



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

DEATH AND TAXES: AN INVESTIGATION INTO ATO SYSTEMS AND PROCESSES FOR DEALING WITH DECEASED ESTATES

The death of a loved one, friend or business partner can be stressful and emotional. Managing the affairs of the deceased includes a range of final tax obligations and financial and legal complexities. The tax obligations include lodging the final individual return for the deceased taxpayer, obtaining a tax file number for the deceased estate (which is treated in tax law as a trust), lodging a trust return,¹ paying any outstanding tax debts and ensuring that any refunds, credits or other entitlements are paid to the estate correctly. Cultural and language considerations can also arise.

Complexities may arise in dealing with the Australian Taxation Office (ATO) on deceased estates as all previously authorised contacts of the deceased taxpayer are removed and only the executor (or the administrator, where letters of administration have been granted by a court) may deal with the ATO. The change in authorised contacts has flow on effects requiring additional steps to be taken for proof of identity, requirements to obtain probate or letters of administration in situations where they are not otherwise required.

These complications relate to legislative impediments, which, except in limited circumstances, prevent the ATO from disclosing a deceased person's information, unless the disclosure is made to the executor or administrator of their estate with a grant of probate or letters of administration. This includes preventing the ATO from disclosing such information to representatives (such as a registered tax practitioner or solicitor) of an executor or administrator, or other persons. This impediment creates practical inefficiencies as it, in effect, requires the executor to personally attend to tax matters which they may not have the expertise to do. Furthermore, the inability to make such disclosures to registered tax practitioners removes their ability to access deceased taxpayers' information via the ATO Portals which may complicate and delay finalisation of lodgments.

The ATO has issued some general guidance on its website to assist executors to deal with deceased estates². The Inspector-General of Taxation and Taxation Ombudsman (IGTO) understands that the ATO has implemented some workarounds to assist executors and administrators where they can and has been engaging with professional bodies to address some of the issues in part, including by making use of the Commissioner's Remedial Power. However, feedback received in stakeholder forums and through the IGTO complaints handling service suggest that the experience of dealing with deceased estates is not optimal.

Some of the concerns raised (to date) include:

- a lack of acknowledgment from the ATO following notification of the death of a taxpayer;
- difficulties or delays obtaining a deceased estate tax file number;
- inconsistent steps for executors to provide their identity to access information, which is made more challenging in instances where the taxpayer died intestate (without a will);
- inconsistent advice and requirements to obtain probate or letters of administration;
- inability to appoint registered tax practitioners or solicitors as authorised contacts;
- difficulties or delays in accessing taxpayer information for the purposes of finalising taxpayer and deceased estate trust returns; and
- denial of access to the ATO Portals.

TERMS OF REFERENCE

The investigation seeks to identify opportunities to improve the administration of deceased estate tax compliance. The IGTO will examine and consider:

1. the experiences of the community (family and friends) in managing the tax affairs for the deceased;
2. the ATO's policies, processes and guidelines for receiving information from and dealing with deceased estates;
3. the public guidance issued by the ATO to assist executors or administrators;
4. the ATO's systems, including the ATO Portals, for dealing with deceased estates;
5. any legislative impediments to the efficient administration of deceased estates; and
6. any other relevant issues to the administration of deceased estate tax obligations.

All taxpayers, advisers (tax practitioners, solicitors or barristers, financial planners, trustee and estate service providers) and professional bodies are welcome to provide examples and suggestions for improving the administration of the tax laws and systems for the deceased.

HOW TO LODGE A SUBMISSION

The closing date for submissions is 6 December 2019. Submissions may be lodged by telephone (02 8239 2111) or be sent by:

Post to: Inspector-General of Taxation and Taxation Ombudsman
 GPO Box 551
 SYDNEY NSW 2001

Fax: (02) 8239 2100

Email to: estates@igt.gov.au

Confidentiality

Submissions provided to the IGTO are maintained in strict confidence (unless you specify otherwise). This means that the identity of the taxpayer, the identity of the adviser and any information contained in such submissions will not be made available to any other person, including the ATO. Section 37 of the *Inspector-General of Taxation Act 2003* safeguards the confidentiality and secrecy of such information provided to the IGTO — for example, the IGTO cannot disclose the information as a result of a Freedom of Information (FOI) request, or as a result of a court order generally. Furthermore, if such information is the subject of client legal privilege (also referred to as legal professional privilege), disclosing that information to the IGTO will not result in a waiver of that privilege.

Professional bodies and others (e.g. specialist advisers) who wish to have their contribution to the IGTO investigation formally acknowledged should accordingly expressly waive confidentiality for these purposes.

¹ Australian Taxation Office (ATO), *Deceased Estate Checklist* (20 May 2019) <www.ato.gov.au>.

² ATO, *Deceased Estates* (10 October 2018) <www.ato.gov.au>.