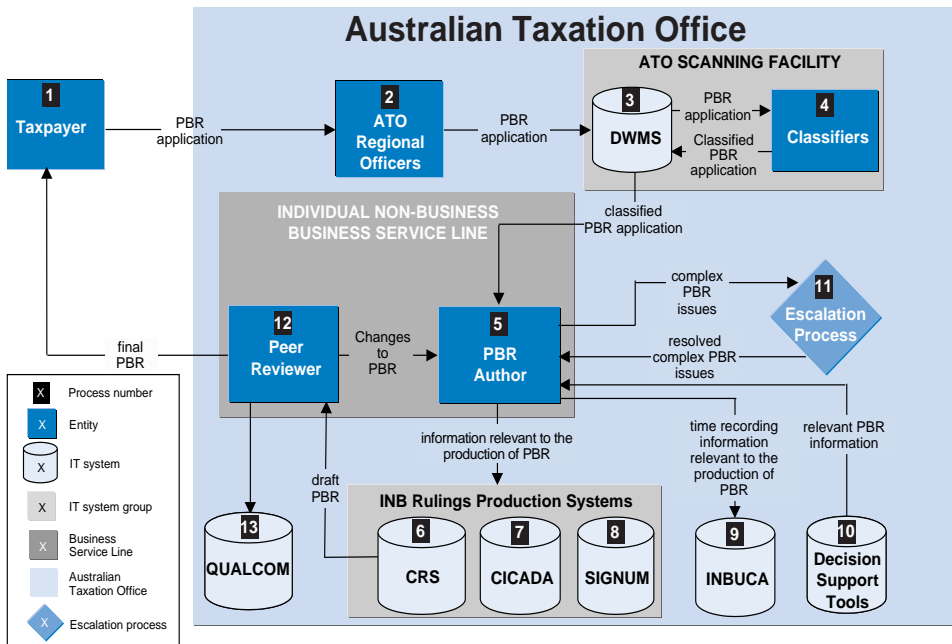
Stage 9**Post Rulings Release Process**

9. The business line responsible for producing the ruling receives feedback on the quality of the ruling, including feedback from the National Tax Liaison Group. The business line monitors compliance outcomes in relation to the issue or segment from a variety of strategies including monthly and bi-annual reports to the ATO executive. The TRU monitors feedback on the ruling. The business lines and the TRU monitor changes in the law or judicial decisions that affect the ruling.

Source: ATO Rulings Manual (10 March 1998), with the exception of stage 9, the contents of which, was provided by the ATO to the ANAO separately.

Diagram 2

Individuals Non-Business Private Binding Rulings Production Process



Source: ANAO analysis

10. A taxpayer **1** submits a Private Binding Ruling (PBR) application to an ATO regional office (located throughout Australia). ATO regional officers **2** send all PBR applications to either of the ATO’s two scanning centres at Penrith or Albury.

11. The PBR application is then scanned into the Duplicate Work-flow and Management System (DWMS) **3**, which is used to distribute and manage PBR work-flow in an electronic format. A classifier **4** then classifies the scanned PBR under the following criteria: Business and Service Line (BSL); work segment; work type; subject; issue; and complexity. The DWMS **3** is used to distribute the classified PBR to an INB author **5** according to their user profile (a user profile specifies what type of work an author can receive based on their work experience and areas of expertise). The DWMS will distribute older PBR applications to INB authors ahead of newer ones.

12. After the author **5** receives a PBR via the DWMS, he/she is required to contact the taxpayer **1** within 24 hours of receiving the PBR. This allows the author to clarify any outstanding or ambiguous details within the PBR.

13. The author **5** then registers the PBR on the following information technology systems:

- Case Reporting System (CRS) **6** is the system used by the author to draft the PBR. To register the PBR on CRS, data such as taxpayer details and the date of receipt are automatically up-loaded from CICADA. CRS also provides authors with a standard template to control the information entered by the author. Drafting the PBR is completed on a word processing facility built into CRS.
- Case Information and Control for Advising Disputes and Appeals (CICADA) **7** is used primarily for generating performance information relevant to ATO Taxpayers' Charter PBR requirements. The author must key manually data such as the taxpayer details and date of receipt into CICADA.
- SIGNUM **8** is a database that is used to record all significant issues that arise from PBRs and other sources within the ATO. For a PBR to be registered on SIGNUM, it must satisfy at least one of the thirteen criteria (outlined in SIGNUM) to be considered to contain a 'significant issue'. The author must record basic factual information about the PBR, as well as noting 'significant issues' and relevant pieces of legislation.

14. All INB line staff are required to record their time against their various work activities. This is done in the INBUCA **9** system. This system records the amount of time authors and peer reviewers spend on PBR related activities.

15. When drafting a PBR, an author **5** is required to use a number of electronically-based decision support tools **10**. These tools include: ATO *Assist*; ATO Law; ATO Forum; CRS and SIGNUM. The author also makes use of informal networks established with other ATO staff.

16. If an Author has difficulty in determining an optimal response to a PBR application, he/she should refer the PBR onto an ATO officer with more technical experience. This is done through the INB escalation process **11**. To escalate a PBR, the author must report the relevant facts of the PBR, case law and legislation, as well as a proposed means of resolving contentious issues associated with the PBR. The various parties that may be involved in the INB escalation process (in order of escalation) are: Team Leader, Tax Technical Network and the Tax Counsel Network (TCN). The TCN has responsibility for settling the ATO position and forming the ATO view on all matters of tax law.

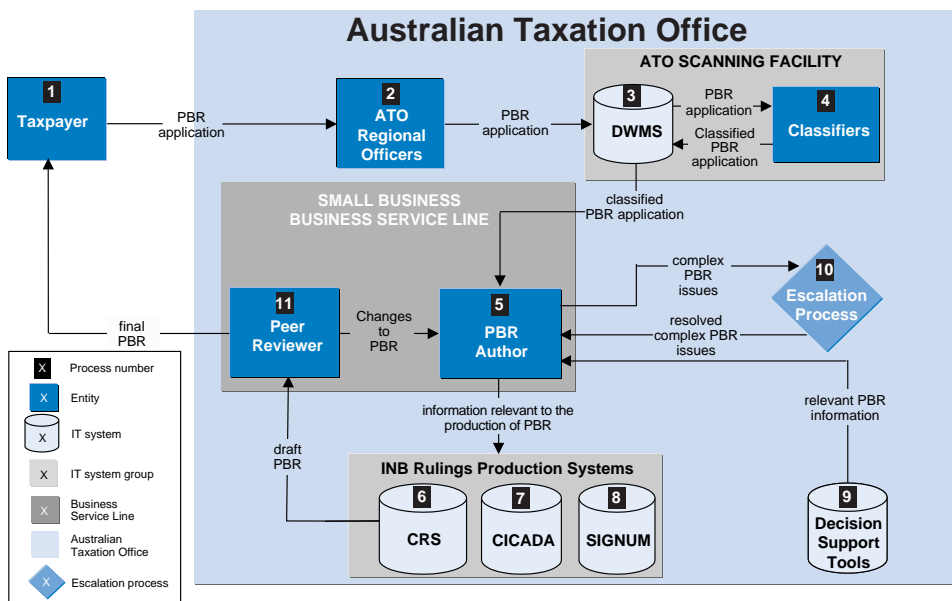
17. Once an author **5** completes a draft PBR it is referred to a peer reviewer **12**. The peer reviewer is usually the supervisor of the author. He/she is responsible for providing quality assurance checking for the PBR. This includes ensuring that all administrative procedures have been followed correctly as well as grading the technical quality of the PBR. This grading is completed using the ATO Judgement model.

18. The results of the peer reviewer's **12** quality assurance checks are recorded on the QUALCOM system **13**. This system utilises a spreadsheet that can be accessed and updated by Peer Reviewers nationally. Other ATO staff responsible for compiling and reviewing PBR performance information can also access it.

19. Once a peer reviewer **12** is satisfied with the quality of a PBR, it is authorised and sent out to the taxpayer **1**. The author is then responsible for closing the following systems CRS **6**, CICADA **7**, SIGNUM **8** and DWMS **3**.

Diagram 3

Small Business Private Binding Rulings Production Process



Source: ANAO analysis

20. A taxpayer **1** submits a Private Binding Ruling (PBR) application to an ATO regional office (located throughout Australia). ATO regional officers **2** send all PBR applications to either of the ATO's two scanning centres at Penrith or Albury.

21. The PBR application is then scanned into the Duplicate Work-flow and Management System (DWMS) **3**, which is used to distribute and manage PBR work-flow in an electronic format. A classifier **4** then classifies the scanned PBR under the following criteria: Business and Service Line (BSL); work segment; work type; subject; issue; and complexity. The DWMS **3** is used to distribute the classified PBR to a SB author **5** according to their user profile (a user profile specifies what type of work an author can receive based on their work experience and areas of expertise). The DWMS will distribute older PBR applications to SB authors ahead of newer ones.

22. After the author **5** receives a PBR via the DWMS, he/she is required to contact the Taxpayer **1** within 24 hours of receiving the PBR. This allows the author to clarify any outstanding or ambiguous details within the PBR.

23. The author **5** then registers the PBR on the following information technology systems:

- Case Reporting System (CRS) **6** is the system used by the author to draft the PBR. To register the PBR on CRS, data such as taxpayer details and the date of receipt are automatically up-loaded from CICADA. CRS also provides authors with a standard template to control the information entered by the author. Drafting the PBR is completed on a word processing facility built into CRS.
- Case Information and Control for Advising Disputes and Appeals (CICADA) **7** is used primarily for generating performance information relevant to ATO Taxpayers' Charter PBR requirements. The author must key manually data such as the taxpayer details and date of receipt into CICADA.
- SIGNUM **8** is a database that is used to record all significant issues that arise from PBRs and other sources within the ATO. For a PBR to be registered on SIGNUM, it must satisfy at least one of the thirteen criteria (outlined in SIGNUM) to be considered to contain a 'significant issue'. The author must record basic factual information about the PBR, as well as noting 'significant issues' and relevant pieces of legislation.

24. When drafting a PBR, an author **5** is required to use a number of electronically based decision support tools **9**. These tools include: ATO Assist; ATO Law; ATO Forum; CRS and SIGNUM. The author also makes use of informal networks established with other ATO staff.

