



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

IGoT News

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An update from the IGTO

As we approach Tax Time 2021, my office is busily preparing to support and assist taxpayers and tax practitioners during this period. Reflecting on the past 12 months, the effects of the COVID-19 pandemic continue to be felt and there are still many individuals and small businesses needing assistance. I am proud that our Jobkeeper and Cash Flow Boost report has resulted in reconsideration of eligibility for many who were previously found to be ineligible and the assistance it has provided to tax, accounting and other professional bodies to reengage and assist their members with similar issues.

Throughout much of 2020, our office operated remotely but that did not diminish our productivity. Some of our key achievements and deliverables include:

- a significant report on how the ATO deals with deceased estates. We are also on track to publish our investigation into undisputed tax debts by 30 June 2021.
- continuing engagement with Parliament through its committees, by providing written submissions on a range of inquiries and attending public hearings – sometimes virtually.
- engagement with our fellow federal agencies and departments – such as the Australian Commission on Law Enforcement Integrity, the Attorney-General's Department, the Office of the Australian Information Commissioner, the Australian National Audit Office, the Commonwealth Ombudsman and the Australian Small Business and Family Enterprise Ombudsman.

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- fostering our international networks through participation in meetings, assemblies and conferences of the International Ombudsman Institute (both International and the Australasia and Pacific Region) and our work as joint national reporter for the Observatory on the Protection of Taxpayer Rights' annual general report.

In the midst of all of this, we also continued to maintain our complaints handling service to assist taxpayers and tax practitioners who approach our office. We continue to prioritise time-sensitive and COVID-related complaints.

Jobkeeper and Boosting Cash Flow update

On 24 March 2021, the Full Federal Court (FFC) handed down its decision in *Commissioner of Taxation v Apted [2021] FCAFC 45*. The ATO decided not to appeal the FFC decision and has since published its [Decision Impact Statement](#).

Among other issues, the FFC considered that the Commissioner should consider a broader range of factors when deciding whether to exercise his discretion to allow further time for an entity to hold an ABN for the purposes of satisfying the JobKeeper eligibility criteria.

The ATO will also adopt this consideration of a broad range of circumstances when exercising the similar discretions to allow a later time to provide notice of assessable business income (e.g. a tax return) and taxable supplies (e.g. BAS) for the integrity rules in both JobKeeper and Cash Flow Boost. Other discretions outside the cash flow boost and JobKeeper legislation are not affected by this decision.

The ATO has updated [PS LA 2020/1](#) (which discusses the Commissioner's discretion in the integrity rules) to include the broader range of factors. Entities whose circumstances fall within the updated guidance and also satisfy all other eligibility criteria may now be eligible to apply for JobKeeper and/or Cash Flow Boost payments. The ATO has agreed to automatically review all past decisions where the Commissioner has declined to exercise his discretion.

The IGTO welcomes the ATO proactively revisiting its decisions in light of the FFC decision. The IGTO made similar observations that the ATO should proactively identify taxpayers that may satisfy the JobKeeper and Cash Flow Boost eligibility rules using the clarified meaning of 'taxable supplies' made during our recent [IGTO report](#).

If you have concerns about how the ATO has considered (or reconsidered) your eligibility, you may wish to consider lodging a [complaint with the ATO](#) in the first instance, otherwise you are welcome to [contact the IGTO](#) for further assistance.

Do you have a statutory right to reasons?

As part of our current [investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal](#), we have published a thought leadership article on the taxpayer's right to receive reasons for decisions made by or on behalf of the Commissioner of Taxation. Reasons enable taxpayers to understand the decision that has been made against them, determine whether they agree with the decision and consider what actions may be appropriate where they do not agree. However, the circumstances in which the tax law prescribes a specific obligation for the Commissioner to issue reasons for decisions are limited. Notwithstanding this, the Commissioner issues reasons for decisions in a wide range of circumstances even where there is an absence of statutory duty to do so.

The paper concludes that it is important for taxpayers to keep in mind that reasons are not always provided, nor are they required to be. The fact that they are typically provided makes any refusal to do so, when it occurs, seem exceptional and, in many cases, unfair. However, in the absence of any change in law or policy, it is ultimately a matter for the Commissioner/ATO to decide and which might be revisited only once a decision to litigate the decision has been made by the Taxpayer.

