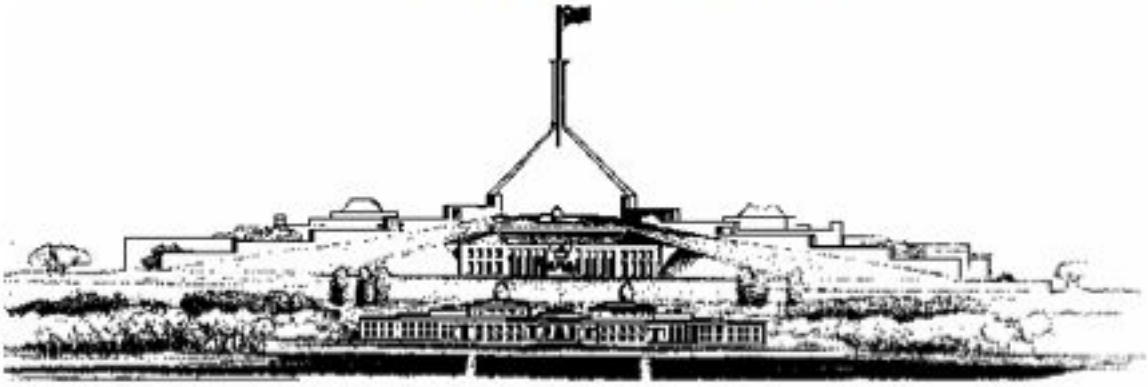
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

INSPECTOR-GENERAL OF TAXATION BILL 2002

Second Reading

SPEECH

Wednesday, 16 October 2002

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Wednesday, 16 October 2002	**Source**	House
Page	7764	**Proof**	No
Questioner		**Responder**	
Speaker	Bishop, Julie, MP	**Question No.**	

Ms JULIE BISHOP (Curtin) (5.04 pm)—The Inspector-General of Taxation Bill 2002 is before us today due to events involving the Australian Taxation Office that began in the late 1980s and early 1990s. These circumstances arose under the watch of the then Labor Treasurer and Assistant Treasurer and were left behind by Labor, and so these reforms are a priority for this parliament. I was intrigued to hear the member for Kingston purporting to give advice on taxation administration. This is the man who was the principal adviser to Treasurer Kerin and then to Treasurer Willis in 1991 and 1992—a very significant period in tax administration in this country, and I will come back to it—and again in 1994 to 1996, which was another significant period in the breakdown of taxation administration in this country—and I will come back to that, too.

First, let me make some general observations. Taxation is perhaps the most direct application of state coercion that the majority of citizens will ever experience. The levying of taxes on incomes, commodities and activities has long tended to be regarded by citizens generally as a necessary evil—necessary in that only through coercion can the public services expected by our community be provided, and evil in that the force deployed in its collection is ultimately sanctioned violence. All great legislators in history, from Cicero to Jefferson to Menzies, and before and beyond, have observed the inherent power a government has over its citizens through the ability to tax and the tension it creates between a government and its citizens. Menzies noted:

> `I pay my taxes,' says somebody, as if that were an act of virtue instead of one of compulsion.

The French economist, legislator and satirist Frederic Bastiat said of taxation in the 1850s:

> It is impossible to introduce into society a greater change and a greater evil than this—the conversion of the law into an instrument of plunder.

Perhaps for a more contemporary take on taxation, there are the words of American humorist P.J. O'Rourke, when he says:

> All tax revenue is the result of holding a gun to somebody's head. Not paying taxes is against the law. If you don't pay your taxes, you'll be fined. If you don't pay the fine, you'll be jailed. If you try to escape from jail, you'll be shot.

While we recognise in a liberal society that taxes are a necessary `evil', we further comprehend that their administration ought to be subject to the most stringent and exacting standards of public accountability. This is what Labor is rejecting by its opposition to this legislation. In dealing with what is, after all, the legalised expropriation of property, authorities ought to be scrupulous in applying the law fairly and uniformly and with due regard to process and natural justice. This is what Labor is rejecting in its opposition to this legislation. Given the awesome power that the federal government has to tax, it is incumbent on governments to restrain and respect the power of taxation. I say again that it is that recognition on the part of liberals that has motivated this bill before us today. Events involving the Australian Taxation Office going back to the late 1980s and the 1990s and circumstances created and left behind by a Labor government have given rise to this legislation.