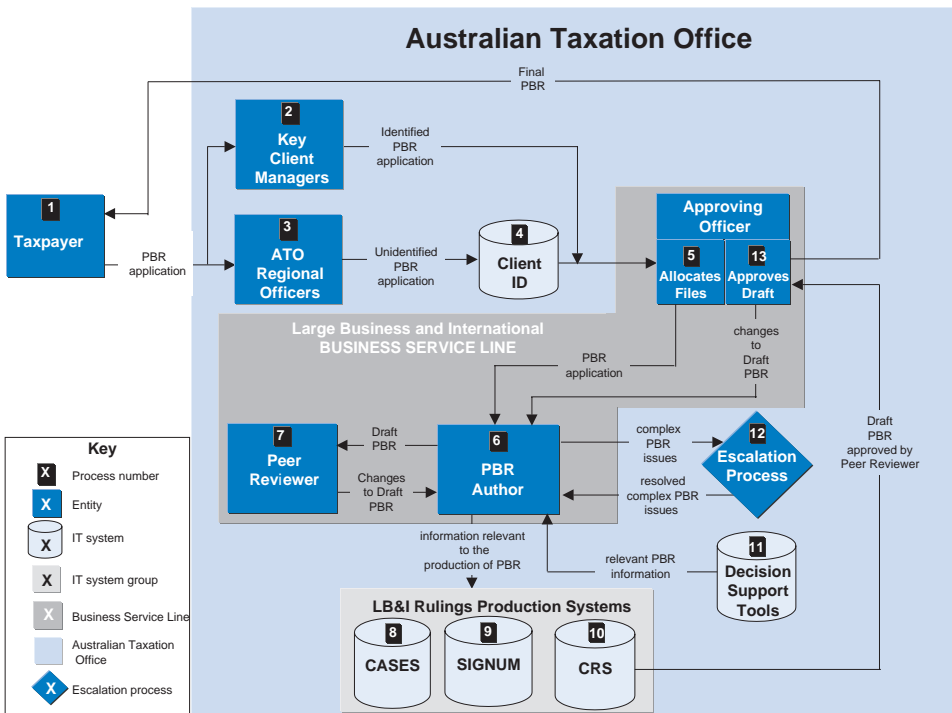
25. If an author has difficulty in determining an optimal response to a PBR application, he/she may refer the PBR onto an ATO officer with more technical experience. This is done through the SB escalation process **10**. To escalate a PBR, the author must report the relevant facts of the PBR, case law and legislation, as well as a proposed means of resolving contentious issues associated with the PBR. The various parties that may be involved in the SB escalation process (in order of escalation) are: team leader, Senior Tax Practice Network, and the Tax Counsel Network (TCN). The TCN has responsibility for settling the ATO position and forming the ATO view on all matters of tax law.

26. Once an author **5** completes a draft PBR it is referred to a peer reviewer **11**. The peer reviewer is usually the supervisor of the author. He/she is responsible for providing quality assurance checking for the PBR. This includes ensuring that all administrative procedures have been followed correctly as well as grading the technical quality of the PBR. This grading is completed using the ATO Judgement model.

27. Once a peer reviewer **11** is satisfied with the quality of a PBR, it is authorised and sent out to the taxpayer **1**. The author is then responsible for closing the following systems CRS **6**, CICADA **7**, SIGNUM **8** and DWMS **3**.

Diagram 4

Large Business and International Private Binding Rulings Production Process



Source: ANAO analysis

28. A taxpayer **1** submits a Private Binding Ruling (PBR) application either to an ATO regional office (located throughout Australia) or an LB&I Key Client Manager **2**. LB&I Key Client Managers manage dealings with a number of large businesses and are able to direct the PBR to an appropriate team leader (approving officer) **5**. If the taxpayer does not provide the PBR application to an ATO Key Client Manager, an ATO Regional Officer **3** uses the ATO Client ID system **4** to identify an appropriate team leader (approving officer) to whom to send the PBR application.

29. Once the PBR application has been received by a team leader (approving officer) **5**, he/she forms a team consisting of an author **6** and a peer reviewer **7** with the skills necessary to draft a PBR.

30. The author **6** then registers the PBR on the following information technology systems:

- CASES **8** is the IT system used by LB&I to register, plan and provide performance information on all LB&I cases including PBRs. When a PBR application is placed on CASES it is automatically assigned project milestones to satisfy the requirements of the ATO Taxpayers' Charter. CASES also has the ability to transfer important PBR information across to CRS and SIGNUM electronically (i.e. without manual re-keying).
- SIGNUM **9** is a database that is used to record all significant issues that arise from PBRs and other sources within the ATO. For a PBR to be registered on SIGNUM, it must satisfy at least one of the thirteen criteria (outlined in SIGNUM) to be considered to contain a 'significant issue'. The author **6** is responsible for specifying 'significant issues' and relevant pieces of legislation.
- Case Reporting System (CRS) **10** is the system used by the author to draft the PBR. To register the PBR on CRS, the author must key manually data such as the taxpayer details and date of receipt. CRS also provides authors with a standard template to control the information entered by the author. Drafting of the PBR is completed on a word processing facility built into CRS.

31. When drafting a PBR, an author **6** is required to use a number of electronically based decision support tools **11**. These tools include: ATO Assist; ATO Law; ATO Forum; CRS and SIGNUM. The author also makes use of informal networks established with other ATO staff.

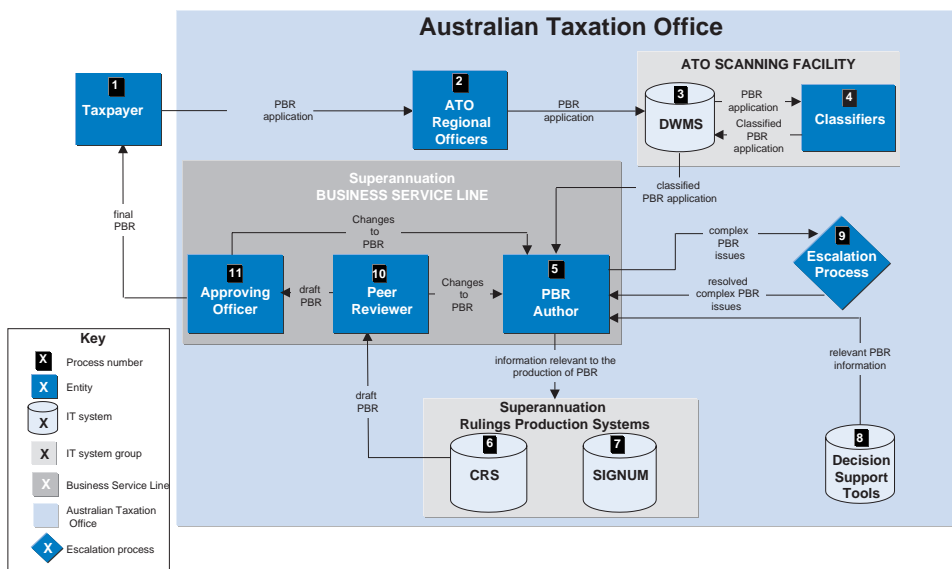
32. If an author **6** has difficulty in determining an optimal response to a PBR application, he/she should refer the PBR onto an ATO officer with more technical experience. This is done through the LB&I escalation process **12**. To escalate a PBR, the author must report the relevant facts of the PBR, case law and legislation, as well as a proposed means of resolving contentious issues associated with the PBR. The various parties that may be involved in the LB&I escalation process (in order of escalation) are: team leader and the Tax Counsel Network (TCN). The TCN has responsibility for settling the ATO position and forming the ATO view on all matters of tax law.

33. Once the PBR has been drafted by the author **6** and reviewed and approved by a peer reviewer **7**, it is placed onto CRS. An approving officer **13** accesses the draft PBR on CRS and checks it for technical accuracy and ensures that the correct administrative procedures associated with the production of the draft PBR have been followed. The approving officer then grades the quality of the draft PBR using the ATO Judgement Model.

34. Once the approving officer is satisfied with the quality of the draft PBR, it is finalised and sent out to the taxpayer. The author **5** is responsible for closing the following systems: CASES **8** ; SIGNUM **9** ; and CRS **10** .

Diagram 5

Superannuation Private Binding Rulings Production Process



Source: ANAO analysis

35. A taxpayer **1** submits a Private Binding Ruling (PBR) application to an ATO regional office (located throughout Australia). ATO regional officers **2** send all PBR applications to either of the ATO's two scanning centres at Penrith or Albury.

36. The PBR application is then scanned into the Duplicate Work-flow and Management System (DWMS) **3**, which is used to distribute and manage PBR work-flow in an electronic format. A classifier **4** then classifies the scanned PBR under the following criteria: Business and Service Line (BSL); work segment; work type; subject; issue; and complexity. The DWMS **3** is used to distribute the classified PBR to a Superannuation author **5** according to their user profile (a user profile specifies what type of work an author can receive based on their work experience and areas of expertise). The ANAO notes that at the time of the audit, the Superannuation business line centralised its PBR drafting process to include only three authors. The DWMS will distribute older PBR applications to Superannuation authors ahead of newer ones.

37. After the author **5** receives a PBR via the DWMS, he/she is required to contact the taxpayer **1** within 24 hours of receiving the PBR. This allows the author to clarify any outstanding or ambiguous details within the PBR.

38. The author **5** then registers the PBR on the following information technology systems:

- Case Reporting System (CRS) **6** is the system used by the author to draft and finalise the PBR. To register the PBR on CRS, the author must key manually data such as the taxpayer details and date of receipt. CRS also provides authors with a standard template to control the information entered by the author. Drafting is completed on a word processing facility built into CRS.
- SIGNUM **7** is a database that is used to record all significant issues that arise from PBRs and other sources within the ATO. For a PBR to be registered on SIGNUM, it must satisfy at least one of the thirteen criteria (outlined in SIGNUM) to be considered to contain a 'significant issue'. The author must record basic factual information about the PBR, as well as noting 'significant issues' and relevant pieces of legislation.

39. When drafting a PBR, an author **5** is required to use a number of electronically based decision support tools **8**. These tools include: ATO Assist; ATO Law; ATO Forum; CRS and SIGNUM. The author also makes use of informal networks established with other ATO staff.

