



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

IGoT
News

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Update from the Inspector-General and Taxation Ombudsman



This edition of *IGoT News* includes:

- an update on our corporate compliance reporting,
- an update on our complaint investigation service (including our experience with COVID-19 cases and some Complaint Case studies),
- some preliminary information from our latest review investigation – the effective communication of taxpayer rights, and
- some insights into our activities planned for Q2 of FY21.

Corporate Plan and Annual Report

On 31 August 2020, we published our Corporate Plan for FY21 – FY24. This document sets out our purpose, vision, key activities and strategic priorities over the next four reporting periods. It also includes Key Performance Areas (KPA) and Key Performance Indicators (KPI) against which we will measure and report on our activities. The Corporate Plan is currently available on our [website](#). Each quarter we report progressively against our KPA and KPI. These updates are also available on our [website](#).

On 23 October 2020, our FY20 Annual Report was tabled in Parliament and is now available on our [website](#). The Annual Report provides an overview of the key events and activities of our agency throughout FY20. It includes some Case study examples and KPA and KPI by which we measure our performance as well as our audited financial statements and details of our resourcing, governance and capabilities.

Some preliminary feedback from our latest Review Investigation – An Investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal

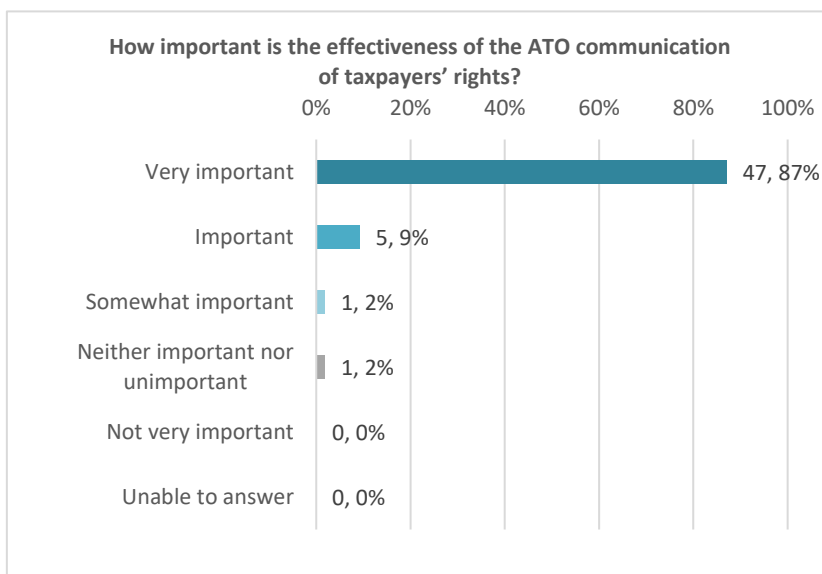
Our survey of taxpayers and advisers closed on 30 September 2020. Submissions closed on this date as well, with some extensions granted.

The survey is the first step in our review investigation and helps us understand what information is currently typically provided to taxpayers and their representatives on rights to review, complain and appeal decisions made by the ATO and what information is important to communicate.

These rights and the community's awareness of them is important for:

- improving the efficient resolution of disputes and complaints;
- reducing red tape and the cost of compliance;
- minimising unnecessary disputes and related costs before Tribunals and the Courts;
- improving community perceptions of the fairness of the tax system; and
- maintaining confidence in the fairness of the tax administration system.

We have set out below some of the insights drawn from the survey results as well as submissions.



96% of respondents indicated that the effective communication of taxpayers' rights was either important or very important.

The IGTO will use the results from the survey to direct the next stage in our review investigation.

Survey participants also provided some suggestions on potential areas for improvement, which the IGTO will consider as part of our review investigation. These suggestions included:

- “Learn to communicate in easily understood language.”
- “ATO should clearly state the basis for a particular decision, the options available to the taxpayer, the information which must be supplied to the ATO for each of the options and the contact details at the ATO for each option.”
- “The ATO also needs to make the timelines for appeals / reviews clearer. This could be made clearer by including the particular due date by which an appeal needs to be lodged in relation to the decision (rather than just generic wording around timeframes).”
- “The ATO should provide the taxpayer with all the information the taxpayer needs to consider the taxpayer's options and exercise any rights to question, challenge or appeal the decision.”
- “Every avenue available to taxpayer for any decision should be conveyed in written form thus allowing taxpayer to avail themselves of the most suited and appropriate remedy.”
- “Stylistic and syntactical choices could be improved to improve efficiencies. I.e. Bolding of key dates, emphasising key factors in the decision, communication of key actions items through differently coloured text.”
- “All Outbound letters should include a separate factsheet that detail all appeal options. There could be separate factsheets for tax, super, debt and different products within each subtype. People may utilise these options if the information is readily available.”
- “There needs to be a mediation & consultation before ANY decision is undertaken.”
- “Sometimes information considered and reasons are provided. However, rarely complete. Supports the outcome rather than the process.”

A slide deck containing some of the survey results will shortly be available on our website.

On 5 November 2020, we met with senior officers from the ATO to discuss these results and identify the areas on which we will focus as part of the investigation. We will provide an update on the progress of the investigation in a future edition of this newsletter.

Complaints about Tax Official actions and decisions – You have a right of review

With the release of the initial insights from our review investigation, it is perhaps timely to clarify some particular details of taxpayer rights – the right to seek an internal ATO review and the right to request an independent investigation of ATO administrative actions and decisions.

The following summary was recently shared as a post on LinkedIn to help clarify several points raised in an on-line conversation. The summary needed to be split in two to share as an on-line post and accordingly is reproduced here as a single summary and explanation. We have added some additional clarification in blue text and also reproduced a visual aid from the IGTO website to help clarify the options available.

We hope it helps to clarify the role of the IGTO and the options available to taxpayers (and their representatives) if they are not satisfied with administrative actions and decisions of the ATO in particular.