The Taxpayer's Charter does set an expectation that the Commissioner will be "open, transparent and accountable" in his dealings with taxpayers. Accordingly, despite the limitations on a taxpayer's legal right to reasons, if a taxpayer is met with a refusal by the Commissioner to provide reasons, or receives insufficient reasons and this impedes their ability to understand a decision or weigh up next steps, the taxpayer should consider availing themselves of their right to complain, including via:

- the ATO Complaints Unit and/or
- the IGTO complaints service.

In this way taxpayer concerns can be appropriately addressed, ensuring fairness and transparency of the system and encouraging voluntary compliance. This is important because, as the OECD observes ... Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply.

The full article is available on our website at: <https://www.igt.gov.au/news-and-publications/other-publications/when-commissioner-taxation-required-give-taxpayer-reasonsunderstanding-taxpayers-rights>.

Quarterly Reporting Pack

Our [Q3 FY21 Quarterly Reporting Pack](#) (QRP) has now been published. The QRP presents a range of data and information against certain Key Performance Indicators in our Corporate Plan 2020-21.

QRPs for prior periods are available on our [website](#).

We have set out, in the next section, some high level data in relation to our Complaints handling service.

Complaints handling service update

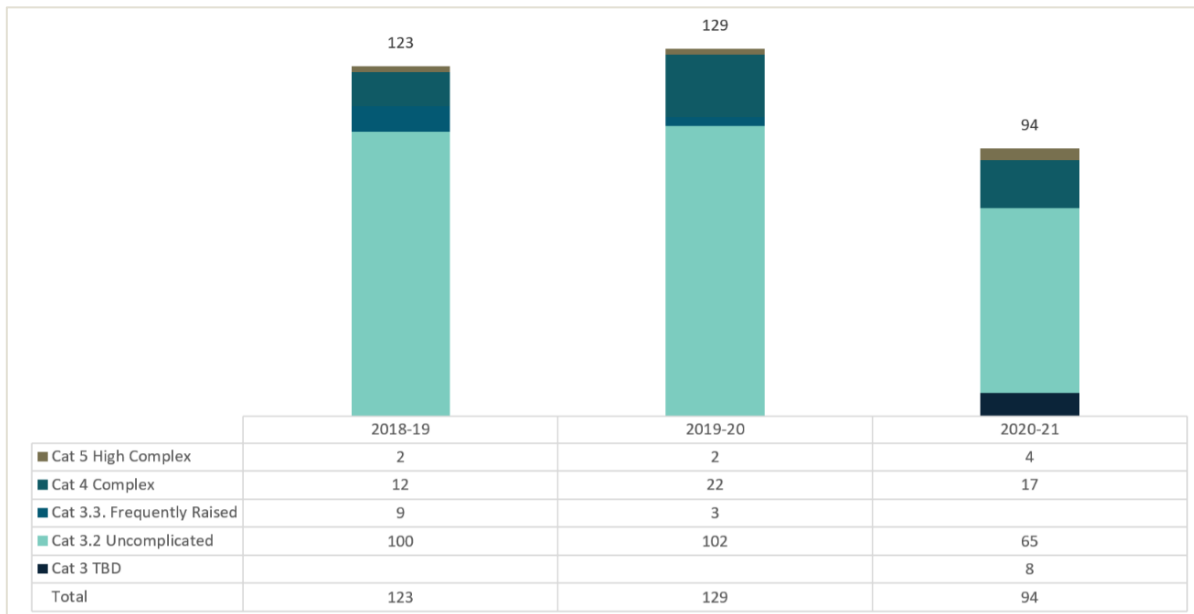
Complaint receipts

We received a total of 1,355 complaints as at the end of Q3 FY21. As was the case in the previous quarter (Q2 FY21), this quarter has also seen a reduction in complaint receipts compared to prior years due to several factors:

- The IGTO has introduced a triage system due to a high demand for its services. Accordingly, the IGTO is reviewing and prioritising taxation complaints which demonstrate exceptional circumstances. All other taxation complaints are placed in a queue to be allocated on a ‘first in, first out’ basis. Taxpayers are advised that the current wait time is approximately 6 to 8 weeks; and
- The IGTO is also continuing to encourage taxpayers to seek to resolve their taxation complaint directly with the ATO in the first instance by lodging a formal complaint with the ATO Complaints Unit.

