



Second Commissioner of Taxation

Karen Payne
Inspector-General of Taxation and Taxation Ombudsman
GPO Box 551
SYDNEY NSW 2001

Dear Karen,

Death and Taxes – An investigation into ATO systems and processes for dealing with deceased estates.

Thank you for the opportunity to provide comment on the final draft of your report.

The report offers the ATO an opportunity to improve on our existing procedures, communications and the support we offer the community. We believe this will help build community confidence in the way we interact with those seeking to manage the affairs of deceased persons. This is an important issue for the ATO as we understand this can be a difficult time for relatives, executors and their appointed agents who may still be grieving over the loss of a loved one as they seek to finalise the estate. We want to ensure that the interactions with the ATO are as efficient and simple as possible.

We consider that while challenging, there are three main areas of change that would significantly improve the client experience. These are:

- Digital notification of death – in this regard, there is work underway exploring what may be possible from a whole-of-government perspective
- the digitisation of interactions required in the course of managing the affairs of a deceased person and to the extent possible, using technology to assist in ‘masking complexity’ where possible, for example, for deceased estates with simple affairs
- an approach for simple estates that do not have probate or letters of administration that meets people’s needs.

Our detailed response to the recommendations is contained in Annexure 1.

Finally, I would like to acknowledge the efforts of all involved in undertaking this review, and, thank you and your team for the collaborative manner in which it was undertaken.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Hirschhorn'.

Jeremy Hirschhorn
Second Commissioner

3 July 2020

IGT Review into Death and Taxes – Investigation into ATO systems and processes for dealing with Deceased Estates

ATO response/comments regarding the final report recommendations

Recommendations	ATO Response
<p>RECOMMENDATION 1 <i>[THIS RECOMMENDATION SHOULD BE READ IN CONJUNCTION WITH RECOMMENDATION 7]</i></p> <p>The IGTO recommends that the ATO, in consultation with external stakeholders, review and refresh its advice and guidance on dealing with deceased estate matters and, as part of that work:</p> <ul style="list-style-type: none"> a. the ATO provides clear guidance on the rules for engaging with representatives of the deceased taxpayer, including the LPR, (particularly those who are not required to seek grants of probate or letters of administration), on issues such as: <ul style="list-style-type: none"> i. information required by the ATO for ATO confirmation of the death of a taxpayer; ii. information necessary to register a person as an LPR or authorised representative of the deceased taxpayer; iii. who can submit information to the ATO on behalf of the deceased taxpayer; iv. who can access ATO-held information of the deceased taxpayer; v. the circumstances in which the ATO will require probate or letters of administration before dealing with a representative of the deceased taxpayer; and 	<p>ATO RESPONSE</p> <p>Recommendation 1a – Agree in part</p> <p>The ATO agrees to review its guidance regarding deceased estates in consultation with external stakeholders, with a view to improving this guidance where it is needed.</p> <p>In doing so, our guidance material needs to strike a balance between being easy to understand for people who are not familiar with the topic and don't need to go into detail, and providing links to more detailed information as required by tax professionals who seek information on more complex scenarios.</p> <p>We want to make it easy for someone dealing with a deceased estate to be able to deal with us and, to, where permitted by law, get the information they need to lodge returns; and to know how to lodge a return</p> <p>In our response to recommendation 7 below we have agreed to confirm our position as to how the tax law applies in relation to information disclosures where a grant of probate or letters of administration have not yet been obtained or will not be obtained. Once this is completed the ATO will consider what further guidance can be provided in relation to the matters set out in Recommendation 1 a. v. and vi.</p>