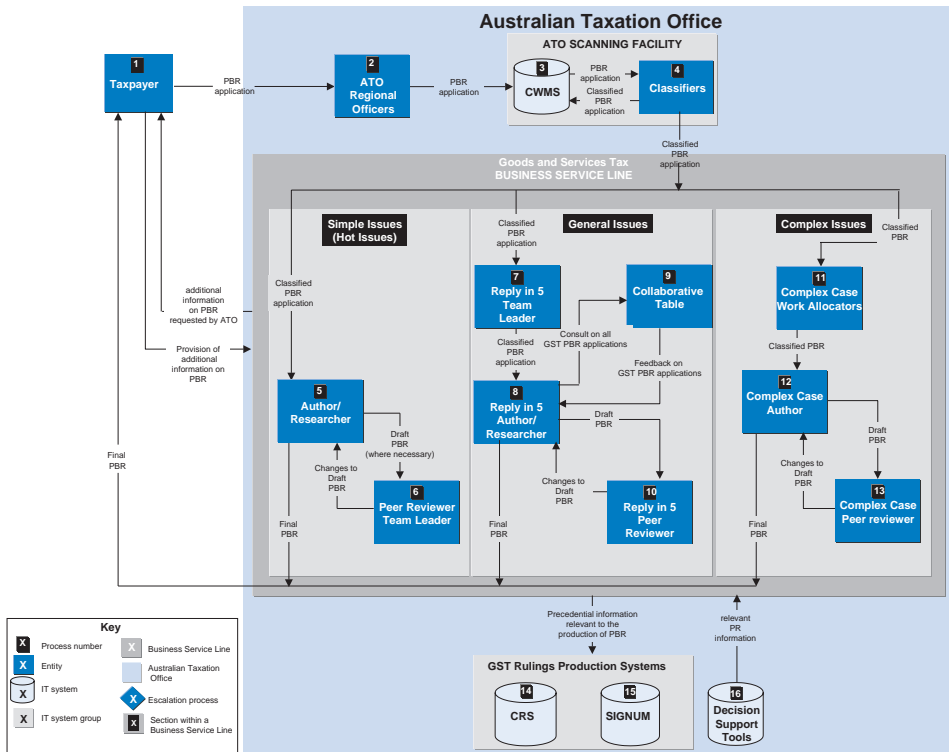
40. If an author **5** has difficulty in determining an optimal response to a PBR application, he/she may refer the PBR onto an ATO officer with more technical experience. This is done through the Superannuation escalation process **9**. To escalate a PBR, the author must report the relevant facts of the PBR, case law and legislation, as well as a proposed means of resolving contentious issues associated with the PBR. The various parties that may be involved in the Superannuation escalation process (in order of escalation) are the Total Quality Support group, the Assistant Commissioner for Taxation (Superannuation) and the Tax Counsel Network (TCN). The TCN has responsibility for settling the ATO position and forming the ATO view on all matters of tax law.

41. Once the author **5** has drafted the PBR, a peer reviewer **10** checks the draft PBR for technical accuracy and ensures that the correct administrative procedures have been followed in relation to production of the draft PBR. The peer reviewer is one of the two other ATO officers assigned to author Superannuation PBRs.

42. Once satisfied with the quality of the draft PBR, the peer reviewer **10** approves the draft and sends it to an approving officer **11** for review. In all cases, the approving officer is the Assistant Commissioner for Taxation. Once reviewed and finalised by the approving officer, the PBR is sent to the taxpayer **1**.

43. Upon finalising the PBR, the author finalises and closes the PBR in SIGNUM **7** and CRS **6**.

Diagram 6 GST Private Binding Rulings Production Process



Source: ANAO analysis

44. A taxpayer **1** submits a written request for information on a GST related topic. All written GST queries provided to the ATO are considered to be Private Binding Ruling (PBR) applications. PBR applications are received at ATO regional offices located throughout Australia. ATO regional officers **2** send all GST PBR applications to either of the ATO's two scanning centres at Penrith or Albury.

45. All written correspondence, including PBR applications are scanned into the Correspondence Work-flow and Management System (CWMS) **3**, which is used to distribute and manage PBR work-flow in an electronic format. A classifier **4** then classifies the scanned PBR under the following criteria: Business and Service Line (BSL); work segment; work type; subject; issue; and complexity. The CWMS **3** is used to distribute the classified PBR to three queues within the GST business line. These are:

Simple Issues (Hot Issues)

46. The simple issues or 'Hot Issues' queue is used to process high volume, low complexity PBR requests. The issues addressed in the Hot Issues queue are determined by a GST Issues Panel. This panel develops standard responses (scripts) to assist Hot Topic Authors **5** provide responses to PBR requests. As the responses provided by Hot Issues authors rely heavily on the Issue Panel scripts, peer review by a team leader **6** occurs only when a PBR is drafted by a new ATO staff member.

47. The Hot Issues author **5** then finalises the PBR and sends it out to the taxpayer. The information comprising the PBR may be distributed to the Taxpayer **1** either through a phone call, via e-mail, or formal letter.

General Issues

48. All issues that are not classified in the Hot Issues or Complex Issues queues, form part of the General Issues queue. All General Issues PBR applications are received by a team leader **7** who assigns an author **8** to research and draft the PBR. At least once a week, General Issues authors meet with other ATO staff members of the 'GST Collaborative Tables' **9**. Collaborative tables are forums to discuss current GST issues and formulate solutions to GST tax technical problems. Authors are able to discuss issues associated with drafting their PBR at the collaborative tables and come up with solutions that draw upon a wide range of experience from within the ATO.

49. Once advice has been sought from the collaborative table **9**, the author **8** drafts the PBR and forwards it to a peer reviewer **10**, who reviews the quality and technical accuracy of the PBR in accordance with the ATO Judgement Model. Once the peer reviewer **10** approves the PBR it is sent out to the taxpayer **1**. The information contained in the PBR may be distributed to the taxpayer either through a telephone-call, via e-mail or formal letter.

Complex Issues

50. PBR applications that require the expertise of an ATO officer with specialist GST knowledge are categorised into the Complex Issues queue. Complex PBR applications are sent to the Complex Case Work allocator **11** who is usually part of an 'Industry Team'. The ATO has established sixteen Industry Teams that are responsible for managing the GST queries of various industry groups may have regarding the GST. These industry groups are consulted regularly when the ATO examines GST-related issues (including the drafting of PBRs). The Complex Case Work allocator then distributes the PBR to an author **12** with the appropriate skills necessary to draft the PBR. Once drafted, the draft PBR is provided to a complex case peer reviewer **13**, who reviews it for technical accuracy and overall quality. He/she also ensures that administrative procedures have been followed. Quality review is completed using the ATO Judgement model. The complex case peer reviewer is a senior taxation officer with significant GST taxation experience.

51. Once approved by the complex case peer reviewer, the PBR is distributed to the taxpayer **1** via a letter.

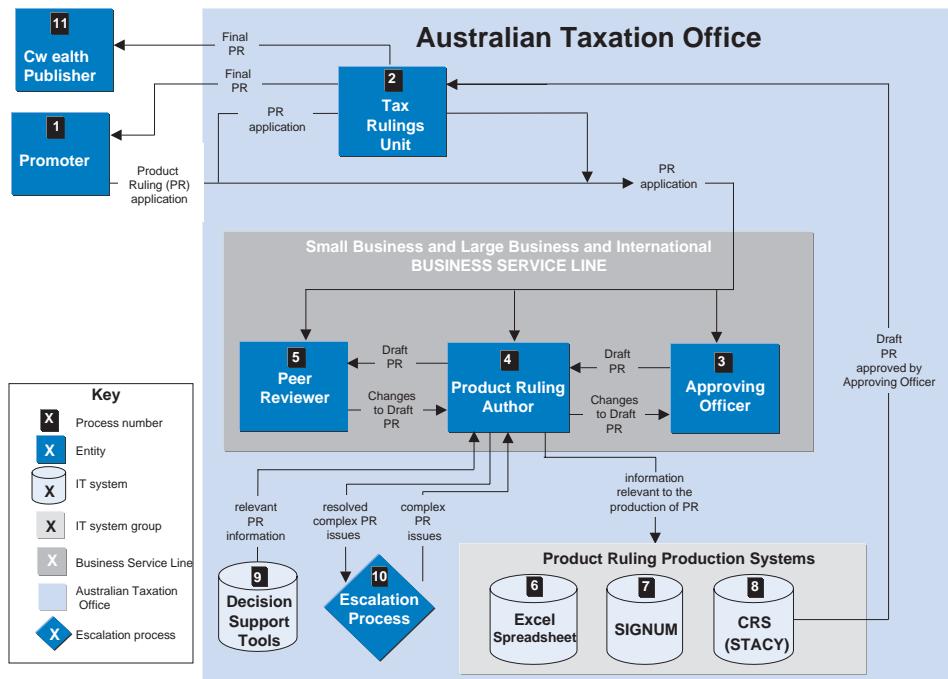
52. Authors drafting PBRs in the General Issues queue and Complex Issues queue use two principal IT systems. These are:

- Case Reporting System (CRS) **14** is the system used by the author to record precedential PBRs. Since 1 January 2001, like other business service lines, GST records all PBRs on CRS. Until that time it recorded only PBRs which contained significant/ important issues establishing ATO GST precedent. All PBR drafting is completed on word processing software, with the final PBR file electronically attached to the CRS record.
- SIGNUM **15** is a database that is used to record all significant issues that arise from PBRs and other sources within the ATO. For a PBR to be registered on SIGNUM, it must satisfy at least one of the thirteen criteria (outlined in SIGNUM) to be considered to contain a 'significant issue'. The author must record basic factual information about the PBR, as well as noting 'significant issues' and relevant pieces of legislation.

53. When drafting a PBR, a General Issues queue and Complex issues queue author is required to use a number of electronically based decision support tools **16**. These tools include: ATO Assist; ATO Law; ATO Forum; as well as CRS **14** and SIGNUM **15**. The author also makes use of informal networks established with other ATO staff.

54. Once a PBR has been finalised and sent out to taxpayers, the author must close applicable CWMS **3** files, as well as CRS **14** and SIGNUM **15** files where relevant.

Diagram 7
Product Rulings Production Process



Source: ANAO analysis

55. A promoter **1** submits a product ruling application to the ATO in addition to a Product Ruling checklist. The checklist (produced by the ATO) specifies the various documents and information required by the ATO for an application to be processed.

56. The product ruling application can be sent either to the Taxation Rulings Unit **2** in the ATO’s National Office, or directly to a branch office site that produces product rulings. If the Taxation Rulings Unit receives the application, it is generally forwarded to the ATO regional office closest to the promoter.

57. An ATO approving officer **3** receives the product ruling request and forms a team of three taxation officers to draft the product ruling. Along with the approving officer, this team comprises an author **4** and a peer reviewer **5**. The approving officer has overall responsibility for managing the production of the product ruling. If it is determined that the draft product ruling examines contentious tax issues, then a representative from the TCN may be appointed as peer reviewer.

58. The author, peer reviewer and approving officer work together closely on the draft product ruling. However it is primarily the author's **4** responsibility to complete the drafting and research associated with the product ruling. It is also the author's responsibility to contact the promoter within 24 hours of receiving the product ruling.

