LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REVIEW OF AUDITOR-GENERAL'S REPORT NO 1, 1999

Stamp Duty on Motor Vehicle Registrations

STANDING COMMITTEE FOR THE CHIEF MINISTER'S PORTFOLIO (INCORPORATING THE PUBLIC ACCOUNTS COMMITTEE)

Public Accounts Committee Report Number 21

August 1999

RESOLUTION OF APPOINTMENT

The Standing Committee for the Chief Minister's Portfolio was appointed by the Legislative Assembly on 28 April 1998 to examine any matter under the responsibility of the Chief Minister's portfolio. The Assembly also resolved that the committee perform the duties of a public accounts committee, specifically:

(a) to examine:

- (i) the accounts of the receipts and expenditure of the Australian Capital Territory;
- (ii) the financial affairs of authorities of the Australian Capital Territory; and
- (iii) all reports of the Auditor-General which have been laid before the Assembly;

(b) to report to the Assembly, with such comments as it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed; and

(c) to inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question.

MEMBERSHIP OF THE COMMITTEE

Mr Ted Quinlan MLA Committee Chair

Mr Trevor Kaine MLA Deputy Committee Chair

Mr Greg Cornwell MLA

Secretary: Bill Symington

1. INTRODUCTION

1.1. Auditor-General's Report No 1, 1999 was presented to the Assembly on 25 March 1999.

1.2. This performance audit noted that in 1997-98 $18.4m was received in stamp duty on initial registration of motor vehicles and transfers of ownership.

1.3. Stamp duty is payable when a new motor vehicle is registered, a certificate of registration is transferred or a certificate of registration is issued in a new name. The duty is calculated as $3 per $100 or part of each $100 of the vehicle's declared purchase price or the market value, whichever is greater. From 1 July 1998 the rate of duty increased to $5 per $100 or part thereof for that part of the purchase price which exceeds $45,000.

1.4. At the time of the audit stamp duty was payable by licensed dealers on the sale of used vehicles. From 1 March 1999 the responsibility for paying duty has rested with the purchaser at the time of registration of the vehicle.

1.5. The audit objectives were to assess whether stamp duty is being imposed in accordance with legislation and whether the duty on changes of ownership through private and dealer sales is being properly imposed.

1.6. It should be noted that the legislative framework for collection of stamp duty is a self-assessment by purchasers with provision for later compliance activity to verify the reliability of self-assessments. The audit observed that the effectiveness in ensuring the correct taxes are paid is heavily dependent on implementation of effective and comprehensive compliance and education programs to inform taxpayers of their responsibilities.[1]

2. AUDIT FINDINGS

2.1. The audit found that:[2]

(i) there are inadequate procedures and controls to provide reasonable assurance that stamp duty payable is being fully imposed in accordance with relevant legislation for:

- private purchases of used vehicles other than auction sales
- purchases of vehicles from used car dealers.

2.2. The audit found that no procedures or controls, at the point where stamp duty is paid, to verify that declared sale values are correct or even reasonable. A review of a randomly selected sample of 30 new vehicles found that one transaction had been intentionally and significantly understated. The audit found very limited compliance verification activities performed by the Chief Minister's Department on new vehicle stamp duty. It found also that

[1] Audit report p4
[2] ibid p5

a number of government business enterprises were not including the equivalent of sales tax in the values of vehicles declared for the calculation of stamp duty payable.[3]

2.3. The committee sought comment on the audit findings from the Chief Minister and from the Minister for Urban Services and received a Government submission.[4] This submission generally repeats the arguments attributed to the Chief Minister's Department which are contained in the audit report and which are commented upon in that report by the Auditor-General.

2.4. In view of this, the committee sought comment on the Government submission from the Auditor-General and the next section of this report discusses the audit findings, the Government submission and additional comments offered by the Auditor-General. [5]

3. COMMENT ON THE SIGNIFICANT AUDIT FINDINGS

Lack of procedures or controls on the registration of new and privately sold used vehicles to verify that the declared values are correct or reasonable.

3.1. The Government agreed with the Auditor General's finding that there should be improvements in the procedures and controls on the registration of vehicles.