As to the bill itself, the Inspector-General of Taxation Bill establishes a new statutory office so as to provide a more independent source of taxation advice to the Commonwealth government than is presently provided by the ATO. The role of Inspector-General of Taxation will therefore require the holder of the office to act in a position of advocacy for all taxpayers in Australia, both individuals and businesses. This is what Labor is rejecting. Given the independent status of the office, the inspector-general will be appointed by the Governor-General and will have tenure of a fixed term of up to five years. This tenure and the strict terms applying to the dismissal of the inspector-general will ensure that the office remains at arms-length from political and administrative forces.

The Treasurer indicated in his second reading speech that the bill allows the inspector-general to conduct reviews of taxation administration, both autonomously and upon the direction of the Treasury ministers. This is what Labor is rejecting. These reviews will provide for public submissions—Labor rejects this—and the investigation of documents and evidence from tax officials. As the inspector-general's role relates only to

systemic problems in tax administration and not to individual taxation matters, the bill does not represent any incursion into the rights of taxpayers. Likewise, these reforms will not compromise the capacity of the Commissioner of Taxation, as head of the Australian Taxation Office, to administer the tax laws of Australia. Rather, the inspector-general will only be able to direct the commissioner to require disclosure of information in the context of his investigations. Further, the possibility of duplication on the part of the inspector-general and the other taxation review agencies—including the Commonwealth Ombudsman—will be reduced as a result of closer interagency consultation.

I have already made mention of the events that necessitated the reform of the existing taxation administration arrangements, including the appointment in late 2001 of Senator the Hon. Helen Coonan as the Minister for Revenue and Assistant Treasurer with special responsibility for tax administration. Upon her appointment, the Assistant Treasurer took on the task of settling disputes between the Australian Taxation Office and taxpayers caught up in what had become known as mass marketed tax effective schemes—not confined to Western Australia, but schemes that were entered into by investors across this country. The saga of these schemes is reason enough for the establishment of the office of inspector-general. It seems that Labor, in opposing this bill, has already turned its back on the thousands of taxpayers who were caught up in these schemes. Back when it was facing an election, Labor, opportunistically, called for action to assist those subjected to amended assessments for their part in these schemes, but now it ignores their plight—and, indeed, the plight of other taxpayers in their dealings with the ATO—when the government introduces a measure to act against the possibility that such a scenario, as confronted taxpayers who entered into these schemes, could recur. This bill ensures greater accountability, transparency, efficiency and fairness in the administration of tax in this country—and Labor opposes it. What could possibly be the motive behind Labor's opposition to giving the ordinary taxpayer a voice, an advocate, in dealings with the bureaucracy—that is, the Australian Taxation Office?

The mass marketed schemes provide a classic case study of what can go wrong when the government of the day—in this case, the Labor government in the late 1980s and the early 1990s, when the member for Kingston was the principal adviser to the Treasurer—takes its eye off the ball and when the consequences of changes it made to the taxation laws in this country at that time are ignored, not detected or not understood by those in charge of taxation administration. Three elements came into play in the late 1980s and early 1990s. Particularly pertinent are the years 1991 and 1992, when the member for Kingston was the principal adviser to the Treasurer and again between 1994 and 1996. Firstly, there were the changes to the assessment procedures, whereby the traditional assessment system—a situation where returns lodged were reviewed and examined by the ATO before the tax was calculated and an assessment issued—were changed progressively to a system of self-assessment, whereby the taxpayer not only calculated the taxable income but also calculated the tax payable and sent that amount to the ATO with a return that contained limited information.

Combined with that, the rulings system was introduced, supposedly to give individual taxpayers certainty in their assessments. However, private binding rulings—intended, apparently, to provide certainty to individual investors on the tax benefits or consequences of an investment—came to be relied upon by tax advisers and planners who deemed them to apply to a range of others who, on the face of it, would be in the same position as the taxpayer receiving the private ruling. The rulings system, introduced by the Labor government, failed with massive consequences. Thirdly, there was the explosion of mass marketed schemes across the country, involving taxpayers from every tax bracket and in various occupations—a phenomena that was exacerbated by the self-assessment system and the existence of private rulings.