59. The author registers the product ruling request on the following information technology systems:

- Excel spreadsheet **6** is used to track product rulings work-flow. The information contained on the spreadsheet includes project name, author, peer reviewer, date received, branch office and any relevant notes or comments;
- SIGNUM **7** is a database that is used to record all significant issues that arise from product rulings and other sources within the ATO. For a product ruling to be registered on SIGNUM, it must satisfy at least one of the thirteen criteria (outlined in SIGNUM) to be considered to contain a 'significant issue'. The author must record basic factual information about the product ruling, as well as noting 'significant issues' and relevant pieces of legislation.
- Case Reporting System (CRS) **8** is used by the author to draft and finalise the product ruling. To register the product ruling on CRS, the author must key manually data such as the taxpayer details and date of receipt. CRS also provides authors with a standard template to control the information entered by the author. Drafting is completed on a word processing facility (STACEY) which is built into CRS.

60. When drafting a product ruling, an author **4** is required to use a number of electronically based decision support tools **9**. These tools include: ATO Assist; ATO Law; ATO Forum; CRS and SIGNUM. The author also makes use of informal networks established with other ATO staff.

61. If an author **3** has difficulty in determining an optimal solution for a product ruling, he/she may refer the product ruling onto an ATO officer with more technical experience. This is done through the product ruling escalation process **10**. To escalate a product ruling, the author must report the relevant facts of the product ruling, case law and legislation, as well as a proposed means of resolving contentious issues associated with the product ruling. The various parties that may be involved in the escalation process (in order of escalation) are team leaders and the Tax Counsel Network (TCN). The TCN has responsibility for settling the ATO position and forming the ATO view on all matters of tax law.

62. The peer reviewer **5** and approving officer **3** have responsibility for checking the technical accuracy of the product ruling. The peer reviewer is also responsible for assisting the author to draft the product ruling where relevant.

63. Once the author has completed the draft product ruling and the peer reviewer **5** and approving officer **3** are satisfied with its technical accuracy, the product ruling is finalised and sent to the promoter **1** .

64. The promoter is then asked to sign a statement that facts contained in the finalised product ruling are accurate and cover all relevant features of the scheme. All parties associated with the product ruling must also agree to have their names published as part of the product ruling and an agreement to abide by the terms and conditions of a product ruling.

65. The product ruling is sent back to the product rulings team who should make any necessary changes based on the promoter's feedback. After the approving officer receives the signed statement from the promoter, he or she forwards the product ruling to the Tax Rulings Unit. The product ruling is then formatted, Gazetted in the *Government Notices Gazette* **11** , tabled in Parliament within five days of Gazettal, and placed on the ATO web-site.

Appendix 4

Summary of the ATO's Provision of Advice Project

1. On 16 May 2000, the ATO commissioned a review to investigate the quality, consistency and integrity of PBRs. The review, known as the Sherman Review, was conducted by Mr Tom Sherman, AO.
2. In response to the Sherman Review, the ATO formed the Provision of Advice (PoA) Project to rectify the issues identified in the report. The PoA Project is a significant initiative which is designed to improve the ATO's provision of written binding advice, including PBRs.
3. The objectives of the PoA Project are to identify and implement strategies that will improve the:
 - integrity of the way the ATO provides written binding advice;
 - tracking of written binding advice casework from when requests are first received in the ATO through to the retrieval of information on finalised casework; and
 - accuracy, consistency and timeliness of the binding advice provided by the ATO.
4. The PoA Project has been broken into five work-streams. These are:

Workstream 1:

Clarify the types of advice provided by the ATO and define the status of each type of advice. Practice Statement 2001/4, finalised on 5 February 2001, clarifies the different forms of written technical advice the ATO provides, the circumstances in which such advice is to be provided and the extent to which such advice can be relied on.

Workstream 2:

Develop an end-to-end process for the provision of advice, including the publication of that advice. This involves having a single and integrated IT system to produce a PBR from when the ATO receives the PBR application, until the PBR is published on the ATO web-site. The focus of the proposed end to end process is the efficient and effective production of written technical advice for applicants (taxpayers) and the provision of this written technical advice (or sanitised versions of this advice) to the general public and ATO staff.

Workstream 3:

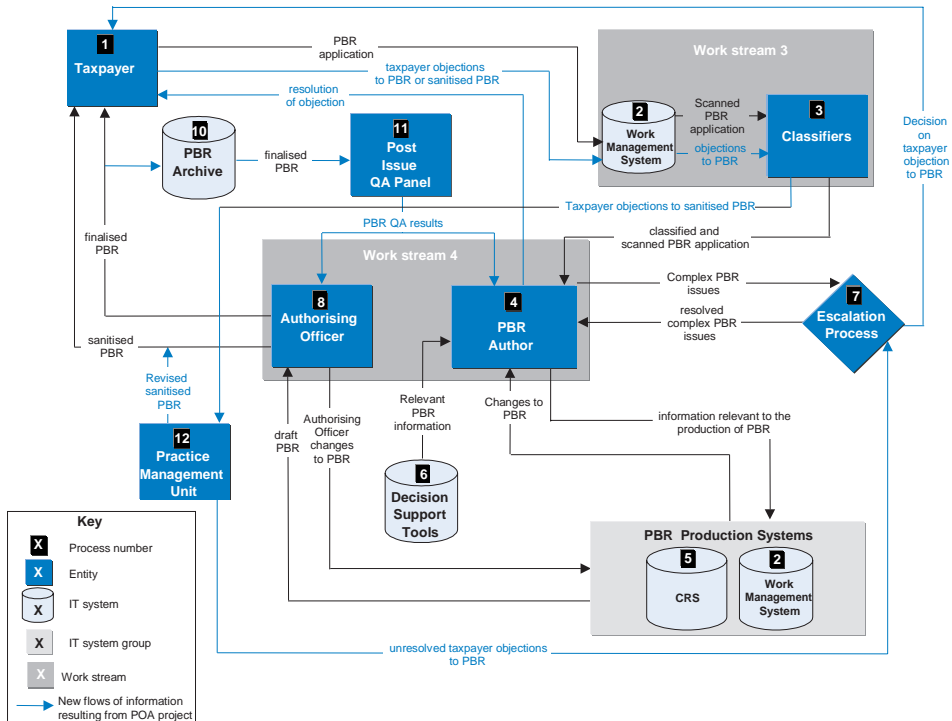
This workstream involves identifying and implementing changes to the existing IT systems and work processes that will improve the integrity, management, and quality of the ATO’s provision of binding advice, including the PBR process. The changes include:

- requiring all business lines to use either CWMS or DWMS as their case management tool to allow consistent registration and processing of all binding advice;
- having a unique and sequential numbering system on binding advice;
- all binding advice to be published on the ATO web-site. Case officers are expected to use a writing style that does not identify the rulee;
- the possibility to generate reports by business line, case type, team(s), start and finish date and source. CWMS and DWMS will be modified to allow a range of reports including Taxpayers’ Charter standards, analysis of work on hand and list of finalised cases.

5. The ATO stated that it implemented its integrated system on 31 March 2001. This system is illustrated in the following diagram.

Diagram 8

PBR Production Process resulting from the ATO Provision of Advice Project



6. A **1** taxpayer submits a PBR application to the ATO, where it is sent to either of the ATO's two scanning centres (Penrith or Albury).
7. The PBR application is then scanned into a Work Management System (CWMS/DWMS) **2** . A classifier, **3** then classifies the scanned PBR according to factors such as BSL ; work segment; work type; subject; issue; and complexity.
8. An author **4** , according to their user profile (a user profile specifies what type of work an author can receive based on their work experience and areas of expertise), down-loads a classified PBR from the Work Management System .
9. The author **4** then registers the PBR on the Case Reporting System (CRS). **5** CRS is the IT system used by the author to draft the PBR. To register the PBR on CRS, data such as taxpayer details and the date of receipt and subject is automatically up-loaded from the Work Management System. CRS also provides authors with a standard template to control the information entered by the author. Drafting the PBR is completed on a word processing facility built into CRS.
10. After the author **4** receives a PBR via the Work Management System **4** , he/she is required to write to the taxpayer **1** within 48 hours of receiving the PBR. The letter contains the name and contact details of the case officer (author), the case number and advice that an edited version of the PBR will be published on the ATO website. In the Small Business and GST areas the officer is also required to contact the taxpayer by telephone within 48 hours of receiving the PBR. This call allows the author to clarify any outstanding or ambiguous details within the PBR.
11. When drafting a PBR, an author **4** is required to use a number of electronically based decision support tools. **6** These tools include: ATO Law; ATO Forum; Technical Reference Search Engine, CRS for searching for current cases and SIGNUM for significant issues. The author also makes use of informal networks established with other ATO staff.
12. If an author has difficulty in determining an optimal response to a PBR application, he/she should refer the PBR onto an ATO officer with more technical experience. This is done through the escalation process. **7** To escalate a PBR, the author must report the relevant facts of the PBR, case law and legislation, as well as a proposed means of resolving contentious issues associated with the PBR. The various parties that may be involved in the escalation process (in order of escalation) are: team leader, Tax Technical Network and the Tax Counsel Network. (TCN). The TCN has responsibility for settling the ATO position and forming the ATO view on all matters of tax law.

13. Once an author **4** completes a draft PBR it is referred to an accredited authorising officer **8**. The authorising officer may not be in the same location as the author and draws down cases to review from C/DWMS and CRS. He/she is responsible for providing quality assurance checking for the PBR. This includes ensuring that all administrative procedures have been followed correctly as well as grading the technical quality of the PBR. This grading is completed using the ATO Judgement Model.

14. Once a authorising officer **8** is satisfied with the quality of a PBR, it is authorised and sent out to the taxpayer. **1** The author is then responsible for closing the case on the Work Management System **2** and CRS **5**.

New additions to existing systems proposed in the PoA project

15. The finalised PBR is then locked down within the CRS thereby establishing a PBR archive **10**. From this archive, a post issue QA panel **11** down-loads a random sample of PBRs for post-issue review. Results of this review are relayed back to both the author **4** and the authorising officer **8**.

16. In addition to the finalised PBR, the author **4** also sends a sanitised version of the finalised PBR to the taxpayer. **1** This sanitised version of the PBR excludes parts of the PBR that can be used to identify the taxpayer, and will form the basis for the PBR that is published publicly. The taxpayer has 28 days to comment or object to the ATO about the contents of the sanitised PBR. If the taxpayer **1** objects and the matter cannot be resolved with the Practice Management Unit, **12** the PBR matter is escalated through the ATO escalation process **7**. The ATO publishes all authorisation numbers on the web-site, but may publish a summary of the ruling instead of a sanitised version if the matter is deemed to be too sensitive. The ATO's policy on the publication of rulings is contained in Practice Statement 2001/7.