A comparison of the composition of the types of complaint investigations in Q3 FY21 compared to Q3 of prior years is as follows:

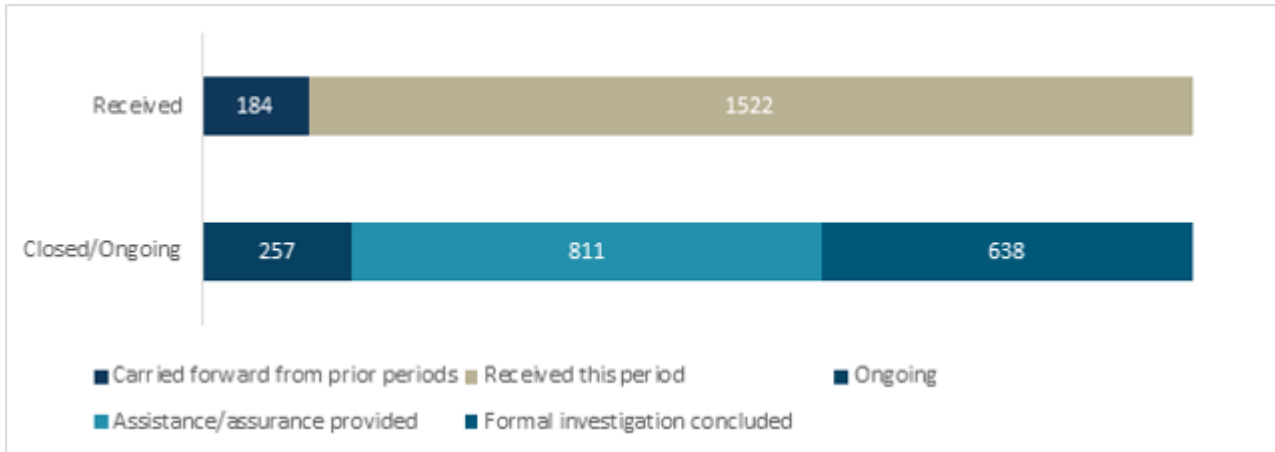
Figure 1: Complaint Investigations (Categories 3.2 to 5) Received in Q3 FY19, FY20 and FY21



Our messaging for taxpayers and tax practitioners to seek, in the first instance, to resolve their complaints with the ATO has enabled our team to direct their efforts to investigating and resolving more complex cases.