3.2. The Chief Minister advised that the Stamp *Duties and Taxes Act* 1987 provided that purchasers of new and used (from other than dealers) vehicles are liable to declare to the Registrar of Motor Vehicles, Dept of Urban Services (the Registrar), the purchase price and market value of vehicles purchased. Duty is paid to the Registrar on the greater of those amounts. These provisions have been continued under the amending *Duties Act* 1999. The Registrar has no discretion to question or otherwise refuse registration on the basis of a potential under valuation of a vehicle as declared by the purchaser. This is consistent with the legislation in other jurisdictions.

3.3. The Chief Minister further advised that as is the case with the majority of taxes administered in the ACT and throughout Australia, this tax is designed to be self-assessed and subject to subsequent inspection activity by the Commissioner for ACT Revenue (the Commissioner) to ensure compliance with the legislation. There is a general recognition that any other system of taxation would involve prohibitive costs of collection and compliance for the Government and taxpayers respectively."

3.4. However, in recognition of the audit finding the Chief Minister advised that the Department of Urban Services (DUS) has designed a range of procedures (at registration) to improve the accountability of purchasers and as a means of more effectively determining under valuations. These procedures are:

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[3] ibid p6
[4] Chief Minister, letter to committee with submisison, dated 16 June 1999
[5] Auditor-General, letter to committee dated 30 July 1999

- a system whereby the Registrar will specifically draw the Commissioner's attention to any registrations where the taxable value declared appears to be significantly lower than market value. These referrals will be based on conflicting values shown in the transfer form or on the knowledge and expertise of the officer processing the transfer. This will simplify the compliance activity and enable an easier targeting of potential understatements of valuations;

- the public and dealer education program will be directed towards ensuring maximum possible knowledge of these procedures and the obligations of purchasers under the legislation. This will include upgrading information pamphlets and circulars and ensuring availability at Shopfronts, Motor Registry and dealers; purchasers being reminded at time of registration of the need to ensure correct valuation declared (and of penalties that could otherwise apply);

- amendment by the Registrar of the *Application for Transfer of Registration* form. The form now provides for that part completed by the former owners of vehicles, to include the sale price. Systems are currently being amended to enable this data to be stored on disk and referred to the Commissioner for subsequent compliance activity. This will provide the Commissioner with a means of cross checking the taxable value declared by the purchaser;

- a further amendment of the transfer form by the Registrar to have former owners attest to the purchase price on that part lodged by the new owners. This measure is expected to provide a deterrent to purchasers to falsify/understate the purchase price of vehicles; and

- training of DUS shop front staff to deal with motor vehicle registrations.

3.5. The Chief Minister advised that the changes to the registration procedures can be implemented at minimal cost and without the need to amend legislation. The committee was further advised that the Auditor-General's suggestion that the Registrar obtain more information than is currently being obtained concerning vehicles being transferred, will be addressed in the context of the introduction a new Road User Services computer system.

3.6. The Auditor-General advised that the range of procedures set out above will result in a much better situation than existed before the audit and greatly reduce the need for the present almost complete reliance on the Chief Minister’s Department’s compliance activities to ensure that vehicle stamp duty is being correctly paid. The Auditor-General noted that without relevant procedures at the point of vehicle registration, the only means of ensuring that correct stamp duty was paid were the Chief Minister’s Department’s compliance activities. The Auditor-General advised that had the procedures now proposed to be implemented at the point of registration been operating at the time of the audit much less attention would have needed to be given to the Chief Minister’s Department activities.

Lack of procedures or controls at the point of receipt of the dealers' returns and remittances to provide reasonable assurance that the value of vehicles declared is correct or reasonable.

3.7. The audit observed that as with most other registrations there were negligible procedures to ensure correct or reasonable declared values. It concluded there is a strong possibility that of regular incorrect stamp duty payments, and surmised that some $175,000 annually may have been underpaid.[6] In later advice to the committee, the Auditor-General re-iterated that there were no procedures and controls at the time of the audit and that in their absence it is difficult to see how they could be categorised as being adequate.

3.8. Nevertheless, the Chief Minister advised that the procedures and controls in respect of the lodgement of dealers' returns were considered by the Government to be adequate, noting that under the *Stamp Duties and Taxes Act 1987*, dealers were required to lodge monthly returns with the Commissioner listing all sales of used vehicles and paying the appropriate duty. Being a (self-assessed) returns type tax, only very basic data is received from the dealers. This data is accepted as correct unless determined otherwise as a result of subsequent compliance activity.