Recommendations	ATO Response
<p>vi. how the ATO deals with simple deceased estates where neither probate nor letters of administration are required by State and Territory succession laws;</p> <p>b. the ATO provide binding advice on the circumstances when:</p> <ul style="list-style-type: none"> i. prior year income tax returns need not be lodged; ii. a TFN for a deceased estate is not required; iii. a date of death tax return and/or deceased estate trust returns is not required to be lodged – for example, in the year of death or in each of the subsequent three financial years where the taxable income does not exceed the tax free threshold; <p>c. the ATO improve its guidance on deceased estate trust returns to inform representatives of deceased estates on which parts of the trust return are mandatory and which can be ignored;</p> <p>d. the ATO:</p> <ul style="list-style-type: none"> i. consolidate the above advice and guidance in an easy to understand and easily accessible format [the Information Guide]; and ii. leverage end-of-life processes to distribute the Information Guide – for example providing it as part of a funeral parlour information package, to tax agents and solicitors who practice in the area of deceased estates and Public Trustee offices –.; or iii. otherwise make the Information Guide available to individuals who directly notify the ATO of the death of a taxpayer. 	<p>Recommendation 1b – Disagree</p> <p>The ATO already provides binding information relevant to these topics via the legislative instrument that sets out when returns must be lodged for each income year and this information is currently included on the ATO’s website. To the extent advice would be about the application of the Commissioner’s general power of administration, the ATO does not have the ability to give binding advice on that.</p> <p>The ATO agrees that representatives should be able to access information that they can rely on regarding the points raised in Recommendation 1b. As per our response to Recommendation 1a, the ATO will review this information with a view to making it easier for LPRs to understand what is required of them. Similarly, the ATO needs to consider when and in what depth it is appropriate for guidance material to outline how the law applies to each of the various issues raised in this recommendation, in order to best assist representatives to understand what they need to do.</p> <p>Recommendation 1c - Agree in principle</p> <p>Our goal is to make the experience as simple as possible for people with simple affairs and we will review the trust return instructions with this in mind. Naturally, not every deceased estate trust return is simple. More complex situations must also be catered for.</p> <p>In reviewing the instructions, we will need to consider whether there are any systems’ or software limitations that may impact on how the instructions could be simplified.</p>

Recommendations	ATO Response
	<p>Recommendation 1d - Agree in principle</p> <p>The ATO notes its responses to recommendations 1 a., b., and c., including the commitment to review its guidance and instructions. We agree with the principle of communicating information in an accessible and easily understood manner. We have noted above the balance our guidance needs to strike between being easy to understand and providing links to more detailed information for more complex scenarios.</p> <p>We agree to work with stakeholders to better understand what the best natural channels and formats are for disseminating deceased estate information to relatives and executors, whether that be in the form and manner recommended or otherwise. This improved understanding will guide the development and delivery of our information products.</p> <p>The Digital Transformation Agency is currently undertaking work to develop digital death certificates to allow a more streamlined notification process through a digital channel. We will continue to be involved in this work that focuses on a whole of government solution to help relatives understand what is required by government after a death. This might be preferable, from a client experience perspective, to an agency by agency approach.</p>
<p>RECOMMENDATION 2:</p> <p>The IGTO recommends that, consistent with a ‘tell us once’ approach, the ATO explore opportunities to:</p> <p>a. better integrate notification of death across whole of government (Commonwealth, State and Territory) and with existing end-of-life processes; and</p>	<p>ATO RESPONSE:</p> <p>Recommendation 2a - Agree</p> <p>The ATO agrees that ideally, relatives would not need to notify government of a death, or at the very least, to only need to ‘tell us once’. Furthermore, the ATO considers this, together with the ability for the notification to be digital, to be a change that would significantly transform the client experience and, whilst challenging to achieve, is worthy of pursuit.</p>

