

How to fix Australia's monstrously unfair taxation system

By Robert Gottlieb in *The Australian*. 29 January 2025

My summary, **Guilty until proven innocent**. I know someone who spent something like eight years and many thousands of dollars fighting an unjust ATO assessment. In the end, the ATO gave up because he could prove that he had paid the correct tax. How many of us could afford to do the same? The article follows. The highlighting is mine.

Australia has one of the most unfair taxation collection systems in the Western world and its basic unfairness is beginning to affect our industrial base. The new US tax environment will increase the dangers

All three major political parties have recognised the unfairness of the tax collection rules, but once they gain office they are “snowed” by the Australian Taxation office and fear that embracing fairness will reduce revenues. The reverse is more likely.

In 2003, the Howard government set up the Inspector General and Taxation Ombudsman (IGTO) “to improve the administration of taxation laws for the benefit of all taxpayers, tax practitioners and other entities”, including small businesses.

IGTO still does good work, but because John Howard and then treasurer Peter Costello did not give the IGTO enough power, and did not change the way the ATO collects tax in the years that followed, the aim was thwarted by the ATO.

Fast forward to 2015 and the Coalition politicians in power did not realise ATO systems had fallen into neglect, partly because the ATO relies on its unfair and horrendous powers. No need for top-rate systems.

The Coalition government foolishly inserted the flawed ATO systems, plus some of its unfair collection methods, into the social security area. It did not work and Robodebt scandal erupted.

In reaction to Robodebt, the current ALP government has wisely decided to increase the IGTO powers, giving a big improvement on the Howard-Costello measures. But again, the ATO snowed in an elected government and inserted a series of “escape clause” words to give it the option to avoid fairness.

For example, the ATO, in responding to requests by the IGTO, is only required to use its “best endeavours” and be “reasonable”. Clearly this caveat should either be removed or, alternatively, qualified so the IGTO has an absolute right to information – provided the information actually exists.

As it now stands, there is a danger that it will become a repeat of 20 years earlier when Howard and Costello were “snowed.”

With an election approaching, former Woolworth's chairman John Dahlson had put together an integrated tax policy document to show how we can improve on the fairness model created by an earlier parliamentary committee, headed by the Liberals Jason Falinsky and Labor's Julie Owens.

Dahlson points out that the core of the unfairness is that when the ATO produces a tax "assessment" the assessment automatically becomes a debt at law, whether the assessment is accurate or not. From that point on, the ATO charges taxpayers interest and penalties. Then the taxpayers must prove to the ATO they have paid the correct amount of tax.

Unlike the criminal code, where the Crown must prove guilt beyond a reasonable doubt, under the ATO rules it is the reverse.

Under the Dahlson proposal, any political party committed to tax collection fairness should adopt a policy that ensures.

- A tax assessment cannot be declared a "debt" until all appeals have been finalised.
- Tax owed can only be reported on or collected once an assessment has been declared a debt.
- The onus of proof is on the ATO.
- Interest and penalties cannot be applied until a tax assessment has been declared a debt.

It's vital in this policy to increase the authority and resources of the IGTO including.

- The IGTO must have automatic and unrestricted access to all ATO files and information.
- The ATO must fully co-operate with the IGTO investigations and reviews. There should be ATO sanctions for non-co-operation.
- The IGTO must have the power to issue a "requirement" to the ATO to do or not do something in relation to a taxpayer assessment. The ATO need not comply but must report to parliament on reasons for non-compliance, subject to taxpayer privacy. The IGTO should comment on the ATO Processes, particularly where improvement might be appropriate for other taxpayers.
- The IGTO should, in determining a taxpayer's affairs, have the power to award costs against the ATO and the costs incurred by the taxpayer's own time and resources, which can be large.
- The IGTO will review the ATO's Taxpayer Charter to create a taxpayer bill of rights for parliament's consideration.
- Increase the IGTO's funding so it has the capacity to support increased volumes of taxpayer complaints effectively and receive a statutory set percentage of the ATO's compliance-related budgeted measure program funding (where taxpayers need support most).
- The party supporting tax fairness should also investigate US tax whistleblower laws to determine what contribution such laws could make to tax collection and taxpayer protection in Australia. Under the US system, the ATO would have power to compensate citizens when information is given to the ATO leading to more tax. It can include a maximum percentage of the tax gain.

In an ideal world, all three parties should embrace the above policy, but the nation desperately needs at least one party to raise the flag of fairness for taxpayers.