Extract from a recent On-line Post – with additional explanation

All taxpayers (or their representatives) have a statutory right to lodge a complaint with the IGTO – refer the *Inspector-General of Taxation Act 2003* (IGT Act).

IGTO has a statutory function to investigate actions and decisions taken by Tax Officials.

IGTO has a statutory obligation to investigate taxation complaints and limited discretion to decline to investigate – refer s9 of the IGT Act 2003.

Should the ATO advise the IGTO that they have no record of a formal complaint, then the complaint investigation will be categorised as Category 3.1. In these cases, the IGTO identifies issues requiring formal investigation and options for resolution and requires the matter to be dealt with by an identifiable ATO Officer providing accountability for the management and resolution of the complaint. IGTO also checks the ATO's handling of the complaint for satisfactory conclusion.

The ATO website encourages taxpayers to resolve their issues directly with the ATO Officer or their Manager. The Taxpayers' Charter also acknowledges taxpayer 'rights' to Alternative Dispute Resolution (ADR) processes and in-house facilitation.

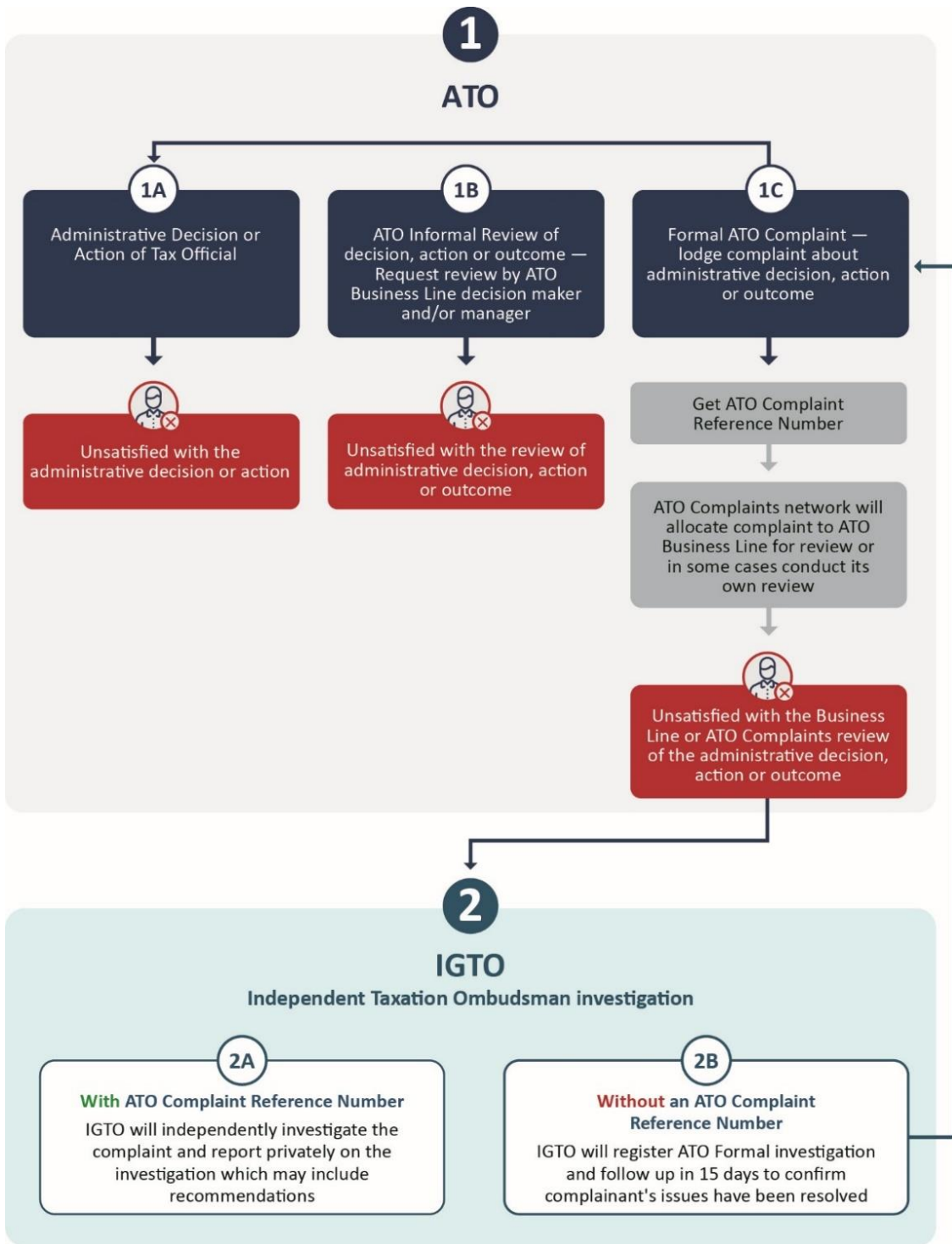
The ATO does not publish external guidance on when a Taxpayer may seek an internal review. However, IGTO has access to ATO records and information as part of its investigations as the Taxation Ombudsman. In addition, the IGTO independently verifies the Taxpayers' facts and circumstances as part of its independent investigation and, where warranted, refers the case to ATO managers and senior executives for their reconsideration.

Either way, if a Taxpayer is not satisfied about tax administration actions or decisions (e.g. delay, refusal to allow time, insufficient reasons, etc), then there is a statutory mechanism to ensure their concerns are reviewed – by the ATO or independently by the IGTO.

There is no guarantee that these 'review' processes will extend the time to lodge Part IVC reviews and appeals – i.e. in the Tribunal or Courts. However, Taxpayers can seek the consent of the ATO and approval by the Tribunal or Courts to allow further time.

More information is available on our website – visit www.igt.gov.au

The process is summarised as follows:



Update on our Complaint Investigation Service

The IGTO complaint handling service has been extremely busy during the past quarter, including dealing with a cluster of complex cases relating to COVID-19 Economic Support Measures - requiring the involvement of our most senior officers. A brief summary of these activities is provided below for your information.