3.9. The Chief Minister went on to advise that the issue had since been overtaken by the introduction of the *Duties Act 1999* on 1 March 1999, which no longer requires dealers to be liable for duty or lodge returns and transfers the dealers' liability to the purchaser.

Very limited compliance activities performed by the Chief Minister's Department on new and used vehicle stamp duty transactions.

3.10. The Auditor-General advised the committee that at the time of the audit, as previously stated, there were no procedures or controls at the point of vehicle registration so that effective compliance activity was of the utmost importance in ensuring that correct stamp duty was paid. However, the new procedures when implemented will reduce the importance of compliance activities.

3.11. The Chief Minister advised that, having regard to the large number of tax types and assessments and approximately 2,200 taxpayers registered for returns type taxes, the Government recognises that compliance activity will not ensure 100% compliance with the tax legislation. The Government, therefore, considered the level of compliance activities, in conjunction with the education program, to be adequate.

3.12. Justifying this position, the Chief Minister advised that in determining the level of compliance activity in respect of each tax type, the Commissioner takes into account a number of factors, including the potential level of tax collected, vulnerability of the tax to underpayment, costs of compliance, success factors of litigation and resources available. Another factor is the achievement of the Department's output target of $300,000 pa per inspector in accordance with the Purchase Agreement.

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[6] Audit report p15

3.13. The Chief Minister advised that compliance activity in 1997-98 resulted in the detection of 39 ($5,019 in duty) and 15 ($46,650 in duty) under valuations in respect of new and used (private sales) vehicles respectively. The activity also resulted in the detection of the government business enterprise under valuations (approximately $50,000 in duty) and the inspection of four dealers ($9,000 in duty). In 1996-97, eight dealers were inspected. The results of the compliance activity reflected the fact that the activity had been directed towards greatest risk/common error areas (e.g. new and higher valued vehicles, government business enterprises not adequately addressing their duty liabilities and dealer issues).

3.14. In comment to the committee the Auditor-General advised that in planning compliance activities the resources currently available within the Department were being taken as a given and there was no attempt to assess whether those resources were adequate. The Auditor-General advised that the audit had not questioned the reasonableness of the method by which available resources had been allocated to tax types but had questioned how the Department could know whether its total available resources were sufficient.

3.15. Commenting on the Department's output target of $300,000 pa per inspector the Auditor-General advised this is of little relevance as the inspector’s revenue arises through taxpayers voluntarily advising of inadvertent errors or omissions in the assessment of their taxation liabilities. When this occurs, and an inspector assists the taxpayer in assessing the correct tax, the Department counts the additional tax assessed as being generated by the inspector a situation which the Auditor-General cannot seriously regard as revenue generated through compliance monitoring.

3.16. The Chief Minister expressed concern that the Auditor General had not given adequate weight to the issue of determining a market value of privately sold vehicles that can be efficiently and effectively relied on, or enforced, from a compliance perspective and proffered the view that with few exceptions, the price of vehicles sold by dealers, at arms length, is the market value and can be verified by reference to the dealers' records. The value of private sales however is more difficult to verify and it is not possible to rely on published market values except where the under valuation is significant and/or an independent valuation of a particular vehicle is obtained.

3.17. The Chief Minister advised that compliance activity is therefore potentially expensive (e.g. in excess of $300 per vehicle) and is much higher than the revenue loss of $102 per vehicle, as assumed by the Auditor General.

3.18. Commenting on this matter, the Auditor-General advised that the audit gave great weight to this issue and that the difficulty in determining a market value for privately sold vehicles was well understood. However, the ineffectiveness of possible compliance activities in determining market values is the reason why additional point of registration procedures and the supply of additional information was recommended.

3.19. The Chief Minister advised that the Auditor General had underrated the significant role of education programs in facilitating compliance and, by way of illustration, stated that less than 5% of compliance related assessments under the *Taxation Administration Act* 1999 relate to an intentional disregard of the law by taxpayers. A conscious decision was therefore made by the Department to expand education activities in 1997-98 (at the expense of inspection activity), particularly in anticipation of the new Duties legislation. These activities included preparing and distributing publications, regular meetings with and presentations to the Motor Trades Association members and visiting all dealers and auctioneers.