<p>Recommendations</p>	<p>ATO Response</p>
<p>b. liaise with key stakeholders within the end-of-life processes, such as Services Australia (for Medicare and pensions), religious institutions and funeral parlours as well as related associations to further enhance the efficiency of the notification process and content of death notification information.</p>	<p>The ATO understands that there are various state government based projects currently underway, seeking to reduce the requirement for relatives to notify the government of the death of a relative, including through the Digital Transformation Agency.</p> <p>The ATO will seek to be an active collaborator in these projects and will look for further opportunities to progress a national digital death notification service for relatives, notwithstanding that this is a complex challenge.</p> <p>Recommendation 2b - Agree in principle</p> <p>The ATO has had initial discussions with Services Australia and we will consult further with them to more fully explore potential options to enhance the notification process. The ATO will also liaise with other key stakeholders on this issue.</p>
<p>RECOMMENDATION 3:</p> <p>The IGTO recommends that the ATO, having regard to its own IT development programs and broader whole-of-government IT priorities:</p> <p>a. allow for official notification of death to be done digitally and develop appropriate channels to facilitate this outcome; and</p> <p>b. enable such notifications to be made by registered tax practitioners who were previously engaged by the deceased person and/or who have been newly appointed by the deceased person’s legal personal representative.</p>	<p>ATO RESPONSE:</p> <p>Recommendation 3a – Agree in principle</p> <p>The ATO agrees that relatives may benefit from having a digital option available to them to notify the ATO of a relative’s death. Furthermore, the ATO considers this, together with the ability for the notification to be a single notification across Government as contemplated through the Digital Transformation Agency Digital Death Certificate project, would significantly transform the client experience and, whilst challenging to achieve, is worthy of pursuit.</p> <p>The ATO will monitor the progress of these potential solutions as touched on in Recommendation 2, and the ATO will explore developing its own digital solution.</p> <p>It is important to note that, as with any IT proposal, the timing of development, design and delivery of such a change would need to be considered in the context</p>

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Recommendations	ATO Response
	<p>of other digital programs and improvements that the ATO needs to implement within a finite IT program, having regard to the relative priority and return on investment of IT proposals for the Government and the broader community.</p> <p>Recommendation 3b - Agree in part</p> <p>The ATO worked closely with tax practitioners to develop the CRP law modification and agrees to continue to work with them to better understand their role in the deceased client process and identify if they require a digital notification channel. In many cases a tax practitioner would not become aware of a death until some time has elapsed after death. As mentioned previously, the ATO considers that a whole of government solution to notification of death would be preferable from a client experience perspective.</p>
<p>RECOMMENDATION 4:</p> <p>The IGTO recommends that the ATO:</p> <ul style="list-style-type: none"> a. promote the availability of the digital channel to lodge deceased estate TFN applications; and b. in the longer term, implement options to enable easier application for deceased estate TFNs, for example by adding the functionality to the Online Services for Agents system, the ATO website or MyGov. 	<p>ATO RESPONSE:</p> <p>Recommendation 4a - Agree</p> <p>The ATO agrees to further promote the digital channel on abr.gov.au for Trust tax file number applications. Currently around 72% of all applications use this digital channel.</p> <p>Recommendation 4b – Agree in principle</p> <p>The ATO agrees to explore how we can make it easier to access the existing digital channel and consult with appropriate stakeholders to determine if there is a more appropriate channel to apply digitally for a deceased estate TFN.</p>