COVID-19 Economic Support Measures - JobKeeper and Boosting Cash Flow Payments

Over the past few months, the IGTO has received an influx of complaints from a number of small businesses (as well as their representatives in the accounting and tax profession) around their eligibility for JobKeeper and Boosting Cash Flow payments. We also observed attention on these issues by Members of Parliament and the media. One of the concerns raised was essentially whether genuinely active new small businesses were being found by the ATO to be ineligible for JobKeeper (JK) and Boosting Cash Flow (BCF) payments because they lodge their Business Activity Statements (BAS) quarterly (rather than monthly). Both COVID-19 Economic Support Measures, include specific integrity rules to prevent entities being established or revived for the sole or dominant purpose of receiving these COVID-19 Economic Support Measures. The concerns, as we understand them, were that new small businesses would automatically register to lodge their BAS quarterly (rather than monthly) and therefore did not report their first sale until the first quarter of 2020 – 31 March 2020, that is after 12 March 2020.

The IGTO grouped these complaints together and escalated them to Category 5 complaints (our highest complaint category). The investigation team comprised a complaint investigator, two complex complaints managers, the General Manager and the IGTO. Through the course of the IGTO investigations, we confirmed that:

- The integrity rules for existing businesses and new businesses are not the same;
- Whereas:
 - an existing business may satisfy the requirement that *an amount was included in the entity's assessable income for the 2018- 19 income year in relation to it carrying on a business,*
 - a new business may not be able to satisfy the former and therefore may be required to satisfy the requirement that the entity made a taxable supply in a **tax period that applied to it** that:
 - (i) started on or after 1 July 2018; and
 - (ii) ended before 12 March 2020.
- Taxable supply and Tax period are as defined for the purposes of the *A New Tax System (Goods and Service Tax) Act 1999* [GST Act], but importantly, the former is modified for JK and BCF purposes;
- The taxable supply must be made for consideration but there is **no requirement** for that consideration to be received in the same tax period in which the taxable supply made;
- The attribution requirement that applies for GST purposes to link a tax period and a taxable supply does not apply in the JK and BCF integrity rules;
- Lodging a BAS is not a mandated requirement (and not the only way to provide notice to the Commissioner);

- Taxable supply for JK and BCF includes both GST free supplies **and input-taxed financial supplies** - as defined for GST purposes. **Financial supplies include the acquisition of financial supplies** in accordance with the *GST Regulations - A New Tax System (Goods and Services Tax) Regulations 1999 (the GST regulations)*;
- Financial supplies can importantly (and somewhat counter-intuitively) include:
 - opening an account with a bank (authorised deposit-taking institution);
 - borrowing money (from a financial supply provider);
 - entering a mortgage over real property; and
 - buying or selling shares or other securities – including incorporation of a shelf company or acquiring an interest in a managed investment scheme (a type of trust).
- Consideration in these cases is not always financial and is not always reported through a BAS;
- Accordingly a new small business entity does not need to have reported sales in their BAS to be eligible. Provided the business entity was carrying on an enterprise when making a taxable supply (as modified for JK and BCF purposes), and provided notice of that supply to the Commissioner (in any form) before 12 March 2020 or further time allowed by the Commissioner, they may be eligible;

In summary:

- An entity does not need to have received consideration in the same tax period for a taxable supply to satisfy the integrity rules – it only needs to have made the taxable supply for consideration; and a ‘taxable supply’ can be made in a tax period where the taxpayer acquires a financial supply – for example opening a bank account, entering a bank loan, providing a guarantee or mortgaging real property (all examples of input-taxed financial supplies). Accordingly, where a new business has ‘acquired’ one or more of these financial supplies as part of the steps undertaken to commence an enterprise and did so in tax periods that ended on or before 12 March 2020, then a business may be eligible (where the Commissioner exercises discretion pursuant to PS LA 2020/1 and the other eligibility criteria are met).

This clarification means that many new entities that were in the process of setting up and establishing their business may have made taxable supplies in tax periods ending before 12 March 2020 (and may be eligible) even though they made their first sale after December 2019.

The ATO has agreed to revisit the cases raised by the IGTO’s investigations. The ATO has also separately identified or undertaken to review other cases that may have been deemed ineligible by virtue of not reporting a sale or supply (by way of BAS lodgement) on or before 12 March 2020.

The IGTO is also developing a report of this investigation to more fully set out our findings and any recommendations.

Complaint Investigation Process and Statistics

We have updated and modified our complaint investigation processes recently to assist us better manage our case workload. Working smarter now includes:

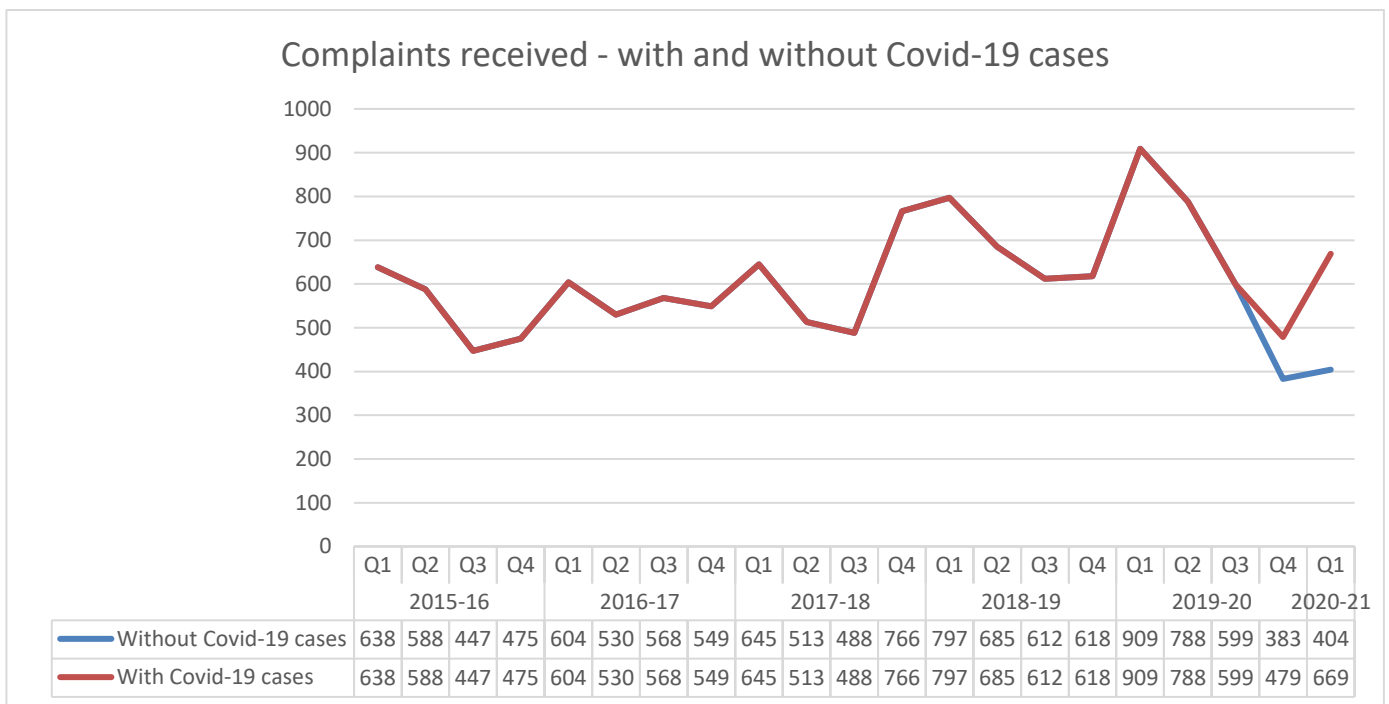
- An updated call centre message to direct complainants to the web form – so we can more efficiently understand the nature of their complaint;
- Educating and reminding taxpayers that there is an ATO Formal Complaints process for them to register their complaint directly with the ATO in the first instance;
- Creation of an Overflow Complaints Officer to allocate complaints in the first instance to triage hardship cases and better manage caseloads that exceed our resource capacity; and
- An updated web page to better communicate our complaints process.

We are hoping that this will assist taxpayers to better understand how we can help them resolve their complaints in a more efficient and effective manner.

We also expect that this may change the mix of complaints that we will receive for investigation. Some initial statistics are set out below for Q1 in FY21.

Complaint Statistics for Q1 in FY21

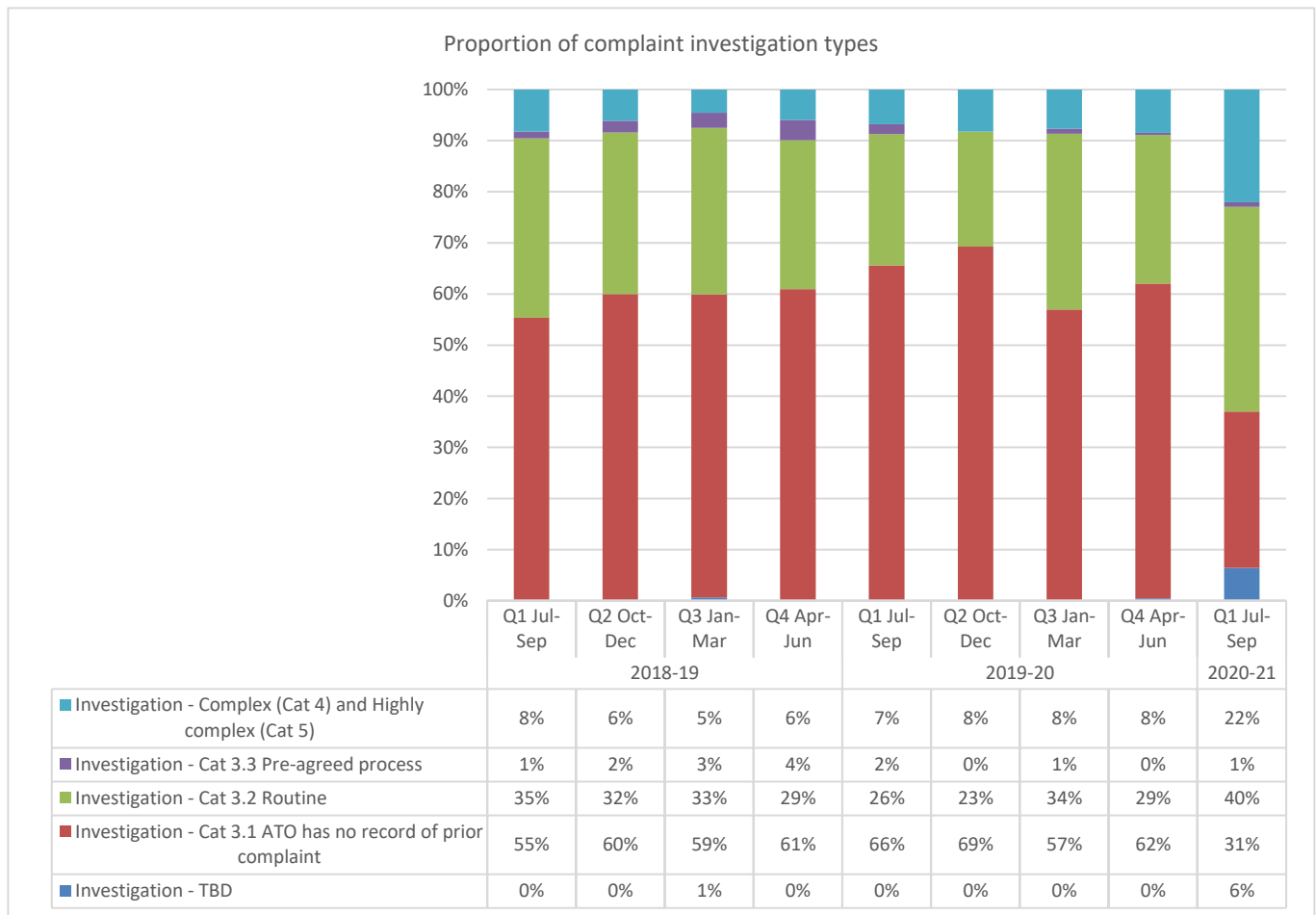
Although our total complaint numbers were tracking to increase by 14% over the prior year before the COVID-19 pandemic, there was an abrupt change in tax complaints in response to the pandemic. We finished the year with an increase in complaints of 2% over FY19 (2,775 in FY20 versus 2,712 in FY19). This represents an increase of 29% over the last 5 years and an average increase of 6% per annum.