3.20. In response, the Auditor-General advised that the audit had not underrated education programs, but rather the Department had no procedures to identify where its education programs should be directed or if the education programs were effective. The Auditor-General hoped that some reasonable method of identifying where programs are necessary and their effectiveness will be implemented.

3.21. The Auditor-General also welcomed the Chief Minister's comment that the Government recognised the benefits of formalising the compliance program in greater detail as considered by the Auditor General and will address this issue when preparing the 1999-2000 program. However, the committee notes that the Government submission was not specific as to how this would be done.

Potential loss of revenue through through under-valuations and under-declarations

3.22. The Auditor General concluded that the results of sampling, combined with the lack of procedures and compliance activity already referred to, are strongly persuasive evidence that many understatements occur with a potential loss of revenue estimated in the vicinity of $400,000 to $500,000pa.[7]

3.23. The Chief Minister questioned the means used by the Auditor General to estimate the level of revenue loss, claiming that the random sample of 30 new vehicles was too small to support the audit opinion and that a 3% rate of non-compliance could be interpreted as a reflection of the effectiveness of the procedures and controls.

3.24. With regard to new vehicles sold to government business enterprises**,** the Chief Minister advised that the issue of sales tax was not being included in the values for the purpose of calculating duty was already subject to investigation by the Chief Minister's Department prior to the commencement of the audit. The assumed loss of $50,000 pa[8] had therefore already been addressed by the existing procedures and controls and should not have been taken into account by the Auditor General.

3.25. In respect of private sales of used vehicles**,** the Chief Minister again questioned the Auditor General's assumed loss of revenue of $300,000 pa. on the grounds that the sample was extremely small, selective, that values used in the sample

[7] ibid p20
[8] ibid p21

were indicative only, and that allowance was not made for the economic feasibility of compliance action.

3.26. The Auditor-General advised the committee that the audit estimate was necessarily based on information gathered during the audit whereas the Department had no information from which to develop any estimate. In view of any alternative Departmental estimate Auditor-General considered the questioning of the audit estimates to be based upon flawed reasoning.

3.27. The Chief Minister advised that the Government recognised the potential loss of revenue in respect of all self assessed taxes, including the stamp duties subject to the audit report. However, the Chief Minister argued that the potential costs incurred to recover the $400,000 to $500,000 losses are likely to be higher than the losses given the large number of transactions (30,000 vehicles annually), the small value per case (average of $100) and the difficulties and costs in obtaining evidence and proving the cases in court.

3.28. On this point, the Auditor-General advised the committee that the audit recognised the difficulties and costs of relying on compliance activities, which is why it recommended improvements to point of registration procedures.

4. COMMITTEE COMMENT

4.1. The committee notes that while the Government submission disputes many of the audit findings, it has adopted almost in their entirety the audit proposals for future actions to redress the shortcomings in vehicle stamp duty administration.

4.2. The committee notes also that the Government intends to address the issue of formalising the compliance program in greater detail (paragraph 3.21 above). In this regard, the committee considers it would be appropriate that the Government adopt the principles outlined in pages 18 and 19 of the audit report viz:

- establishment of a logical and consistent basis for determining the proposed mix of strategies for targeting the various categories of vehicles and transactions involved
- the development of educational programs and compliance activities
- development of a method for the rating of risks
- the inclusion of appropriate sampling techniques to enable reasonable estimates of overall compliance.

4.3. The committee considers it would be appropriate for the Auditor-General to review compliance activity planning and, during the present financial year, to review the effectiveness of the new procedures and controls on the registration of new and re-sold used vehicles designed to ensure that declared values are correct or reasonable.

5. RECOMMENDATIONS

5.1. The committee recommends that the Government:

(1) confirm to the Assembly that the new procedures and controls on the registration of new and re-sold used vehicles designed to ensure that declared values are correct or reasonable are in place; and

(2) provide to the Assembly details of the compliance program in respect of vehicle stamp duties.

Ted Quinlan MLA
Chair