Recommendations	ATO Response
<p>RECOMMENDATION 5:</p> <p>The IGTO recommends that the ATO:</p> <ul style="list-style-type: none"> a. Simplify tax filing requirements for a deceased taxpayer following consultation with relevant stakeholders: <ul style="list-style-type: none"> i. This could include, for example, simplified processes for obtaining tax credits or refunds (for example franking credit refund concessions currently available for taxpayers before their death could be extended) or developing a simplified and dedicated tax return for a deceased taxpayer – such as a ‘D’ return form – that minimises tax administration compliance for simple estates (especially for franking credit refunds); ii. incorporates information routinely acquired by the ATO as part of their administration of deceased estates; and iii. permits use by next of kin or LPRs administering low-value or straightforward deceased estates – for example, where a return is lodged simply to obtain franking credit refunds; b. consider options for ‘hiding’ or non-display of irrelevant labels and expanding use of ATO data to pre-fill the return; and c. where the ‘D’ return form is to apply in limited circumstances, develop a ‘bright line’ test to determine the threshold whereby complex estates may be required to use the standard Trust Tax Return form and engage with the ATO more extensively. 	<p>ATO RESPONSE</p> <p>Recommendation 5a - Agree in principle</p> <p>It is important to note that at the time of writing, the COVID-19 pandemic has resulted in a re-alignment of some of the ATO’s priorities and workforce and will likely have an ongoing impact for some time to come. This would inevitably impact our ability to deliver large IT based improvements.</p> <p>The ATO considers these recommendations to be a change that would significantly transform the client experience and, whilst challenging to achieve, are worthy of further exploration.</p> <p>The ATO agrees that a dedicated tax return for deceased estates has merit.</p> <p>In our experience, the development and implementation of a new income tax return, or other forms, requires significant resources to design, develop and implement.</p> <p>As with any project, the ATO will need to assess the cost, priority and benefits associated with this work against other priorities, and the existing legal framework, so that we can best use our limited resources to improve client experience across the whole tax system.</p> <p>Included in these considerations is that the number of deceased estate trust returns lodged each year totals approximately 48,000. Around 95% are lodged by tax practitioners and of those, approximately 95% are lodged digitally.</p> <p>The ATO will explore if there are ways to simplify the tax filing requirements, including the use of information acquired by the ATO, within the existing legal framework for deceased estates.</p> <p>Recommendation 5b - Agree in principle</p>

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Recommendations	ATO Response
	<p>The ATO will explore options for making it easier to complete the trust return and whether pre-filling is possible within the existing legal framework and current IT priorities.</p> <p>Recommendation 5c - Agree in principle</p> <p>The ATO agrees in principle with the recommendation but notes our response in relation to paragraphs i., ii. and iii. above.</p> <p>The opportunity costs associated with the development of a new return where use may be relatively low must be considered with respect to the prioritisation of our limited IT resources.</p>
<p>RECOMMENDATION 6:</p> <p>The IGTO recommends that the ATO:</p> <ul style="list-style-type: none"> a. explore with external stakeholders, such as members of the National Tax Liaison Group, or other consultation forum, the consequences and challenges associated with applying general taxation of trusts principles to deceased estates; and b. where appropriate, make submission for further inquiry to bodies such as the Board of Taxation or lodging minutes with the Treasury noting the potential for law change. 	<p>ATO RESPONSE</p> <p>Recommendation 6a – Agree</p> <p>The ATO agrees to explore the consequences and challenges associated with applying general taxation of trust principles to deceased estates through our usual consultative forums., which may include the National Tax Liaison Group members. The ATO notes that it’s a matter for government to determine policy change for the taxation of deceased estates.</p> <p>Recommendation 6b - Agree</p> <p>The ATO agrees that where appropriate, it will make submissions to bodies for further inquiry, including the Board of Tax or lodge minutes with Treasury noting opportunities for potential law change.</p>
<p>RECOMMENDATION 7:</p> <p>The IGTO recommends that the ATO:</p>	<p>ATO RESPONSE</p> <p>Recommendations 7a and 7b</p>

