



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

Understanding a Taxpayer's Rights

When is the Commissioner of Taxation required to give a taxpayer reasons?

Briefing Document - May 2021

Understanding a Taxpayer's Rights

Is the Commissioner of Taxation required to give a taxpayer reasons for ATO decisions?

- **No** - There is no principle at common law establishing an obligation to provide reasons or a right to receive reasons for administrative decisions generally
- **Qualified Statutory Requirements** - Statutory rights to receive reasons for ATO (administrative) decisions are in many cases
 - limited or
 - not available unless and until a taxpayer commences litigation
- **No ... However** - good tax administration creates an expectation that taxpayers should receive reasons for decisions which affect them.

Would the Commissioner ever choose to give a taxpayer reasons?

- **Yes** - The Commissioner may choose to give reasons, even in the absence of a statutory or common law obligation to do so, as a matter of good tax administration ... and frequently does.
- The *Taxpayers' Charter* (for example) contemplates that the Commissioner will be “open, transparent and accountable” in his dealings with taxpayers and that he will explain the decisions the ATO makes about taxpayers.
- To learn more you can review:
 - the *Taxpayers' Charter*
 - [Download.aspx \(iorder.com.au\)](#)
 - Practice Statement Law Administration PSLA 2013/1 - *Commissioner's guidance on how to prepare a statement of facts and reasons under s13 of the ADJR Act (PS LA 2013/1)*.

What if you don't get reasons or sufficient reasons?

A taxpayer that does not get reasons or even sufficient reasons can:

ACTION 1 – complain to the ATO complaints unit to investigate

ACTION 2 – complain to the Taxation Ombudsman (the IGTO) to investigate and obtain that understanding

Note this is important because ... :

IT AIDS VOLUNTARY COMPLIANCE

As the Organisation for Economic Co-operation and Development (**OECD**) notes ...

Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply

IGTO Review Investigation

These themes are to be explored in the Inspector-General of Taxation and Taxation Ombudsman's (IGTO's) Review Investigation (as at May 2021), *'An investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal'*. The report is still in progress and a few months from publication.

An article has recently been published on the IGTO website to provide an overview of the current statutory and administrative requirements – for community awareness [IGTO Article re Requirement to give reasons for decision 14 May 2021 Final.pdf](#)

For more information on our Review Investigation, see: [An Investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal | IGT](#)

Why is it important to receive reasons for ATO decisions?

For Taxpayers

ASSURANCE – the taxpayer has been dealt with fairly and transparently

UNDERSTANDING – and highlighting any facts or issues in dispute, to understand the precise nature of the decision that was made or action that was taken and what review rights are available

INFORMING - critical to the taxpayer making an informed decision about whether to accept a decision or take action to dispute it.

RESULT = FAIRNESS (procedural fairness) + **EFFICIENT HANDLING OF DISPUTES**

Why is it important to provide reasons for ATO decisions?

For the Commissioner

Safeguards against decisions being made improperly or without due consideration:

- **CORRECTNESS** - what relevant material facts have been considered
- **COMPLIANCE** - with the relevant law
- **CONSISTENCY** – ensure ATO guidance is followed to ensure consistency of outcomes

Key IGTO Considerations

- 1. HELP taxpayer's in UNDERSTANDING** their rights – currently (legal, administrative, consistent with expectations of fairness)
- 2. PROVIDE EDUCATION SUPPORT** – including by the Australian Taxation Office in educating stakeholders and this includes **REMINDING** tax practitioners when rights are and are not available
- 3. HELP to RESOLVE AND MINIMISE DISPUTES** in the tax system
- 4. SUPPORT VOLUNTARY COMPLIANCE**

Taxpayer rights to reasons supports voluntary compliance

Organisation for Economic Co-operation and Development (OECD)

In its Practice Note on Principles of Good Tax Administration, the OECD encourages revenue authorities to apply tax laws in a “fair, reliable and transparent manner”. The OECD also notes that:

The promotion of voluntary compliance should be a primary concern of revenue authorities. The ways by which revenue authorities interact with taxpayers and employees impact on the public perception of the tax system and the degree of voluntary compliance. Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply.

General Administrative Principles – GAP001 Principles of Good Tax Administration – Practice Note, OECD Committee of Fiscal Affairs Forum on Strategic Management, 2 May 2001.

The OECD guidance under Taxpayer Relations also encourages revenue authorities to:

1.2 outline and communicate to taxpayers their rights and obligations as well as the available complaint procedures and redress mechanisms;

1.3 consistently deliver quality information and treat inquiries, requests and appeals from taxpayers in an accurate and timely fashion;

1.4 provide an accessible and dependable information service on taxpayers rights and obligations with respect to the law ...

Background Notes and Key Information

Including extracts from the Taxpayer's Charter

You can download a full copy of the Taxpayers' Charter in the link below

[Download.aspx \(iorder.com.au\)](https://www.iorder.com.au/Download.aspx)



Other Extracts from the Taxpayers' Charter

Commissioner's foreword

...