17. Once any difficulties with the taxpayer regarding the sanitised PBR have been resolved, it is published on the ATO web-site. The sanitised PBR is archived.

Workstream 4: The Workforce Capability standard

18. The Workforce Capability standard is designed to provide a framework for assessing the capability and competence of officers engaged in the provision of written binding advice. Case officers and authorising officers will need to pass an accreditation process which is designed to ensure that ATO officers have the requisite attributes, skills and knowledge to ensure that a quality product can be issued. The accreditation process involves assessing case officers and authorising officers against a range of capabilities. These capabilities are grouped under a number of categories, namely business practice,³⁰⁷ professionalism,³⁰⁸ client focus,³⁰⁹ relationship management,³¹⁰ communication,³¹¹ corporate alignment,³¹² IT acumen,³¹³ and leadership and people skills³¹⁴.

19. The ATO completed an authorisation review in December 2000, and it intends to have finalised the authorisation model by 30 June 2001.

Workstream 5:

Maintain a process for ensuring that PoA project outcomes for each workstream are successfully introduced.

³⁰⁷ Knowledge of work practices and processes, application of law, law design and development, business intelligence, knowledge management and process improvement.

³⁰⁸ Professional development, planning and prioritisation and effective decision-making.

³⁰⁹ Client relationship management and understanding the client and the clients' context.

³¹⁰ Working with others, negotiation and conflict resolution and mediation.

³¹¹ Written communication, oral communication and facilitation.

³¹² Organisational strategy and vision.

³¹³ Desktop system, equipment, business systems and mainframe systems.

³¹⁴ People development and flexibility and change coordination.

Current status of the PoA project

20. The ATO advised that the PoA project has resulted in the following changes as of 2 April 2001:

- the integration of the ATO's case management systems;³¹⁵
- mandatory use of these integrated systems;
- introduction of a case registration number;
- introduction of a PBR authorisation number;
- the locking of completed cases to form an archive of issued PBRs; and
- the publication of edited versions of PBRs on an ATO web-site.

21. As noted in the report, the ATO advised us that the next phase of the PoA project will cover, among other things, the development and implementation of a corporate-wide system to track costs and time associated with private rulings and the creation of a number of reports from CWMS and DWMS to enhance performance information reporting in relation to PBRs.

³¹⁵ The ATO considers that its case management systems are integrated because it has:

- rationalised the number of systems used to manage and produce private rulings;
- increased consistency between business lines regarding the IT systems and controls it uses to produce private rulings;
- mechanisms (computer software) in place to facilitate the transfer of data between existing case management systems; and
- the ability to produce aggregated PBR management reports across all business lines.

Appendix 5

Significant Issues Criteria

Extract from ATO Practice Statement 2000/7—Management of Significant Technical Issues (Section 4)

4. Table A

Explanation of Significant Issues Criteria

Risks	Significant Issues Criteria	Explanation
<i>Compliance</i>	<ol style="list-style-type: none"> 1. Significant loophole, deficiency or anomaly in, or unintended application of the law. 2. Significant absence of deficiency in, or constant challenging of ATO technical interpretative policy. 3. Application of anti-avoidance provisions such as the general provision contained in Part IVA of the <i>Income Tax Assessment Act 1936</i>. 	<p>'Significant' means the issue involves:</p> <ul style="list-style-type: none"> • a large number of taxpayers; • major impact from the community perspective; • industry-wide impact; • complex, novel, or sensitive issues; • substantial actual or potential tax revenue; or • long term effect on the tax system. <p>Significant issues need clarification, whether by legislation, objections, litigation (including appeals), public rulings, or some other means – e.g. a test case.</p> <p>International treaty issues are considered significant where they involve:</p> <ul style="list-style-type: none"> • international tax avoidance schemes; • referral by the Australian Government, another department/agency or a foreign government; • international issues of political significance; • legislative projects; • litigation involving the ATO; • matters under treaties that require Competent Authority consideration; • complex questions of interpretation, or novel issues relating to international agreements; or • treaty issues involving significant revenue. <p style="text-align: right;"><i>continued next page</i></p>

Risks	Significant Issues Criteria	Explanation
<i>Implementation of tax reform</i>	4. Significant interpretive issues and tax planning opportunities arising from tax reforms.	
<i>Globalisation</i>	5. Significant international tax technical issues.	
<i>Revenue base protection</i>	6. Substantial revenue implications. 7. Total potential annual tax revenue impact of a particular issue to exceed \$25 million.	Examples include tax planning opportunities arising from tax reforms that have a substantial revenue impact.
<i>Community confidence</i>	8. Sensitive, important or controversial issues where senior ATO officers or Government need to be informed or consulted.	Examples include tax matters relating to high profile taxpayers (large corporates, high wealth individuals etc.), media sensitive etc. Matters which anticipate community concerns by the issue of public rulings and amendments to legislation etc. to ensure consistent tax treatment.

Appendix 6

Survey of Private Sector Tax Professionals and ATO Staff—Perceptions of Taxation Rulings

Methodology

1. The data collection method adopted was a self-completion mail out survey. Two questionnaires were developed with the assistance of the ATO and taxation law experts. One questionnaire was for ATO staff and the other was for private sector tax professionals. There was significant overlap between the issues covered in each survey.

Sampling Method

2. The subjects for this research were people who used taxation rulings in their day-to-day work. This included both staff at the ATO and tax professionals working in the private sector. For the private sector survey, the specific target population was defined as tax professionals working in:

- large accounting/legal firms;
- medium-sized accounting/legal firms;
- small accounting legal/firms;
- tax return processing agents; and
- non-accounting/legal firms.

3. For the ATO staff survey, the survey was targeted at staff working in the following areas:

- Large Business and International;
- Small Business;
- Individuals Non-business;
- Goods and Services Tax (GST);
- Office of Chief Tax Counsel; and
- Superannuation.

4. A stratified random sampling method was employed with the aim of drawing statistically valid and reliable estimates of the underlying views of the target population groups. Samples were drawn from the following sampling frames:

- private sector survey—membership database of the Taxation Institute of Australia (TIA); and
- ATO staff survey – staff designated as being in the Interpretation, Legislation and Litigation staff classifications by the ATO and other staff identified by the ATO as using tax rulings.

5. For the private sector survey, the TIA database was segmented into four strata that reflected the target population groups as closely as possible. (It was not possible to construct a sampling frame for tax return processing agents from the TIA database.) TIA members residing outside of Australia and libraries were excluded from the sampling frame. Within each of the following strata, a random sample of 400 TIA members was drawn ('N' indicates the total number of eligible members in the stratum):

- large accounting/legal firms (30+ partners): N=1087;
- medium-sized accounting/legal firms (6–29 partners): N=936;
- small accounting legal/firms or sole practitioners (1–5 partners): N=5598; and
- commercial business sector (non-legal/accounting businesses): N=1137.

6. For the ATO staff survey, random samples (of size 'n', where 'N' indicates the total number of eligible staff in the stratum) were drawn for the following strata:

- Large Business and International: n=222, N=399;
- Small Business: n=255, N=773;
- Individuals Non-business: n=240; N=542;
- Goods and Services Tax: n=235; N=484;
- Office of Chief Tax Counsel: n=215, N=364; and
- Superannuation: n=33, N=33.

7. The response rates for the surveys are shown in Tables 5 and 6 below.

Table 5
Private Sector Survey—Response Rates by Stratum

	<i>Sample size</i>	<i>Number of responses</i>	<i>Response rate</i>
Large accounting/legal firms	400	44	11 per cent
Medium accounting/legal firms	400	45	11 per cent
Small accounting/legal firms	400	69	17 per cent
Non-accounting/legal firms	400	40	10 per cent
Total	1600	209*	13 per cent

* Includes 11 responses that could not be classified to a stratum.

Table 6
ATO Staff Survey—Response Rates by Stratum

	<i>Sample size</i>	<i>Number of responses</i>	<i>Response rate</i>
Large Business and International	222	119	54 per cent
Small Business	255	143	56 per cent
Individuals Non-business	240	113	47 per cent
Goods and Services Tax	235	103	44 per cent
Office of Chief Tax Counsel	215	55	26 per cent
Superannuation	33	24	73 per cent
Total	1200	573 *	48 per cent

* Includes 16 responses that could not be classified to a stratum.

Summary of Results

8. This summary of the results of the survey covers both the private sector and the ATO. Caution should be exercised in interpreting the findings of the private sector survey given the low response rate. Specifically, there is a risk that the findings may be subject to non-response bias, whereby the findings may not accurately reflect the views of the underlying population of private sector tax professionals due to the views of non-respondents being systematically different from those of the respondents to the survey.

Part 1 Public Rulings

How often the private sector and the ATO use public rulings.

Private Sector:

9. 51 per cent of private sector tax professionals that spend at least 80 per cent of their time on tax consulting and compliance matters, generally read public rulings shortly after they are released, compared with 28 per cent of private sector tax professionals who spend less than 20 per cent of their time on tax consulting and compliance matters.

10. 92 per cent of private sector tax professionals that spend less than 20 per cent of their time on tax consulting and compliance matters generally read public rulings when they are faced with an issue covered by that ruling, compared with 66 per cent of private sector tax professionals that spend at least 80 per cent of their time on tax matters.

ATO:

11. Of the ATO staff who responded to the survey, 40 per cent use public rulings either 'all the time' or 'often' in their daily work.

12. Also, 20 per cent of relevant ATO staff favoured the longer and more discursive format of current public rulings in the TR and GSTR series, whereas only 8 per cent preferred the format of the TD and GSTD series (i.e. specific question with short answer).

Private sector and ATO understanding of the public rulings processes

Private Sector:

13. Although the majority (57 per cent) of private sector tax professionals understood the processes involved in the development of public rulings, a significant 18 per cent indicated that they did not. The level of understanding of public rulings processes was higher amongst private sector tax professionals who spent at least 80 per cent of their time on tax consulting and compliance matters, when compared to those who spent less than 40 per cent of their time on tax matters.

14. The level of awareness amongst private sector tax professionals of the various public rulings consultation mechanisms varied considerably:

- around half of private sector tax professionals were aware of the existence of the Public Rulings Panel and the GST Rulings Panel (with 49 per cent and 47 per cent respectively reporting awareness of these panels); and
- around one quarter (26 per cent) of private sector tax professionals were aware of the existence of the International Rulings Panel.