Looking back now, it is beyond comprehension that the ATO, the Labor Treasurer, the Labor Assistant Treasurer and even the principal adviser to the Treasurer in these years were not able to detect the consequences of the mass marketed schemes. According to evidence given to the Senate Economics References Committee inquiry into mass marketed tax effective schemes and investor protection, claims for non-allowable deductions for investments in these schemes rose from some $50 million in 1990, or thereabouts, to about $1.5 billion five years later—somebody was asleep on the watch! Nevertheless, it was some many years later that the ATO issued assessments disallowing the deductions claimed in respect of the various investments made.

Under the self-assessment system that was progressively introduced under Labor, the ATO had four years within which to issue such assessments. In circumstances where the ATO believed it was a tax avoidance scenario under part IVA, the anti-avoidance provision, the tax office had six years within which to act. Invariably, for inexplicable reasons, the ATO was outside the four-year period, so part IVA notices were issued to tens of thousands of men and women who had believed under this self-assessment regime that the deductions they had claimed in tax returns lodged up to six years previously—without a peep from the ATO, without a peep

from the Labor Treasurer or Assistant Treasurer—had been accepted by the ATO. They were, understandably, outraged, distressed and angered by the implication that they were tax avoiders and by the fact that their financial arrangements from up to six years previously were now, in many cases, in disarray and they faced massive reassessments, penalties and interest on the disallowed deductions.

I am conscious of the impact that this had on the lives of many in my electorate and other electorates across Australia. I, with other members, particularly Western Australian members, spent many hours trying to assist constituents in their dealings with the ATO. I recall that the member for Brand and the member for Stirling also raised concerns and asked that action be taken in respect of investments people had made back in the early 1990s.

After the Howard government was elected in 1996, there were changes made to the administration of tax collection. For example, having product rulings to apply to a product rather than just an individual taxpayer was a vast improvement on the old private ruling system introduced under Labor. Ultimately the majority of the investors involved in the mass marketed or tax effective schemes settled with the ATO rather than take their cases through the courts.

What have we learned? The time, effort, uncertainty and distress of taxpayers and the challenge to the integrity and credibility of the tax office indicated that there were systemic problems dating back a decade or more that were not detected in a timely fashion. That has led to the introduction of this office of Inspector-General of Taxation.

I hope that one of the first reviews directed to the inspector-general will be the system of self-assessment. It clearly has led to a situation where taxpayers and their advisers bear the full burden of seeking to understand and apply complex, often confusing, often contradictory taxation legislation as it is implemented by the ATO to their particular circumstance. For self-assessment to work, taxpayers must understand the law. The way in which the legislation and administrative practices have grown up over the years militate against that being achievable. The extent and complexity of reforms in the areas of income tax, superannuation and capital gains tax alone are hard enough for tax experts to keep up with, let alone members of the public.

Why Labor could not see this when they progressively introduced self-assessment in the late 1980s and early 1990s is beyond me. Yet the tax office, who ought to have the expertise, the understanding and the critical knowledge of how our income tax laws are meant to apply in everyday situations, has been able to sit back under this self-assessment system as a kind of armchair critic, not having to apply its expertise, understanding and knowledge of any particular tax return as the burden falls on the taxpayer because claims are not assessed when the return is lodged and compliance is monitored by the tax office in a risk assessment program. I would encourage a review by the inspector-general of the self-assessment regime. This is not a role the Ombudsman could or should undertake.

This is not the time to debate the factors that give rise to the business of tax minimisation or tax avoidance in this country, but I suggest that another area of review for the inspector-general could be the differential between the top marginal income tax rates of 47 per cent—or 48½ per cent with the Medicare levy—and the top corporate rate of 30 per cent. I applaud absolutely that the top corporate rate in this country is 30 per cent. It makes us competitive in this region. But I believe that the impact that the differential between a top personal rate of 48.5 per cent and a corporate rate of 30 per cent has on the behaviour of taxpayers, in trying to characterise their income as corporate rather than personal, is a matter for review by the Inspector-General of Taxation.

This initiative, in establishing an advocate for the taxpayer, may well bring us back to the question of the fundamental principles of taxation. I believe there must soon come a reckoning in this country that taxation is justified but ought to be limited. This means that we must lessen our sense of entitlement to the fairly earned incomes of others for the sake of our economic future and for our self-worth as citizens. I applaud this initiative in the creation of the office of Inspector-General of Taxation and I commend the bill to the House.