It outlines our commitment to act professionally, treat taxpayers fairly and reasonably and help taxpayers to meet their obligations by providing accurate, consistent and clear information. The Charter sets out how we conduct ourselves when dealing with taxpayers and explains:

- taxpayers' rights
- taxpayers' obligations
- what taxpayers can do if they are not satisfied with our decisions, actions or service
- the standard of service taxpayers can expect from us

Other Extracts from Taxpayers' Charter

Explaining the decisions we make about you (Page 7)

We explain to you the decisions we make about your affairs and provide you with a contact number or email address for the area of the ATO handling your case. We will explain our decisions clearly. If you have questions, think we made a mistake, or have not given adequate reasons for our decision, contact us using the details provided to you or your nominated representative.

Generally, we explain our decision in writing. If we give you our decision verbally, we will give you the explanation at the same time. In some very limited circumstances, we will not be able to explain our decisions fully, although we still provide as much information as we can. For example, if:

- another person is involved, releasing information about our decision may breach their privacy or the secrecy provisions in the tax laws
- we suspect fraud, we may not release information because it might jeopardise our investigations.

Under the *Administrative Decisions (Judicial Review) Act 1977 (ADJR)*, you are entitled to get a free written statement setting out the reasons for some decisions we make about your tax affairs. The Act does not cover all decisions and there are some important exceptions – for example, decisions about assessments.

Extracts from the Taxpayers' Charter

Respecting your right to a review (Page 8)

- ...
- If you disagree with our review decision, you can ask for an independent, external review. For some decisions, you will have the choice of applying to the Administrative Appeals Tribunal or appealing to the Federal Court. We will meet our model litigant obligations that include the preparation and proceedings before courts, tribunals, inquiries, in arbitration and other alternative dispute resolution processes.

Extracts from the Taxpayers Charter

Respecting your right to make a complaint (Page 8)

If you are not satisfied with our decisions, service or actions, or feel we have not followed the Charter, you can make a complaint.

We recommend that:

- you first try to resolve your problem with the tax officer you have been dealing with (or phone the number you have been given)
- if you are not satisfied, or if you find it difficult to raise the issue with the tax officer, talk to the tax officer's manager
- if you are not satisfied with the way your complaint is being handled, phone our complaints line on 1800 199 010.

You can make a complaint by:

- lodging a complaints form online by visiting ato.gov.au/complaint
- sending us a Freefax on 1800 060 063.

We treat complaints seriously. If you come to us with any problems or complaints, we will try to resolve them quickly and fairly. Complaints also provide us with important feedback and help us identify how we can improve our service.

For more information, visit ato.gov.au and search for 'QC 33775'.

Inspector-General of Taxation

If you have a complaint, you should try to resolve it with us first. If you are unable to, or if you are not satisfied with how we have handled your complaint, the Inspector-General of Taxation may be able to help you.

For more information:

- visit Inspector-General of Taxation website igt.gov.au
- phone 1300 448 829.

Extracts from the Taxpayers Charter

Chapter 6 – Fair Use of our access and information gathering powers

Explaining and reviewing our decisions (Page 58)

We will provide you with a clear explanation of the decisions we make about gaining access and gathering information and documents.

We must use our access and information gathering powers in good faith. The law protects you from the abuse of those powers. For example, under the *Administrative Decisions (Judicial Review) Act 1977*, decisions can be reviewed by the Federal Court and the Federal Circuit Court.

Grounds for review include that:

- use of the power was unreasonable
- the power was used in bad faith
- the power was abused.

This Act gives you the right to get a free, written statement of our reasons for a decision, for example, if we have decided to issue a notice requiring you to give us information. However, even if you ask us for a statement of reasons, you will still need to give us the information we have asked for.

There are exceptions to this right under the Act. These include where powers are used in relation to the institution or conduct of civil proceedings, such as under the promoter penalty laws.

Where you believe our officers have not conducted themselves according to the principles and practices in this document, a senior officer will be available to hear your concerns. Any claim of abuse of our formal powers is a serious matter. We consider the facts and circumstances of each case. This could result in counselling or disciplinary proceedings against the officers involved.

If you are not satisfied with the way your concerns have been addressed you can have them independently reviewed by phoning our complaints line on 1800 199 010.

PS LA 2013/1

- In PS LA 2013/1, the Commissioner acknowledges that it may be appropriate to respond favourably to a request for reasons, even where the requirements of s. 13 ADJR Act are not satisfied and there is otherwise no obligation to provide them.
- In this regard, the Commissioner states the following:

Provision of statement if no entitlement exists

48. In some circumstances, a request for a statement of reasons will be received where no entitlement under section 13 exists. In these circumstances, the decision maker should consider whether it is appropriate to provide a statement setting out the reasons for the relevant decision to assist the person requesting the statement to better understand the decision. Provision of a statement of reasons in these circumstances would generally be consistent with our commitment under the Taxpayers' Charter to explain our decisions and be accountable for our actions, and would align with the beneficial aims of the ADJR Act. However, the decision maker should make it clear to the applicant that the statement of reasons has not been provided pursuant to section 13.

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