15. Private sector tax professionals who had worked in the tax field for more than 15 years had a better awareness of the International Rulings Panel, (37 per cent responding that they were aware of the Panel), than those who had worked in the field for less than 8 years (15 per cent responding that they were aware of the Panel).

ATO:

16. Almost three-quarters (74 per cent) of staff understood the processes involved in the development of public rulings. However there were varying levels of awareness of the panels that are used as consultation mechanisms in the development of public rulings. 71 per cent of staff were aware of the existence of the Public Rulings Panel, around half (46 per cent) of staff were aware of the GST Rulings Panel, and 31 per cent of staff were aware of the International Rulings Panel.

17. Awareness in relation to all three panels was significantly more widespread among staff at the SES and EL2 levels than among staff at lower levels.

Satisfaction with public rulings and the public rulings process

Private Sector:

18. The basic statistics were:

- 72 per cent were positive about the ease of access to public rulings;
- 61 per cent were positive about the ruling's readability;
- 57 per cent were positive about the ruling's ease of understanding: A larger proportion of private sector tax professionals who spent at least 80 per cent of their time on tax related consulting and compliance rated the last public ruling they consulted as easy to understand (66 per cent rated it 'good' or better) than those who spent less than 40 per cent of their time on tax matters (41 per cent rating it 'good' or better);
- 53 per cent rated the examples in the ruling positively in terms of their usefulness in helping them to understand how the ruling applied;
- 51 per cent rated the ruling positively in terms of the clarity of the explanation of how it applies to the particular arrangement or class of arrangements it covers; and
- 55 per cent of private sector tax professionals said that they were highly confident that they could rely on the public ruling in subsequent audits (31 per cent were moderately confident that they could rely on public rulings in this way).

19. Slightly less than half (48 per cent) of private sector tax professionals were positive about the ruling in terms of the clarity of its explanation of the law – 34 per cent rated it as 'average' and 19 per cent as 'poor' or 'very poor'.

20. The key perceived weakness of public rulings related to the ease of following up related questions with the ATO: around one-third (35 per cent) rated this aspect of the public rulings process as 'poor' or 'very poor' (equal to the proportion of private sector tax professionals rating this aspect positively).

21. Another less favourably assessed aspect of public rulings was the extent to which they answered private sector tax professionals' questions: around half (48 per cent) of private sector tax professionals considered that the last public ruling that they consulted only partially answered their questions and a further 9 per cent considered that it did not answer their questions at all.

22. Over half (56 per cent) of private sector tax professionals rated public rulings as 'good' or 'very good' in terms of their overall clarity. 37 per cent rated their overall clarity as 'average' and only 8 per cent rated them as 'poor' or 'very poor' on this basis.

23. An overwhelming 98 per cent of private sector tax professionals considered that public rulings were of benefit to them in carrying out their work and 98 per cent considered that the ATO should continue to issue public rulings.

ATO:

24. The basic statistics were:

- 88 per cent were positive about the ease of accessing/finding that public ruling;
- 80 per cent were positive about the ease of reading/readability;
- Staff who spent 40 per cent or more of their time on tax related matters felt that public rulings were easier to read (81 per cent 'good' or 'very good') than those who spent less time on tax matters (59 per cent).
- 79 per cent rated the ease of finding their way around the ruling as 'good' or 'very good';
- 77 per cent were positive about the clarity of the explanation of the law in the ruling;
- 76 per cent were positive about the ease of understanding of the ruling;
- 70 per cent were positive about the clarity of the explanation of how the public ruling applied to the particular arrangement it covers; and
- 68 per cent rated the usefulness of the examples in the ruling in helping them understand how the ruling applied as 'good' or 'very good'.

25. ATO staff were asked to give an overall rating of the clarity of ATO public rulings. A large majority of staff (78 per cent) rated public rulings as 'good' or 'very good' on this criterion, 20 per cent rated public rulings as 'average', and only 2 per cent rated them as 'poor' or 'very poor'.³¹⁶

³¹⁶ The following were the most common explanations of why staff thought characteristics of public rulings were 'average', 'poor' or 'very poor':

- the ruling was not current with recent legislative changes and/or did not provide an explanation of why it was not consistent with the legislation;
- the language in the ruling was verbose and 'jargonistic'/quasi-legalistic, terms were not explained;
- too much information was contained in one ruling and/or it attempted to address too many issues;
- there were too few examples and/or the examples covered very basic situations not reflected in the complex real world, and not useful in applying the ruling;
- the ruling failed to take complexities and disparate circumstances into account – leading to difficulties in application;
- there was no reasoning described for the conclusions provided in the ruling;
- headings were insufficient or confusing, and structure and navigation were poor; and
- it was difficult to access and navigate the relevant information on the ATO system.

Part 2 Private Binding Rulings

Decision to publish private rulings

Private Sector:

26. Most (82 per cent) private sector tax professionals considered that, subject to adequate protection of taxpayer confidentiality and privacy, private binding rulings should be published by the ATO. Of these private sector tax professionals, 90 per cent said that they would be satisfied to receive private binding rulings that addressed the material facts of their request, but did not identify the particular taxpayer for whom the rulings had been sought. 84 per cent thought that private binding rulings should be reviewable by the Administrative Appeals Tribunal and the courts.

ATO:

27. 75 per cent of staff considered that private binding rulings were of benefit to the general taxpayer population. 59 per cent felt that, subject to adequate protection of taxpayer confidentiality and privacy, private binding rulings should be published by the ATO.

Overall satisfaction with the clarity of private rulings

Private Sector:

28. Almost half (46 per cent) of private sector tax professionals rated private binding rulings as 'good' or 'very good' in terms of their overall clarity. 44 per cent rated their overall clarity as 'average' and 10 per cent rated them as 'poor' or 'very poor' on this basis.³¹⁷

29. Overall, 89 per cent of all private sector tax professionals considered that private binding rulings are of benefit to the general taxpayer population.

³¹⁷ When asked to explain why they rated the characteristics of private binding rulings as 'average' or poorer, respondents commonly gave the following types of answers:

- the timeliness of the response was unsatisfactory;
- they had to contact the ATO many times to ensure the issue was actioned;
- the specific issue/question was not addressed in the ruling;
- the ATO provided no explanation as to how they formed their view;
- there were problems with the ATO's interpretation of the legislation; and
- facts which supported an alternative outcome were ignored or discounted.

ATO:

30. Almost two-thirds (63 per cent) of staff considered that, overall, the clearness of ATO private binding rulings was 'good' or 'very good'. 31 per cent of staff rated overall clearness as 'moderate' and 5 per cent rated it as 'poor' or 'very poor'.

31. 75 per cent of staff considered that private binding rulings were of benefit to the general taxpayer population. 59 per cent felt that, subject to adequate protection of taxpayer confidentiality and privacy, private binding rulings should be published by the ATO.

Appendix 7

Summary of References to Rulings in Tribunals and Courts

<i>Decisions 1996–2000</i>	<i>ATR Reported: AAT</i>	<i>ATR Reported: FCA</i>
Total relevant cases ATR reported	324	384
ATR decisions referring to rulings	45 (3 not in ATR)	20
Per cent rulings decisions of total ATR reported	13.9%	5.2%
References to rulings over time	AAT	FCA
Rulings referred to 1996–2000	48 (47.1%)	25 (46.3%)
Rulings referred to pre 1996	54 (52.9%)	29 (53.7%)
Total decisions	102	54
Approval/disapproval of rulings	AAT	FCA
Approving references	33 (32.4%)	13 (24.1%)
Neutral references	40 (39.2%)	32 (59.3%)
Disapproving references	29 (28.4%)	9 (16.6%)
Approval/disapproval over time 1996–2000	AAT	FCA
Approving references	21 (43.8%)	8 (32%)
Neutral references	15 (31.2%)	13 (52%)
Disapproving references	12 (25%)	4 (16%)
Pre 1996		
Approving references	12 (22.2%)	5 (17.2%)
Neutral references	25 (46.3%)	19 (65.5%)
Disapproving references	17 (31.5%)	5 (17.3%)

Source: Scaleplus and Australian Tax Reports (ATR). FCA is Federal Court of Australia. Calculations by Professor Vann with assistance from Karen Davis.

Appendix 8

Formal Advice—Summary of Treatment by Revenue Authorities

Country	Formal Rulings system	Tax Office Administered	Binding	Appeal Rights	Fees
Australia	Yes	Yes	Yes	Yes	No
Austria	Yes but obligations limited	Yes	No	Only in respect of refusals to rule	Yes
Belgium	Yes but mainly only public rulings	Yes by the Ruling Commission	No	No formal appeal rights but default system operates that deems ruling in favour of taxpayer	No
Brazil	Yes	Yes	Yes	No	No
Bulgaria	Yes	Yes	No	No	No
Canada	Yes	Yes	Formally no but in practice yes in respect of advance rulings but not on technical interpretations	No	Yes
China	No but there are administrative circulars that are like rulings	Yes	Theoretically yes but as interpretation is left to local tax authorities, often not in practice	No because the Chinese courts do not have the general power of statutory interpretation	No
Denmark	Yes	Yes	Yes	Yes within 3 months of issue	Yes, an application fee and thereafter in blocks of 5 hours

Country	Formal Rulings system	Tax Office Administered	Binding	Appeal Rights	Fees
Finland	Yes, binding advance rulings, private letter rulings and oral guidance	Yes	Advance rulings are binding	Generally yes	Yes, but fees are small
France	Rulings are issued, but system does not have legal foundation	Yes	Yes	Yes but not under the tax legislation	No
Germany	Yes, but only in respect of transactions that have not happened yet	Yes	Yes	Only in respect of failure to issue a ruling	No, the parliament has rejected the imposition of costs
Greece	No, the Ministry provides its interpretation of the law on request	No, taxes are collected by hundreds of tax inspectorates and although the Ministry may provide advice, the inspectorates do not have to follow it	Not on the inspectorates	No	No
Hong Kong	Yes, and operates separately from China	Yes but as income tax rates are very low they are not used a lot	Generally yes	No	Yes