Since the COVID-19 pandemic, we have seen a decrease in the total number of tax complaints compared to prior periods. This is especially true for our Categories 0 – 3.1. Category 3.1 complaint investigations, for example where the ATO says it has no record of the complaint having been raised with it before and asks for the opportunity to resolve the concerns with the complainant directly, have reduced from 309 in Q1 of FY20 to 96 in Q1 of FY21 .

However, we are receiving more complaints which require investigation and a greater number of more complex complaints (226 Category 3.2 or higher cases in Q1 of FY21, versus 162 in Q1 of FY20). That is, a greater proportion of our total complaint investigations are more complex and more time intensive – 63% of complaint investigations are Category 3.2 or higher in Q1 of FY21, versus 35% in Q1 of FY20.

At the same time, the proportion of complaint investigations where the ATO has no record of a complaint (Category 3.1) has also reduced. In Q4 FY20, the proportion of Category 3.1 complaint investigations was 62% reducing to 31% Q1 FY21. This is a positive outcome for the tax system.



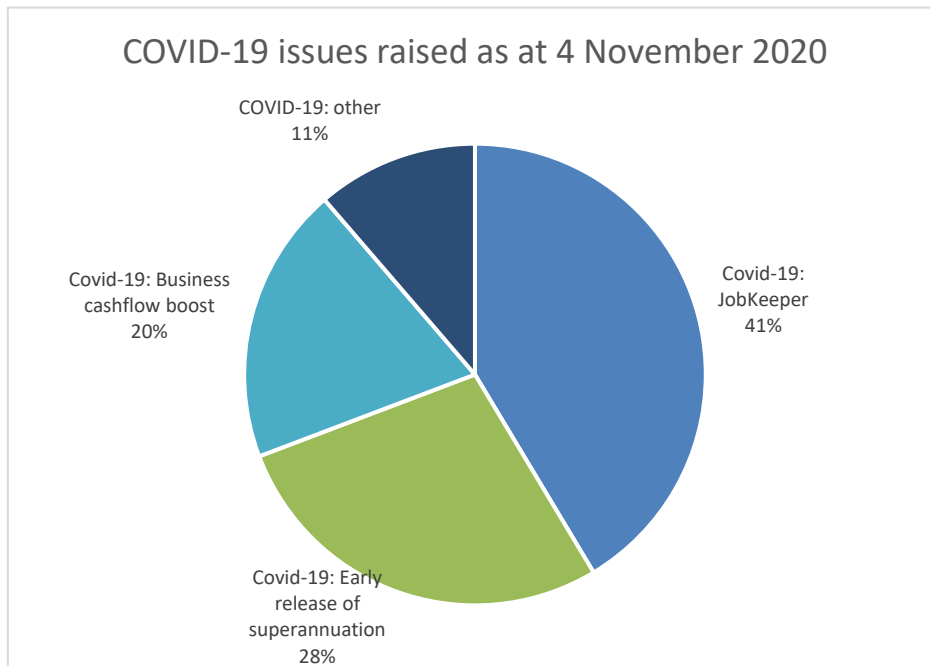
COVID-19 Complaints

Since March, our team has been busy:

- helping individuals and small businesses resolve their concerns with adverse ATO actions and decisions that they could not resolve with the ATO directly;
- helping new small businesses with access to the JobKeeper measure so they may continue to trade, by engaging directly with senior ATO executives to clarify technical views, improve guidance to ATO staff and obtain ATO commitments to reconsider its decisions;
- helping established businesses to access the Cash Flow Boost payments when they were overlooked by the ATO due to simple mistakes they made on their Business Activity Statements (BAS); and
- assisting individuals who were unsuccessful in accessing their superannuation to help them with the necessities of life. Many made simple mistakes in their application form or relied on pre-populated information.

We have provided some further details below in relation to the complaints that we have received about COVID-19 support measures and the manner in which we have assisted these taxpayers.

As at 4 November 2020, we had received 442 cases raising 660 issues relating to COVID-19 support measures (some cases raised more than one issue). We directly assisted taxpayers in 132 cases (29.9%) and commenced investigations in 310 cases (70.1%). A breakdown of the type of COVID-19 issues raised as a proportion of all COVID-19 issues is provided in the chart below.



Complaint Case Studies

As we have previously reported, IGTO categorise our complaints into assistance and assurance (Categories 0, 1 and 2) and complaint investigations (Categories 3, 4 and 5). Below are some Case Studies to illustrate each of these functions.

Complaint case study #1 – Complaint Category 1

An individual taxpayer raised concerns with the ATO's response to his attempts to correct a mistake that he made on his 2011 income tax return form. He had mistakenly reported his income twice, resulting in a large tax debt of tens of thousands of dollars. The individual explained that he was suffering from PTSD and unable to amend his return earlier. He had been told to lodge an objection to his 2011 assessment, which he did, but the ATO deemed that objection invalid. He had also lodged two complaints with the ATO as a result, but was unable to obtain guidance on how to successfully lodge a valid objection in his circumstances.

The IGTO officer assisted the individual by identifying the part of the objection form where he needed to ask the ATO to exercise its discretion to accept his objection outside of the usual time limits (an "out-of-time" request). The individual did so and this enabled him to successfully lodge a valid objection with the ATO. The individual thanked the IGTO for its assistance.

