



Australian Government

Inspector-General of Taxation

Taxation Ombudsman

AN INVESTIGATION INTO THE EFFECTIVENESS OF ATO COMMUNICATIONS OF TAXPAYERS' RIGHTS TO COMPLAIN, REVIEW AND APPEAL

The purpose of this Inspector-General of Taxation and Taxation Ombudsman (IGTO) investigation is to confirm how effectively (clearly and completely) the Australian Taxation Office (ATO) communicates appropriate information to taxpayers and their representatives on the taxpayers' rights to review, complain and appeal decisions made and actions taken by the ATO.

The review will involve an investigation of (a selection of) written communications of ATO decisions made – for clear communication of the taxpayers' rights to review, complain and appeal these decisions. The communication of taxpayers' rights is an important feature of procedural fairness and is consistent with the Taxpayers' Charter. These rights and the community's awareness of them is important for maintaining confidence in the fairness of the tax administration system.

Procedural Fairness

Although the terms procedural fairness¹ and natural justice² are often used interchangeably, natural justice is often associated with principles applied by Courts of law. Accordingly, the term procedural fairness is preferred and adopted by the IGTO. The rules of procedural fairness require:

- A hearing appropriate to the circumstances;
- Lack of bias;
- Evidence that logically supports a decision; and
- Inquiry into matters in dispute.

Taxpayers' Charter

The Taxpayers' Charter notes that taxpayers have the right to be informed of their rights or obligations when the ATO makes decisions about them and their right to question.³ The Taxpayers' Charter states that the ATO will 'outline [the taxpayer's] options if [they] want a decision or action reviewed including, legal review rights and the formal complaint process'.

¹ The principles of 'Procedural fairness' require that decision makers should act fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision.

² The principles of natural justice include a fair hearing rule – a rule against bias (nemo iudex in causa sua, or "no man a judge in his own cause"), and the right to a fair hearing (audi alteram partem, or "hear the other side").

³ Australian Taxation Office, *Taxpayers' Charter – Essentials* (22 October 2018) <www.ato.gov.au>.

Where a taxpayer is affected by a decision or action taken by a Tax Official, the principles of procedural fairness (and natural justice) require that they should be given an opportunity to dispute the decision made and have the matter reviewed independently.

Various avenues exist for taxpayers to exercise their rights to dispute or question a decision made by the ATO. These avenues include formal review rights⁴ to the Administrative Appeals Tribunal (AAT) or Federal Court of Australia and both formal and informal review rights⁵ within the ATO – such as objections and internal reviews. The AAT and the Courts provide a mechanism for independent review on the merits and legal correctness of ATO decisions and decision making processes.⁶

Additionally, there are internal⁷ and external complaint investigation services – for example, through a taxation complaint lodged with the IGTO⁸. The IGTO provides a free and independent investigation service to provide assurance to taxpayers on the administrative fairness of ATO decisions and decision making processes.

Consistent with the principles of procedural fairness and the Taxpayers' Charter, it is imperative that taxpayers are aware of their rights to object, appeal and/or raise a taxation complaint in respect of the legal correctness and fairness of ATO decisions and decision making processes.

The IGTO has observed through her taxation complaints investigation service that information on rights of appeal and opportunities to raise complaints varies across different types of ATO-issued correspondence. A number of taxation complaint investigations have highlighted to the IGTO that ATO correspondence may not clearly and/or completely advise taxpayers (and their representatives) of their rights to review, complain and appeal decisions made and actions taken by the ATO.

For example, in some cases the correspondence includes information on formal review rights with no reference to taxpayers' rights to an internal ATO review or the ability to lodge a complaint with the ATO or the IGTO. As a result, taxpayers may not be fully aware of their review rights and importantly may only be made aware of options that may incur significant Court and professional fees. Accordingly, this investigation will prioritise ATO communications which concern debt decisions; individuals and small business taxpayers which likely do not have significant financial resources to appeal taxation decisions. The review will also confirm ATO communications around access to the AAT Small Business Taxation Division (SBT Division)⁹.

⁴ Part IVC of the *Taxation Administration Act 1953* provides for objection and appeal rights. The *Administrative Decisions (Judicial Review) Act 1977* provides for judicial review rights.

⁵ Taxpayers may seek an internal review of the decision by another ATO officer.

⁶ The *IGTO Corporate Plan 2020-23* notes the participants in the tax systems and their functions. The Administrative Appeals Tribunal and Federal Court adjudicate disputes and provide guidance and information on administration of tax laws. The IGTO provides assurance and oversight of the ATO.

⁷ A complaint may be lodged internally with the ATO Complaints area < <https://www.ato.gov.au/About-ATO/Contact-us/Complaints,-compliments-and-suggestions/>>.

⁸ A complaint may be lodged with the Inspector-General of Taxation and Taxation Ombudsman under the *Inspector-General of Taxation Act 2003*.

⁹ The SBT Division has been established to provide a cost effective review process that is accessible to small businesses and tailored to achieve resolution at the earliest opportunity in an individual case.

TERMS OF REFERENCE

This investigation will seek to identify opportunities to improve the information communicated to taxpayers (and their representatives) in ATO written communications on the review, appeal and complaint rights available to taxpayers consistent with principles of procedural fairness and the Taxpayers' Charter. This includes rights to object, dispute, review, appeal or investigate an ATO decision or action. The IGTO will examine and consider:

- whether ATO written communications to taxpayers appropriately provides complete information on formal and informal review rights available to taxpayers; and
- the adequacy of such information that is provided to taxpayers and their representatives.

The IGTO will undertake this investigation in stages, focusing initially on areas affecting the most vulnerable taxpayers and those least likely to be able to afford representation.

All taxpayers, advisers (tax practitioners, solicitors or barristers) and professional bodies are welcome to provide observations, comments and suggestions to this review. The IGTO welcomes submissions and comments on how to improve communication and awareness of taxpayers' rights of review.

HOW TO LODGE A SUBMISSION

The closing date for submissions is 30 September 2020. 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: atocommsreview@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 a legal professional privilege), disclosing that information to the IGTO will not result in a waiver of that privilege.

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