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Fees	Country system	Formal Rulings Administered	Tax Office	Binding	Appeal Rights
Hungary	Yes	Yes	Yes, rulings are considered to be very strict interpretations of the law and departures from rulings are not permitted	Yes, but only within 15 days of the ruling being issued	Yes, fees are based on 1% of the taxable amount involved but not less than a prescribed minimum amount. If the applicant formally revokes appeal rights within 15 days of the ruling being issued, in the case of negative rulings a refund of the fees for preparation of the ruling can be applied for
India	Yes. Resident taxpayers are able to apply for advance rulings. They are only issued on questions of fact and law	No. Rulings are issued by the Authority for Advance Rulings	Yes on the tax office and the applicant	No, but in extraordinary cases some appeal rights do exist	A flat fee is imposed regardless of the complexity of the application
Indonesia	No, but written advice is given	There are various tax authorities, all of whom make laws. The general principle appears to be the higher the tax authority, the more general is the law	Legally not because there is no formal system for rulings. In practice taxpayers have no option but to follow unfavourable written advice	No	No

Country	Formal Rulings system	Tax Office Administered	Binding	Appeal Rights	Fees
Israel	Yes but only in limited circumstances and generally only for prospective actions	Yes	Yes and in cases where the advice does not constitute a ruling the tax authorities consider themselves administratively bound	Rulings are mainly informal but on points of law they can be appealed to a court	No
Italy	Yes but there are only some sections of the law under which rulings may be sought. However extensions are being considered	Yes but if the tax authorities do not rule, the taxpayer can go to the 'Consulting Committee' which is outside the tax office	Seems to be a controversial subject. If the Committee does not respond to a ruling request it is deemed by default to be in favour of the tax payer. In such instances the tax authorities do not consider themselves bound, but under others they do	There are no express provisions in the law to allow an appeal	No
Japan	No, except in relation to transfer pricing	Yes	No	No	No
Republic of Korea	Yes	Yes	Yes	Not in respect of tax rulings but yes in respect of Ministry Of Finance rulings	No
Malaysia	No, but advices are issued	Yes	Administratively only	No	No
Mexico	Yes	Yes but there are many levels of tax authorities	Yes. Rulings are binding on the tax authorities and the taxpayer. This includes unfavourable rulings issued to taxpayers	Yes	No

continued next page

Country	Formal Rulings system	Tax Office Administered	Binding	Appeal Rights	Fees
Netherlands	Yes	Yes	Yes	Only if the tax authorities decision is adverse or less favourable or if the request is rejected	Not documented
New Zealand	Yes public, private and product rulings	Yes	Yes	Not against the ruling itself but appeals can lodged against assessments that apply the principles of the ruling	Yes
Norway	No	There are different levels of tax administration including national and municipality based. The Ministry of Finance is the highest but does not assess income tax only some specific taxes	Depends on who issues it and what tax it is	No	Yes
Pakistan	Yes, advance rulings are issued	Yes	Yes	In limited circumstances only	No
Portugal	Yes advance rulings are available but their use seems to be limited	Yes	Yes	No	Fees are charged
South Africa	No formal advance rulings procedure, but written opinions of the tax administration are binding	Yes	Written opinions only	Yes but taxpayers can only appeal against the use of discretionary powers	No

Country	Formal Rulings system	Tax Office Administered	Binding	Appeal Rights	Fees
Spain	Yes private rulings are called consultations and there is also a form of public ruling	Yes	Depends on the topic that the consultation covers	No, the taxpayer can effectively only appeal the assessment	No
Sweden	Yes	No, rulings are issued by the Council of Advance Tax Rulings	The system is more like a court system	Rulings are not agreements between the taxpayer and the tax office they are more like a court decision or judgement. Favourable rulings are binding on the courts and the tax office. Decisions can, however, be appealed by both parties	Yes. The size of the fee depends upon the complexity of the matter
Switzerland	Yes	Yes	Generally yes	Yes	No
Taiwan	Yes	Yes	Yes	No, but because of different levels of tax authorities, a review can be sought by a higher authority	No
United Kingdom	There is no system of statutory rulings but in practice public and private rulings are made. There are also advices that are called 'settled views of the law'	Yes but Inland Revenue does not have responsibilities for collecting withholding taxes	In practice yes	Unfavourable rulings can be appealed. But there is no appeal if the dispute is because Inland Revenue has refused to rule	Not for opinions but a fee does apply to settled views of the law

Country	Formal Rulings system	Tax Office Administered	Binding	Appeal Rights	Fees
United States	Yes there are five different types of rulings	Yes	The 'lowest' category of rulings is a letter ruling which are issued by IRS branch offices in respect of private taxpayer affairs. Technically the IRS National Office can ignore them but in practice does not, providing the actual circumstances are those as set out in the application	None in respect of letter rulings. There are two internal ways to contest determination letter rulings. Technical rulings can be appealed through a conference with the National Office of IRS.	There is a prescribed scale of fees that varies with income levels and the type of ruling being sought
Venezuela	Taxpayer has a right to an opinion from the tax office	Yes	No but generally through the opinion system the tax office gives an indication of its position	T/p can't appeal an adverse opinion but can appeal the opinion if it is used in the assessment	Yes, approximately \$US1

Source: ATO data, based on *The International Guide to Advance Rulings*, edited by the International Bureau of Fiscal Documentation, 1999.

Appendix 9

Rulings Administration in New Zealand³¹⁸

Background

1. Binding rulings were introduced in 1995. They are administered by the Adjudication & Rulings Business Unit (A&R) in the Inland Revenue Department (IRD).

Number of rulings by type (1999–2000)

Private Rulings	115
Product Rulings	25
Private Rulings finalised without issue of Ruling	26
Product Rulings finalised without issue of Ruling	17
Rulings Applications not proceeded with	16
Accrual Determinations	2
General Depreciation Determinations	2
Taxpayer Specific Depreciation Determinations	14
Public Rulings	4
Review of Expired Public Rulings	10

Staffing³¹⁹

2. There are 33 staff in the Rulings Unit. Combined with staff fulfilling the adjudication, support and managerial functions, the total number of staff in A&R is 63.

Performance targets

3. Each year, IRD signs up to a performance delivery and monitoring document that sets out parameters of the Department's agreed delivery to Government, i.e. the Purchase Agreement. With respect to rulings, the document sets out specific performance targets and standards and it is a reference source to measure performance against performance standards.

³¹⁸ Compiled from material provided by the Inland Revenue Department of New Zealand, November 2000.

³¹⁹ As at 30 September 2000.

Production process

The team and the process

4. A team of three is appointed to work on each ruling. The team comprises an analyst, a manager and a person with responsibility for sign-off. In addition, an advisor may also be appointed to the team, if appropriate. If more detailed involvement in research or analysis is demanded in addition to that reasonably allocated to the analyst, a manager may allocate a second analyst to the job (to work independently or collaboratively). Alternatively the manager may refer one or more of the issues to a principal advisor, for research and a report.

The analyst

5. The analyst has authorship responsibility for the job, and is the person who actually researches, analyses, and writes up the issue. The analyst is responsible to the manager for delivery of the job, within the agreed timeframe and to an acceptable level of quality. Occasionally, a principal advisor may be the author of a particular item.

The manager

6. The manager has overall management responsibility for the job. The manager is responsible to the General Manager for delivery of the job within the agreed timeframe and to an acceptable level of quality. Rulings managers determine the allocation and prioritisation of work, as well as provide technical leadership and guidance to the analyst.

The sign off officer

7. The sign off officer signs, and approves, the item concerned. The General Manager or Assistant General Manager will generally undertake this role. The sign off officer is involved at the stage at which the job is allocated to the advisor, to give an indication of what he or she thinks the issues are and what should be looked at. In appropriate cases, e.g. significant change in the apparent issues or likely answers, the analyst and the manager may consult the sign off officer further during the research phase.

The advisor

8. For some projects there is also an advisor: someone who can add value to the project on a consultative basis. Advisors are appointed to a project only if they have particular expertise to contribute, e.g. because of their expert knowledge and/or the analyst's relative lack of experience. It is not the advisor's job to research fully the issue and provide an alternative view (if they hold one). Advisors are not required to agree with the final result, although if they do not this is obviously a relevant fact for the Manager and the sign off officer.

Preliminary consideration

9. Two preliminary checks are carried out on new applications. The Manager Field Liaison & Communications (FLAC), to whom applications are addressed, performs the first check. Receipt of the application is formally recorded, following this check.

10. The second preliminary check takes the form of an 'Allocation Meeting', attended by the analyst, the manager, and the sign off officer who leads the discussion. At this meeting further consideration is given to some of the points addressed earlier by the Manager FLAC. Following this meeting, a letter with an estimate of time and cost to completion is issued to the applicant. Usually, A&R avoids spending further time on the project until the applicant has accepted the cost estimate.

11. Once an acceptance letter is received a 'Technical Directions Meeting' takes place, having the same attendees as the allocation meeting, but led by the manager. At this meeting the key technical issues and relevant commercial aspects are considered and any pressure points identified. The structure of the report will be planned and a decision made on the order in which the work should proceed. This leads, in turn, to the production of an issues report.

Desk File

12. The 'Desk File' (available electronically on every staff member's personal computer) spells out in detail the processes to be used to analyse, research and issue rulings. The desk file includes templates for issues reports and the variety of proforma letters that are used when applications are received, when additional information is required, when a draft ruling is issued for consideration by the applicant, when the final ruling is issued, when an application is withdrawn; and when a file is closed for lack of finality.

Check lists

13. Check lists are used at the time of receipt of an application, the allocation meeting, the technical directions meeting, the debrief meeting and the post-issue review. These lists have been designed to minimise the risk of overlooking vital details during the process, to identify at the beginning areas for research so that valuable time is not used by analysts working at a tangent to the real issues, to identify issues with a wider application, and to ensure that performance standards are met.

Issues reports

14. The issues report is the document that gives rise to a subsequent ruling. It is a substantial document that records:

- A summary of A&R findings on the technical issues discussed in the report.
- The background—facts, arrangement, issues, previous work on the subject matter and relevant legislation.
- The analysis of the issues—the applicant’s submissions and conclusions.
- Comments from IRD technical groups.
- Conclusions
- Recommendations
- The agreement/comments of the manager and sign off officer relating to the recommendations.

15. The issues reports are placed on the relevant project file and copies stored on an electronic database that holds all reports issued to date. This forms part of the research facility made available to analysts for subsequent projects.

Peer comment

16. Resulting from the directions meeting, the analyst prepares a brief summary of the arrangement and associated issue(s) and e-mails it to all Rulings’ Unit technical staff, inviting any comments or suggestions they might have on the subject.

17. A copy of the message also goes to the Policy Advice Division and the Technical Standards group in IRD, and can serve as an advance indication that there may be policy concerns or operational matters arising from the application.