Complaint case study #2 – Complaint Category 3.2

A trustee company raised concerns that the ATO refused to remit almost \$300,000 in interest charges for tax liabilities that had arisen from the trustee's 2007 income tax return that was lodged earlier this year. The trustee had inadvertently overlooked lodgement of that return and, unprompted by the ATO, lodged it as soon as it realised the oversight and paid all the tax liabilities arising from it. As it had lodged and paid all of its other tax returns and liabilities, it considered the ATO's refusal to remit the interest charges as unfair and that it discouraged voluntary compliance with the tax laws.

The IGTO commenced an investigation and asked the ATO to internally review its decision, and to consider the trustee's good compliance history and the disproportionate nature of the interest charges in the circumstances. The ATO agreed to do so. As a result, the ATO remitted all of the interest charges and offered the trustee an apology. The trustee expressed its appreciation for the IGTO's assistance:

"The professionalism of your team and the manner in which this issue has been handled was extremely professional and to be highly commended."

Update on IGTO Activities and what to expect in Q2 of FY21

Presentations and Webinars

Throughout Q1 of FY21, we engaged with a range of stakeholders through presentations and webinars, including:

- The Tax Institute's online Death and Taxes symposium;
- A webinar hosted by CCH;
- A podcast with Accountants Daily;
- Webinars hosted by the Society of Trust and Estate Planners (NSW and QLD);
- A meeting of the Law Council of Australia's Taxation Committee;
- A discussion group from the Institute of Public Accountants;
- A meeting of the Law Society of New South Wales' Elder Law, Capacity and Succession Committee;
- A discussion group hosted by Curtin University.

One of our Complaints Managers also delivered a lecture as part of the University of New South Wales' Business Taxation unit.

Parliamentary Committees

On 16 September 2020, we lodged a submission to the Senate Economics Legislation Committee's (SELC) Inquiry into the Treasury Laws Amendment (Self Managed Super Funds) Bill 2020. The Bill will allow for an increase in the maximum allowable membership of self-managed superannuation funds. Our full submission is available on our [website](#).

On 26 October 2020, we appeared before the SELC as part of Senate Estimates. The IGTO's opening statement from that hearing is published on our [website](#).

We will appear before the House of Representatives Standing Committee on Tax and Revenue on 6 November 2020 to assist with its Inquiry into the Development of the Australian Corporate Bond Market. Our submission to the Committee is available on our [website](#).

Other work

We continue our work with international organisations on the protection of taxpayer rights. In October, we (together with Dr John Bevacqua of Monash University and with input from the ATO) submitted some interim updates to the Observatory on the Protection of Taxpayer Rights (OPTR) in relation to the ATO's approaches to compliance activities

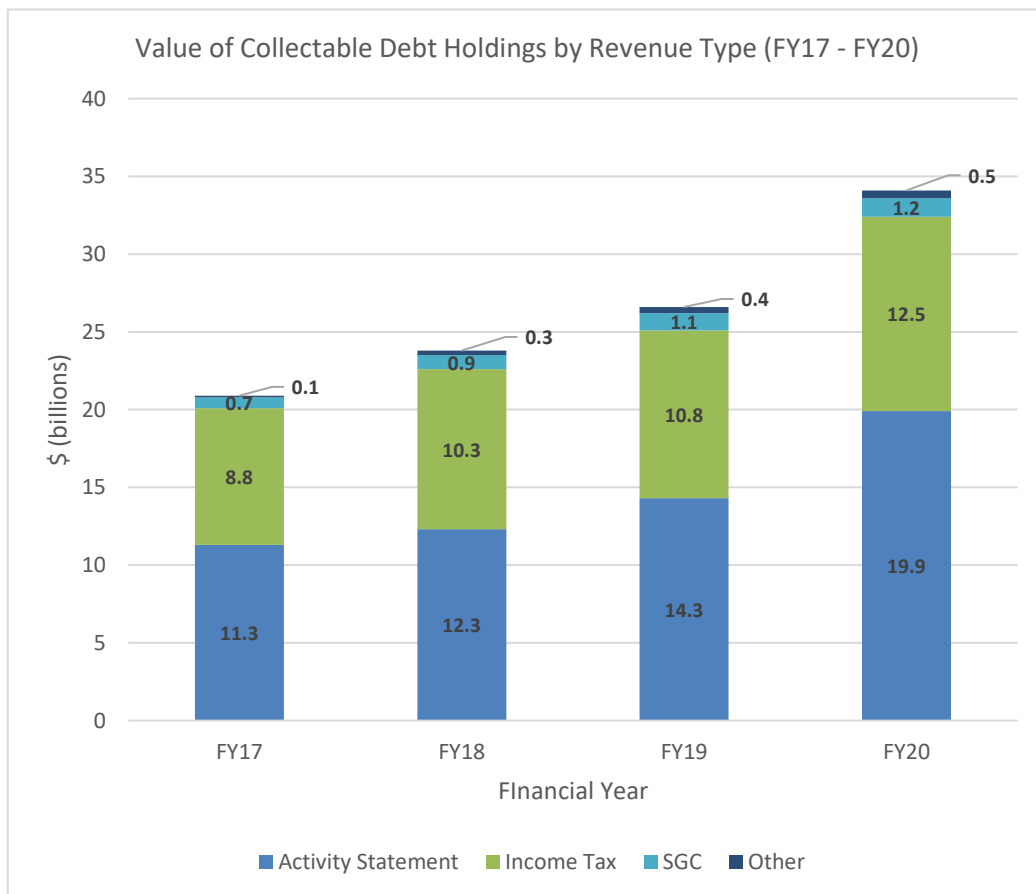
and debt recovery for those affected by the bushfires and throughout the COVID-19 pandemic. We will be completing the OPTR’s general survey for Australia in December and January.

The OPTR’s general report for 2019 along with individual country reports are available on the OPTR [website](#).

An Investigation and Exploration of Undisputed Tax Debts in Australia

We have re-engaged with the ATO on the undisputed tax debts review investigation to discuss information and data relating to FY20 and the impacts that the bushfires and COVID-19 pandemic have had on undisputed tax debt levels. The ATO has also published its FY20 Annual Report which includes details on undisputed tax debts. Some of this data is set out below.