Recommendations	ATO Response
<p>a. confirm its position on the interaction between State and Territory succession laws and tax laws to confirm which ‘representatives’ of the deceased can represent the deceased for various tax purposes, particularly in circumstances where neither probate nor letters of administration are required by State and Territory succession laws; and</p> <p>b. leverage expertise in the community and from its consultative forums to seek feedback on the position and any proposed changes to administrative arrangements or the need for legislative change to find a workable solution.</p>	<p>The ATO considers that improving the experience of people dealing with the affairs of a deceased person in the absence of a requirement for probate or letters of administration has the capacity to significantly transform the client experience. We will look to confirm the position under the current law as to who the ATO can disclose a deceased person’s information to and engage with the community to see whether what is possible under the existing legal framework meets people’s needs, or not. We note legislative change is a matter for Government.</p> <p>Recommendation 7a - Agree in part</p> <p>The ATO has outlined its position in relation to access to protected information of a deceased person. We have noted that a disclosure cannot be made, except in limited circumstances, other than to an LPR with a grant of probate or letters of administration.</p> <p>The ATO agrees to confirm its position as to how the tax law applies in relation to disclosures of a deceased person’s information where a grant of probate or letters of administration have not yet been obtained or will not be obtained.</p> <p>We note our response to Recommendation 1 that we will review our guidance with a view to improving that advice where needed.</p> <p>Any legislative change to Division 355 of Schedule 1 to the <i>Taxation Administration Act 1953</i> is a matter for Government.</p> <p>Recommendation 7b - Agree in part</p> <p>The ATO agrees that it will consult with its usual consultative forums in relation to administrative arrangements for access to a deceased person’s information. We note legislative change or policy is a matter for Government.</p>

Recommendations	ATO Response
<p>RECOMMENDATION 8 [this recommendation should be read in conjunction with recommendation 7]:</p> <p>The IGTO recommends that the ATO provide registered tax practitioners (appointed by LPRs with whom the ATO is authorised to engage with a grant of probate or letters of administration) with access to any correspondence sent to the deceased taxpayer’s MyGov that is not otherwise accessible through Online Services for Agents.</p>	<p>ATO RESPONSE</p> <p>Recommendation 8 - Agree in principle</p> <p>The ATO agrees that, ideally, appointed tax practitioners should be able to view all correspondence that has been issued to the deceased person pre and post their death. The reason that some existing documentation is not visible to a tax practitioner is because some correspondence issued by ATO officers is from systems that don’t automatically become viewable in Online Services for Agents.</p> <p>The ATO is working towards moving all items of correspondence onto systems that will allow tax practitioners to view them. As part of this work, the ATO needs to consider opportunities, costs and other IT priorities and so we have not finalised a timeline for these changes.</p>
<p>RECOMMENDATION 9:</p> <p>The IGTO recommends that the ATO:</p> <ol style="list-style-type: none"> engage with external stakeholders, especially tax practitioners, solicitors and barristers with expertise in succession law, wills and estates to identify the key enquiries that may require escalation; develop escalation channels to dedicated areas within the ATO who are trained to provide specialist advice on deceased estate issues; and recognise and acknowledge the needs of bereaving family members – so that advice is delivered with empathy and sensitivity. 	<p>ATO RESPONSE</p> <p>Recommendation 9a - Agree</p> <p>The ATO agrees to review its escalation process for cases that have complexity that can’t be managed by front line staff. The ATO agrees to encourage its technical staff to share and discuss key deceased estate topics or themes with industry experts where they are able to.</p> <p>Recommendation 9b – Agree</p> <p>The ATO is currently in the process of reviewing how it allocates and escalates deceased estate related work to its staff.</p> <p>Recommendation 9c - Agree</p>

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	<p>As per b. above, the ATO is reviewing its work allocation procedures. The ATO will ensure that staff who are actioning deceased estate do it while displaying empathy and sensitivity to relatives of the deceased.</p>
<p>RECOMMENDATION 10:</p> <p>The IGTO recommends that the ATO conduct a post implementation review, in consultation with external stakeholders (within five years) to assess the effectiveness of:</p> <ul style="list-style-type: none"> a. improvements to the administration of deceased estates including the measures recommended in this report that aim to deliver greater certainty for representatives of deceased estates; and b. PCG 2018/4 in providing sufficient certainty for LPRs to finalise an estate, as necessary. 	<p>ATO RESPONSE</p> <p>Recommendations 10a and 10b - Agree</p> <p>The ATO agrees to revisit the recommendations made by the Inspector General in this report and the responses provided by the ATO in consultation with external stakeholders within a 5-year timeframe.</p>