Debrief

18. At the end of a project once a ruling has been signed and provided to the applicant, or the file is otherwise completed, a short debrief meeting is held. At that meeting the manager and/or sign off provide feedback to the analyst on how the job went, what lessons could be learned from it, and other implications of the ruling. Sometimes information needs to be sent to the Operations area of IRD if the impact of a ruling can be expected to apply widely to taxpayers in similar circumstances. A recommendation might be made to issue a public ruling on the topic, or it may be necessary to refer the outcome to the Policy Advice Division if a legislative amendment is deemed appropriate.

Post-issue review

19. A post-issue review process is in place and is intended to provide a level of certainty that all technically-based outputs such as private, public, product rulings, determinations, technical correspondence, have followed appropriate procedures and met required performance standards.

20. The process involves having someone at manager level or above—other than the sign off officer and manager who worked on the matter—review a completed file to ensure that certain procedures have been followed and performance standards relating to that project have been met.

Issues report data base

21. As noted earlier, once a project is completed, a copy of the issues report for that project is stored in an electronic library so that analysts researching a similar topic in future have access to these reports. This has the advantage that earlier conclusions can be considered afresh, or with a different perspective, or in the light of more recent case law or thinking. A&R indicated that it was continually seeking to ensure that its work develops in the context of ongoing review of the correctness of decisions.

Information management systems

22. The principal information management system used by A&R is the Litigation Adjudication and Rulings System (LARS). LARS is purpose-designed to provide a comprehensive case management system for the work undertaken by the business units of Litigation Management and A&R. LARS is used to manage the internal workflow, time management, costing and management reporting.

23. Access to LARS is restricted to the Systems group in IRD only. While LARS does have some error checking routines for data entry, A&R relies on the analysts to provide accurate data and to check the integrity of data in resulting reports. The IRD is currently developing electronic reports to allow the Systems group to identify more readily errors and missing data. It is also developing a process whereby the team leader in the Systems group regularly reviews audit trails of modifications to important data (e.g. staff details, hourly rates).

24. The A&R systems team (part of the support function in A&R) sets up each new project in LARS, and then updates the project milestones from the project control sheets on which analysts notify amendments on a regular basis.

25. Staff complete a daily timesheet with time allocated between each project. This enables the Systems team to prepare Fee Estimates reports which are distributed to staff three times per week, detailing the time allocated to projects against the initial and latest estimate. This allows managers to monitor performance and production against previously-estimated time lines.

26. To improve the consistency and accuracy of time recording the IRD recently developed a guide for time recording for analysts. The weekly time report summaries are signed by the analysts and their managers – as true and correct. The time estimate for a project is currently based on the level of complexity, the experience of the analyst, and comparison with similar projects.

27. Numerous management reports are available, for example work in progress and cases with no action for 90 days. Reports are run regularly and on demand.

Clarity of written text

Desk File

28. The Desk File, used extensively by staff as a guide to processes and procedures, contains a style guide that provides analysts with information on formatting, structure, grammar, etc. There are also instructions on how to review issues reports for clarity and continuity. Staff have access to texts on style (including The New Zealand Style Book), and are encouraged to attend training courses when their work requires improvement.

Publications and Rulings Coordinator

29. All public rulings, product rulings, interpretation statements and interpretation guidelines are edited by the Publications and Rulings Coordinator before they go to the sign off officer for approval to be issued as an exposure draft.

Public items

30. The role of the Publications and Rulings Coordinator in the context of public items is to see that drafts follow the stated guidelines, while allowing for some departures that may be necessary in certain circumstances. This officer is also concerned with the readability of an item, its grammatical accuracy, similarity in style to other items, and conformity with the broader concepts of IRD's Tax Information Bulletin in which it will subsequently appear.

Private and product rulings

31. Depending on the complexity of a ruling's arrangement and subject matter, and the need to ensure that it is described accurately in the final ruling, the team working on the ruling may need to check with the client on a number of occasions to ensure that its understanding of the details of the subject arrangement is correct.

32. When a ruling has reached the draft stage, it is forwarded to the client with a letter that contains the following:

It is imperative that you carefully check the content of the ruling for complete accuracy, including the description of the Arrangement, the taxation laws covered by the ruling, and any assumptions made or conditions stipulated by the Commissioner in making it. Any inaccuracy subsequently discovered in the final ruling's content may lead to the ruling not applying at all or as intended. It could also lead to inconvenience to you should the ruling have to be withdrawn and a new ruling issued. It is your responsibility as the applicant to ensure that the proposed ruling is accurate in every factual detail, and that it covers what is required.

Systems supporting user-charges and fee-based rulings

Billing process

33. A \$310 (GST inclusive) fee is paid by the taxpayer on application. This covers the cost of the first two hours' work on the application. Once the application has been allocated and the first meeting held, the applicant is advised of the estimated additional cost of the ruling and work proceeds once the estimate is agreed. The time an analyst spends on the project is recorded against the project from the daily timesheet.

34. In many cases the application proves to be more complex than first estimated or the client may make further submissions. The client is advised of a revised estimate and agreement is negotiated for the additional costs. Analysts receive regular updates of the cost incurred to date on the project to ensure that a new estimate is renegotiated with the client if necessary.

35. The time recording system is an essential part of the billing system and is part of the in-house database that records all project and management information on all projects undertaken by A&R. The time recording data is also transferred and summarised into the IRD-wide time recording system, which calculates the cost of all Departmental outputs.

36. A record of all time spent on the project (chargeable and non-chargeable) is available from the database at any time. The manager reviews the detailed billing log, before an invoice is approved. In exceptional circumstances, the client may be billed for less than the chargeable time booked to the project, in which case a waiver application must be made to the General Manager to waive a portion of the charge for this time.

37. Invoices issued are entered into the accounts receivable system and payment is followed up in the usual way. Interim invoices are produced for large projects or when a draft ruling is issued, particularly when it is expected that further work will be done before the final ruling is issued.

Charge out rates and fee setting

38. A uniform charge out rate of \$155 (GST inclusive) per hour applies at present. The rate is specified in the Tax Administration (Binding Rulings) Regulations 1999. The rate is based on full cost recovery at the estimated hourly rate cost of the Rulings Unit. This includes the cost of overheads for A&R and a share of corporate overheads for IRD. Included in the corporate overhead is a capital charge which is the public sector surrogate for a return on capital.

Quality assurance processes

39. A&R has several initiatives aimed at ensuring quality in the group's deliverables. They include, but are not limited to:

- The team approach based on different levels of experience with the most senior people in the sign off role;
- The involvement of the Publications and Rulings Coordinator who reviews and monitors the drafting and consistency of rulings;
- The internal and external consultation process for finalisation of public items;
- The opportunity for ruling applicant/agents to be involved throughout the technical decision making and drafting processes;
- Regular and ongoing evaluation of staff within the context of performance appraisals;
- The rulings' evaluation process, described below; and
- The activities of the National Research Unit seeking taxpayer feedback, described below.

Customer evaluation forms

40. As part of Rulings' drive to improve customer services, evaluation forms are sent to recipients of private, product, or status rulings asking for opinions on the quality of services provided. In order to get a comprehensive result, forms are sent out regardless of whether a ruling resulted from the application or the application was withdrawn prior to the ruling being issued.

41. In order to get as high response rate as possible, if a response is not received within 4 weeks, a follow-up phone call is made and responses included in a pro forma evaluation form.

42. The evaluation comments are passed to the manager of the project for consideration and appropriate action. A quarterly summary report amalgamating the evaluation responses is considered by management.

The consultation process

43. As part of the quality assurance process, before publication, exposure drafts of all publishable products are put through an extensive consultation process, firstly on an internal basis and then publicly.

Internal consultation

44. Once an item has been signed off for distribution as an Exposure Draft the item is sent to the Minister of Revenue, Treasury, Policy Advice Division, Litigation Management, and managers of all the relevant Operations groups. This gives the consulted groups the opportunity:

- To provide any reasons why the item should not proceed to external comment; and
- In the case of the IRD groups, to provide technical comment before the item goes out for external comment.

45. When a project team believes the subject matter to be reasonably straightforward and non-controversial, internal commentators are advised that, unless they provide compelling reasons why the item should not be made publicly available, the deadline for comments is one fortnight. If the subject matter is complex or more contentious, internal commentators are given four to six weeks to provide their views.

External comment

46. Once a public item draft is issued for external consultation the public is given a minimum of six weeks in which to make submissions. The process includes the following components:

- Exposure drafts are available through the IRD Web Site;
- Exposure drafts are circulated to the Institute of Chartered Accountants of New Zealand, the NZ Law Society, and various other interested groups; inviting them to give their views on the accounting/legal/commercial aspects of the subject matter. Drafts are also sent to the Australian Tax Office;
- Each issue of IRD's *Tax Information Bulletin* details the availability for comment of current exposure drafts; and
- The drafts are available through commercial publishing firms such as CCH, Brookers and Butterworths.

Post consultation review

47. Following receipt of the comments, the analyst who prepared the draft responds as a matter of course to the commentators, whether IRD disagrees or agrees. Mention is made of the responses received (both favourable and unfavourable) in the commentary of the finalised version.

National Research Unit

48. A specialist unit within IRD, the National Research Unit, operates a customer satisfaction survey process for IRD's corporate customers and tax agents. This process provides for comments to be made on the performance of A&R.

Training and knowledge management approach

Introductory Tax Course

49. The Introductory Tax Course (ITC) comprises 16 modules, delivered over a two-week period. The modules are facilitator-led and the programme is held annually, usually within 3 months of a person's start date. The ITC is customised for A&R. The ITC is aimed at new technical staff, being mainly recent graduates who almost always have a law degree or combined law and commerce degree.

Professional Development Programme

50. Technical training sessions, aimed at tax technical staff with under four years' experience in A&R, are planned to be held fortnightly. Off-weeks are available for non-technical training such as organisational or operational issues and to provide contingency sessions for the technical training sessions or for coverage of topical issues.

Individual training needs

51. As part of the IRD's performance appraisal system, formal appraisal of each individual staff member's performance occurs every six months. As part of the review process, the individual's needs for training are identified and agreements are reached on the training that is considered appropriate for that staff member.

Performance monitoring, reporting and review*Performance Appraisal*

52. IRD has a transparent performance appraisal process in place with documented performance monitoring procedures required. The formal parts of the process take place on a six-monthly basis, however continuous feedback to staff on performance and progress is encouraged.

Summaries of rulings

53. IRD does not publish summaries of private rulings from which identifying details have been removed. However, when a ruling is on a topic which is considered to have wide appeal, or relates to a developing area, such as e-commerce or software development, for example, the team who completed such a ruling might well recommend that the issue become the subject of a public ruling as resources permit or demand requires. The topic will then be referred to A&R's internal Public Items Panel, for consideration as to appropriateness.

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