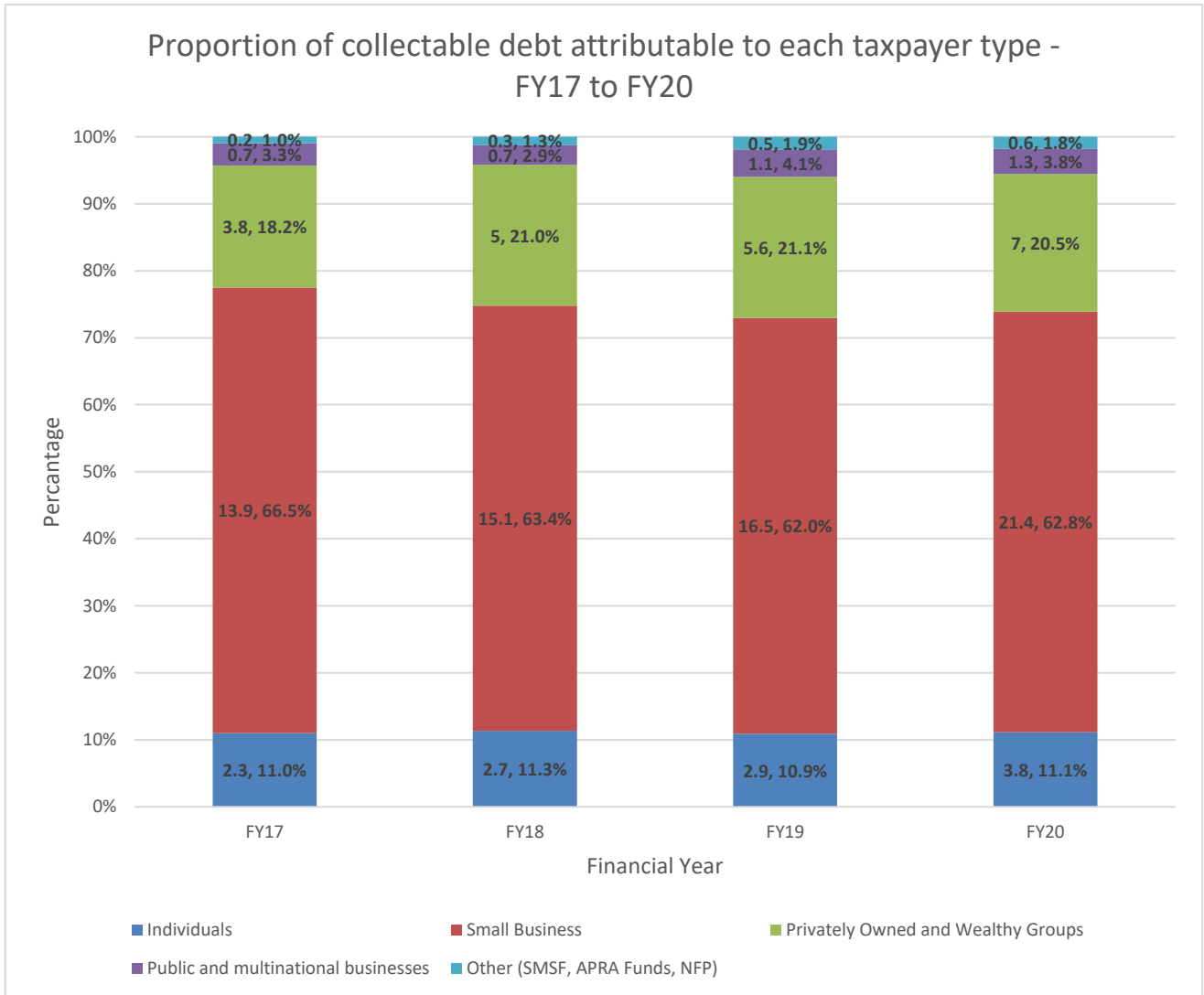
Overall, the ATO has reported that, as at 30 June 2020, its collectable debt balance is \$34.1 billion, a 28.2% increase from 30 June 2019. This increase is not surprising, given the a impacts on the community of the bushfires and COVID-19 pandemic. The composition of collectable debts across 4 financial years from FY17 to FY20 is provided below.



	FY17 (\$B)	FY18 (\$B)	% Change	FY19 (\$B)	% Change	FY20 (\$B)	% Change
Activity Statement	11.3	12.3	8.8%	14.3	16.3%	19.9	39.2%
Income Tax	8.8	10.3	17.0%	10.8	4.9%	12.5	15.7%
SGC	0.7	0.9	28.6%	1.1	22.2%	1.2	9.1%
Other	0.1	0.3	200.0%	0.4	33.3%	0.5	25.0%
Total	20.9	23.8	13.9%	26.6	11.8%	34.1	28.2%