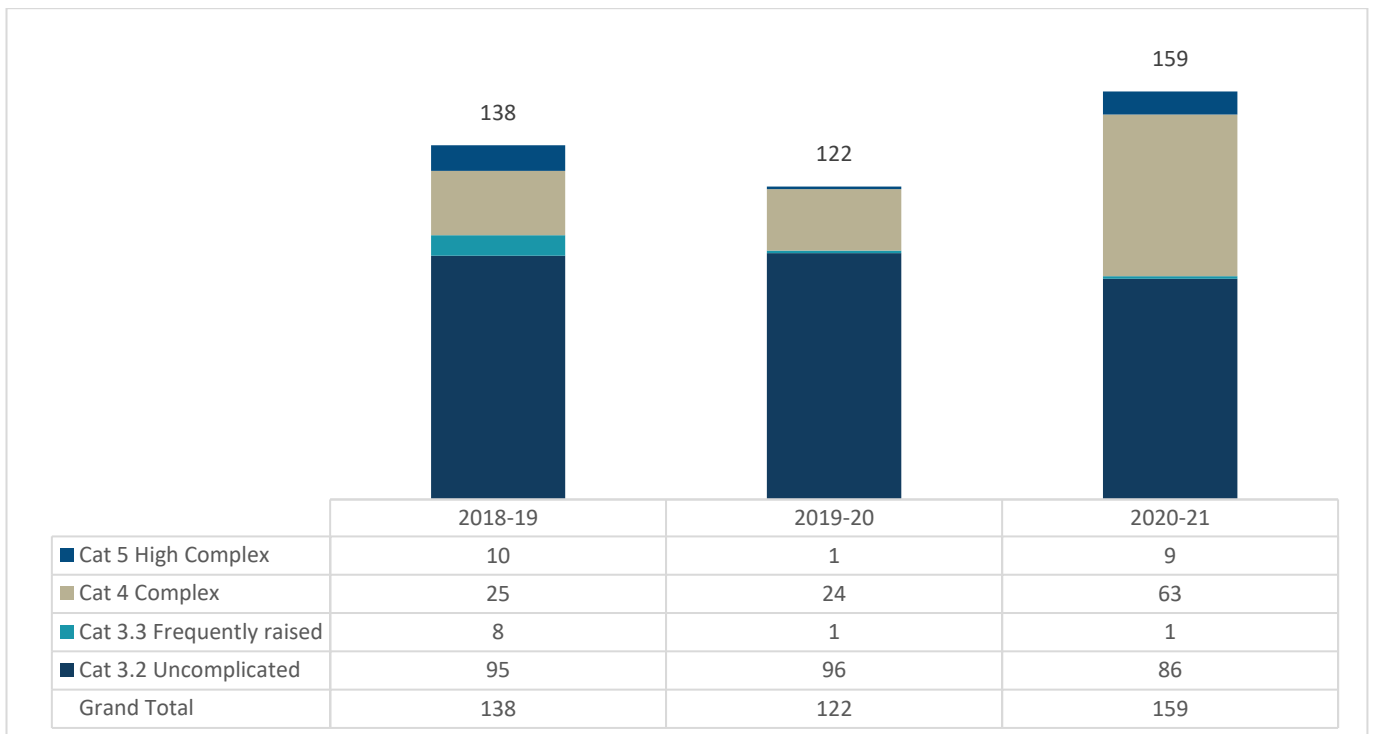
At the start of the financial year, we had 184 cases on hand and, in FY21 year to date (as at 25 May 2021), we received a further 1,522 cases (a total of 1,706 cases). We have closed 1,449 cases (i.e. 84.9%).

Figure 2: Complaint cases received and closed in FY21 YTD (as at 25 May 2021)



In Q3 FY21, we closed 159 investigation cases (more than over the same period in FY19 and FY20) – 45% of these were either Complex or Highly Complex (compared to 25% in FY19 and 20% in FY20).

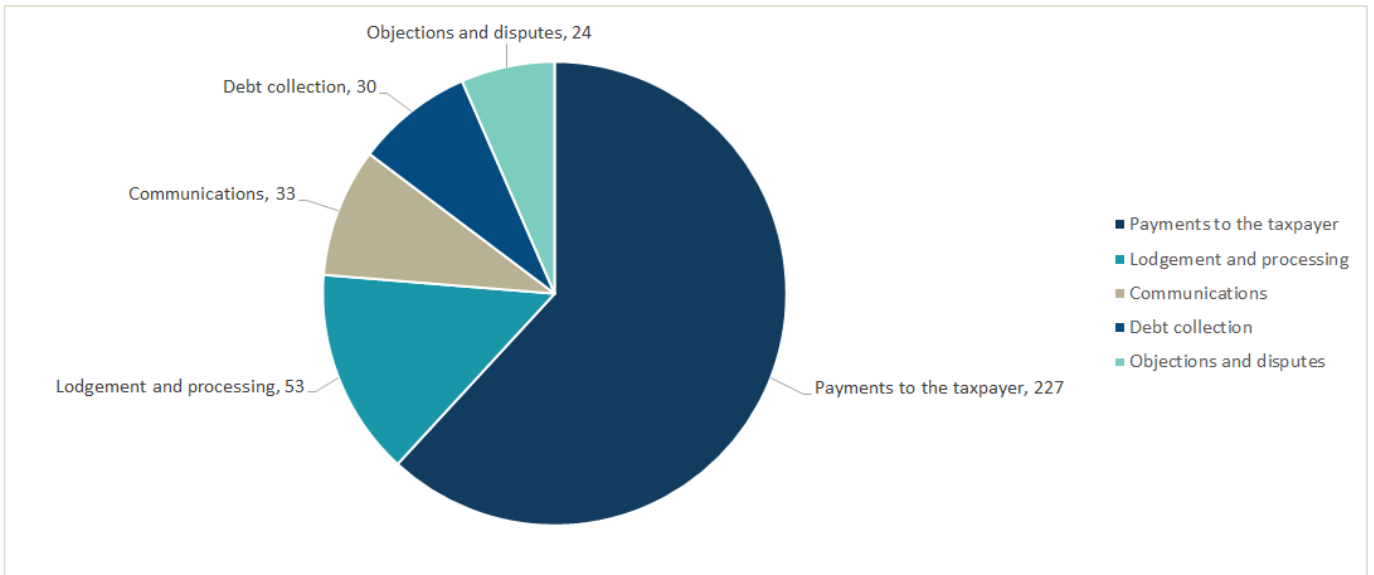
Figure 3: Complaint Investigations (Categories 3.2 to 5) closed in Q3 FY19, FY20 and FY21



Top 5 Issues

The top 5 issues are set out in the table below (these total 367, noting that some cases may involve multiple issues):

Figure 4: Top 5 issues raised in complaints in Q3 FY21



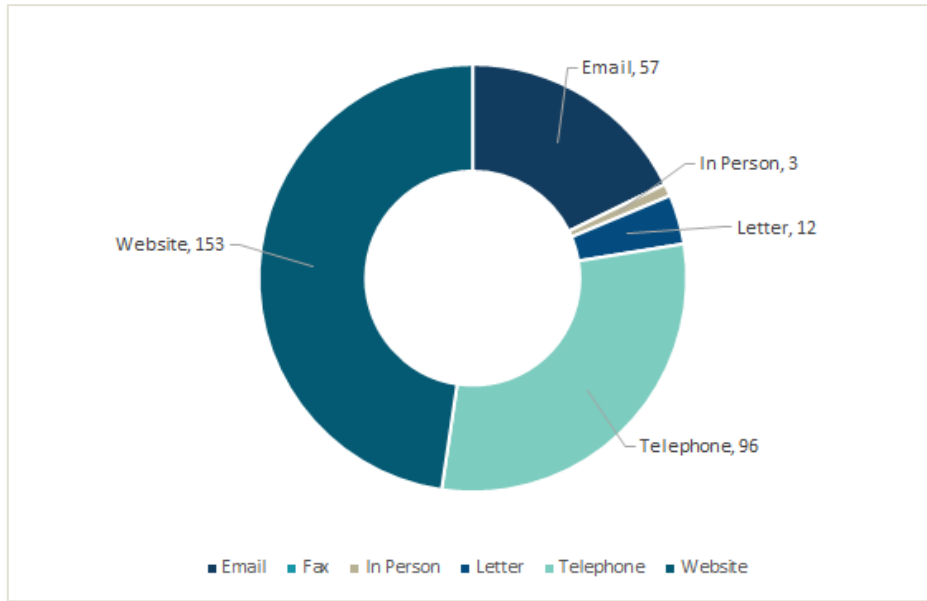
Payments to the taxpayer was the issue of greatest concern, accounting for 62% of the top 5 issues. This reflects the continued concerns of taxpayers needing access to various COVID-19 support measures such as JobKeeper, Cash Flow Boost and COVID-19 early release of superannuation.

However, as the economy continues to recover, it is noted that the ATO’s focus is slowing shifting away from COVID-19 support measures and back to debt collection (which was paused due to the pandemic). We expect that this may impact the prevalence of certain complaint issues recorded in subsequent periods.

Lodgement of complaints

We receive taxation complaints from individuals, small business, tax professionals and other taxpayers through a range of different channels. Of the 321 complaints received during Q3 FY21, 65% of those complaints were lodged via the complaints webform or email. We encourage complainants to make use of the online webform as the most effective channel to lodge a complaint as it allows complainants the opportunity to provide a greater explanation of their concerns.