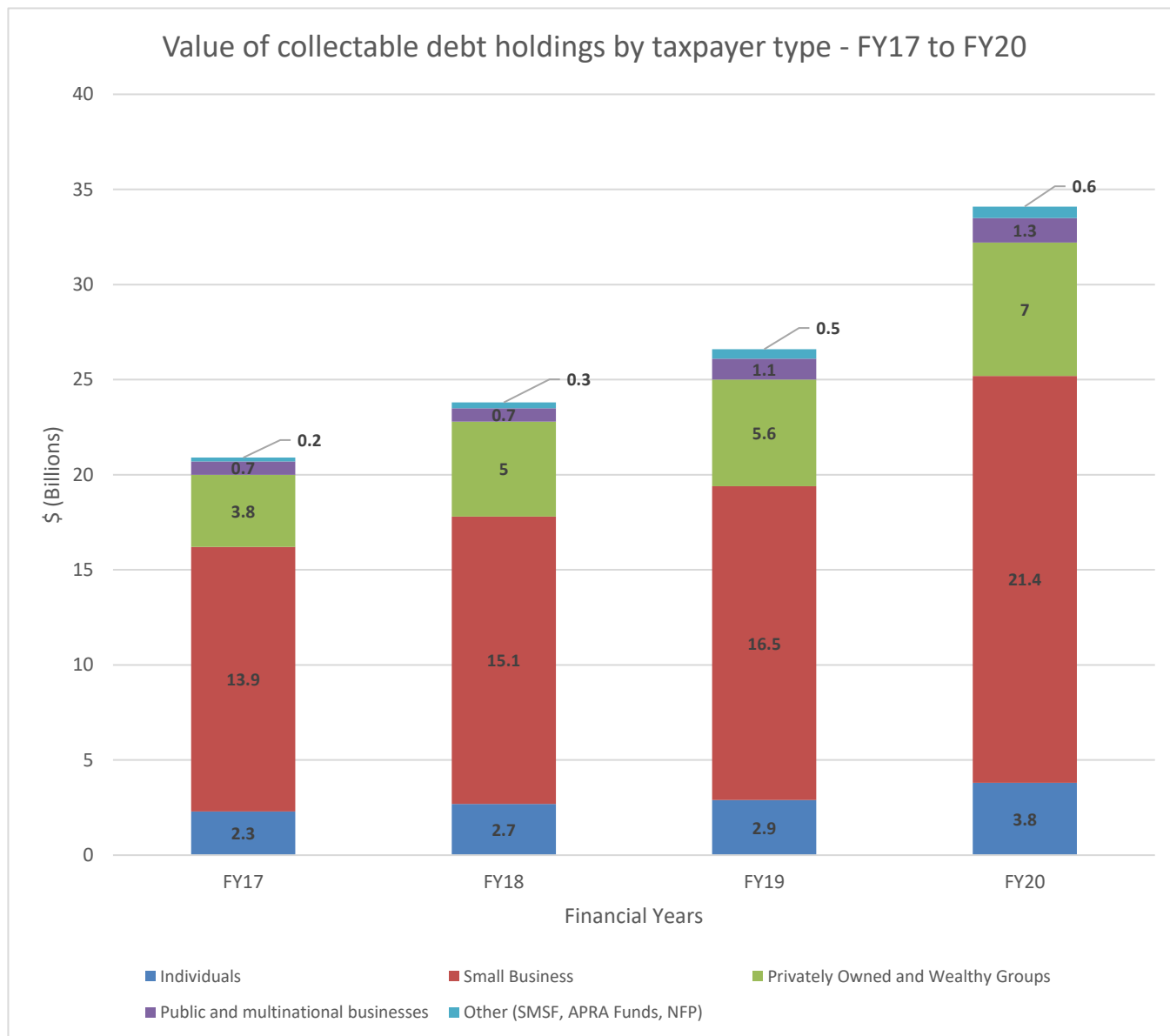
Activity statement collectable debt (which includes GST and PAYGW) accounts for the largest component (58%) as at 30 June 2020. It was also the debt type which recorded the largest increase (39%) since the prior year.

When examining the collectable debt levels from the perspective of taxpayer type, it appears that as the overall collectable debt book has grown, the proportions attributable to each taxpayer type has remained relatively consistent across the financial years.



Taxpayer Type	FY17 (\$B)	% of Total	FY18 (\$B)	% of Total	FY19 (\$B)	% of Total	FY20 (\$B)	% of Total
Individuals	2.3	11.0%	2.7	11.3%	2.9	10.9%	3.8	11.1%
Small Business	13.9	66.5%	15.1	63.4%	16.5	62.0%	21.4	62.8%
Privately Owned and Wealthy Groups	3.8	18.2%	5	21.0%	5.6	21.1%	7	20.5%
Public and multinational businesses	0.7	3.3%	0.7	2.9%	1.1	4.1%	1.3	3.8%
Other (SMSF, APRA Funds, NFP)	0.2	1.0%	0.3	1.3%	0.5	1.9%	0.6	1.8%
Total	20.9	100.0%	23.8	100.0%	26.6	100.0%	34.1	100.0%

However, when examining the year-on-year percentage changes, individual taxpayers and small businesses reported the highest percentage changes – 31% and 29.7%, respectively. This may suggest that the impacts of the bushfires and COVID-19 pandemic are more pronounced in these market segments.



Taxpayer Type	FY17 (\$B)	FY18 (\$B)	% Change	FY19 (\$B)	% Change	FY20 (\$B)	% Change
Individuals	2.3	2.7	17.4%	2.9	7.4%	3.8	31.0%
Small Business	13.9	15.1	8.6%	16.5	9.3%	21.4	29.7%
Privately Owned and Wealthy Groups	3.8	5	31.6%	5.6	12.0%	7	25.0%
Public and multinational businesses	0.7	0.7	0.0%	1.1	57.1%	1.3	18.2%
Other (SMSF, APRA Funds, NFP)	0.2	0.3	50.0%	0.5	66.7%	0.6	20.0%
Total	20.9	23.8	13.9%	26.6	11.8%	34.1	28.2%

The IGTO has re-engaged with the ATO to further understand its collectable debt data in the FY20 year before continuing with our review investigation. At a broad level, it is likely that much of the increase in collectable debts reported in FY20 is attributable to the economic impacts and pausing of some debt collection activities by the ATO as a result of the bushfires and the COVID-19 pandemic.

Refresh of Potential Review Investigation Topics

In April 2020, we published a [register of potential reviews](#) which can be located on our website. There are currently 27 topics on the register which were drawn from a number of different sources including complaints investigation cases, stakeholder feedback and Parliamentary Committee recommendations.

We will be commencing our six-monthly refresh of the register in November 2020.

If you have a suggestion or a view about which of the ideas on the register should be included in the register, please email us at enquiries@igt.gov.au.

Stay in touch

We value your feedback, so please stay in touch. You can contact me directly at any time using the details below. You can also keep up to date with the IGTO's activities via our website or follow us on [Facebook](#), [Twitter](#) or [LinkedIn](#).

Kind Regards
Karen Payne

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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.