Figure 5: How complaints are lodged with the IGTO in Q3 FY21

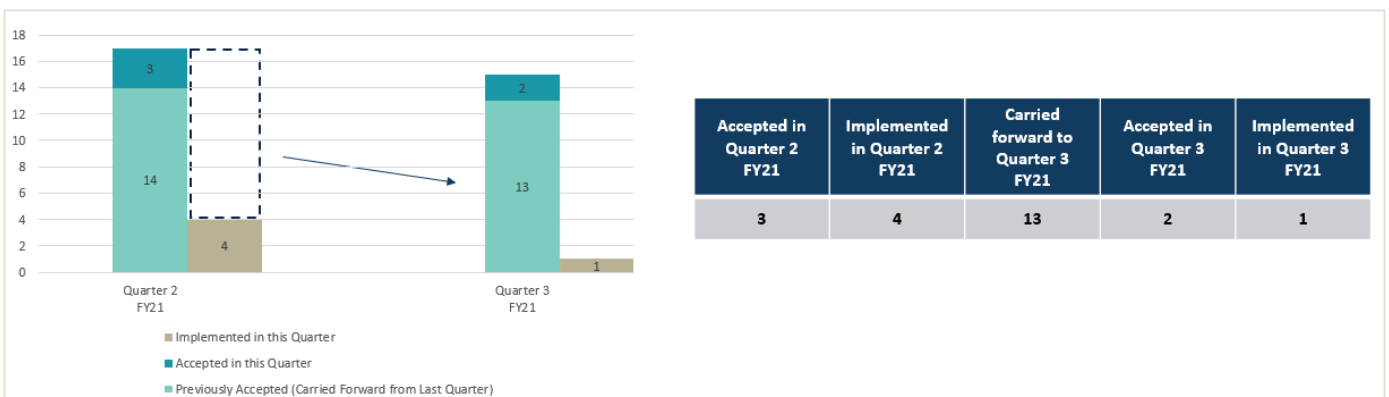


Agreed Business Improvements (ABI)

During our complaint investigations, the ATO or TPB may acknowledge that there is an opportunity for improvement in business processes and an ABI may emerge without the need for the IGTO to conduct a more formal review.

During Q3 FY21, the ATO accepted 2 ABIs and implemented 1 ABI, compared to accepting 3 ABIs and implementing 4 ABIs in the previous quarter.

Figure 6: Agreed Business Improvements (ABIs) accepted and implemented by the ATO or TPB



Review investigations update

We provided our preliminary draft report of the [Investigation and Exploration of Undisputed Tax Debts in Australia](#) to the ATO for comment in early April (in accordance with statutory requirements) and have received their comments to that draft. We have provided a Final Draft Report to the ATO for its consideration and response to our recommendations. We aim to publish the report, together with the ATO response, by 30 June 2021.

In addition to developing and publishing our article on the statutory rights for taxpayers to receive reasons for decisions from the Commissioner of Taxation, we have also progressed with drafting our initial draft of the report [into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal](#). We are aiming to provide the ATO with a preliminary draft report for its initial comments in July and will aim to finalise and publish the report before the end of the 2021 calendar year.

Refresh of the register of potential investigation topics

We are commencing our six-monthly refresh of our [Register of Potential Investigation Topics](#). The register provides insight to the community on the range of topics and issues that have been raised with the IGTO through our complaints handling service, stakeholder consultations and independent research as potential areas for broader investigation.

Suggestions for potential areas of investigation can be addressed to [Director - Review and Engagement](#).

We welcome feedback and input from all members of the tax profession and all sectors of the community. We will consider all feedback and suggestions provided and publish updates to the register in June 2021.

Our activities in Q4 FY21

Leading up to 30 June 2021, we will be:

- Engaging with the ATO in relation to Tax Time 2021 areas of focus to ensure that our team is able and ready to assist taxpayers and tax practitioners who contact our office;
- Commence planning and work on our Corporate Plan 2022, which will be published in August 2021 in accordance with requirements under the *Public Governance, Performance and Accountability Act 2013*;
- Preparing and planning to complete our Annual Report 2020-21 which will be published by October 2021;

- Publishing our latest review investigation report – *An Investigation and Exploration of Undisputed Tax Debts in Australia*.

Karen Payne

Inspector-General of Taxation | Taxation Ombudsman



phone: +61 2 8239 2111

email: igt@igt.gov.au

www.igt.gov.au

The Inspector-General of Taxation and Taxation Ombudsman acknowledges the traditional owners and their ongoing cultural connection to Country, throughout Australia. We pay our respects to their Elders past, present and future.