

IGTO-ATO Complaints Handling Guidelines

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ABOUT THIS DOCUMENT

- 1.1. This document provides operational guidelines between the Inspector-General of Taxation and Taxation Ombudsman (IGTO), and the Australian Taxation Office (ATO) regarding tax complaints lodged with the IGTO. It should be read as part of the IGTO's suite of communication products to assist IGTO and ATO officers to understand the role of the IGTO within the tax system and the broader Australian Public Service.
- 1.2. This document has been endorsed by the Deputy Commissioner of Taxation, ATO Corporate and the Deputy IGTO. Ongoing material updates to the document will be approved by the Deputy Commissioner of Taxation, ATO Corporate and the Deputy IGTO. Any updates that are not material in nature will be approved by the IGTO General Manager and the Assistant Commissioner, External Engagement & Governance, ATO Corporate (ATO Assistant Commissioner, Corporate). Any alterations to this document must be mutually agreed in writing.
- 1.3. Any reference to the IGTO includes his or her staff and any reference to the ATO includes the Commissioner of Taxation (Commissioner) and his or her staff, unless otherwise stated. For the purpose of this document, the term 'client' refers to the complainant.
- 1.4. The IGTO General Manager and ATO Assistant Commissioner, Corporate will issue detailed written instructions for IGTO and ATO staff to assist with the application of these operational guidelines (operational instructions). If there is an inconsistency between such operational instructions and these operational guidelines, the latter will prevail to the extent of the inconsistency. Inconsistencies will be rectified as soon as possible.

IGTO COMPLAINTS HANDLING FRAMEWORK

- 1.5. The IGTO's legislative aim is to improve tax administration for the benefit of all taxpayers, tax practitioners and other entities. Similarly, the ATO aims to improve the administration of the tax laws. In seeking to achieve this common aim, IGTO and ATO staff work together professionally, efficiently and effectively. Such interaction is facilitated through proactive provision of information as well as timely access to information and evidence to reach a common understanding of the issues being examined and to develop practical options for improvement in the administration of the tax system.
- 1.6. IGTO and ATO staff both seek to facilitate the resolution of complaints to improve the client experience (be they taxpayer, tax practitioner or other representative) with the administration of the tax system — for example, by empowering clients in their dealings with the tax system as well as minimising delays and inefficiencies.
- 1.7. In resolving complaints, both IGTO and ATO staff must act independently as:
 - the IGTO has a legislative responsibility to independently investigate complaints made by clients relating to administrative matters under a taxation law;¹ and
 - the ATO has a responsibility to independently administer the taxation and superannuation laws as well as resolve complaints made by clients at first instance.
- 1.8. In performing their independent roles, both IGTO and ATO staff seek to improve the client experience in a manner that minimises unnecessary delay or 'run-arounds' for clients. Consideration is also given to minimising the impact on each agency's resources without having impact on the actions needed to facilitate an appropriate resolution and/or provide assurance of the ATO's actions.

1 ss. 7(1)(a) and (e) of the *Inspector-General of Taxation Act 2003*.

- 1.9. IGTO complaint investigations are outcomes focused. This means if ATO staff agrees with the client's preferred (or agreed) outcome, there may be no need for the investigation to continue. However, if ATO staff have concerns with such agreement, IGTO case officers aim to reach a sound understanding of the issues based on the best available evidence.

SCOPE OF IGTO COMPLAINTS HANDLING

- 1.10. The IGTO investigates tax administrative matters.²
- 1.11. The IGTO does not investigate ATO workplace relations issues³ or the application of legislation imposing tax liabilities or the quantification of those liabilities.⁴
- 1.12. Similarly, the IGTO does not investigate the merits of ATO determinations of taxpayer liability. Such an issue is to be resolved through the tax objection and appeal process.⁵ However, the IGTO may investigate whether procedural fairness was afforded in forming such determinations.⁶ For example, the IGTO may consider whether an ATO officer followed an appropriate process in forming their decision. Such investigation provides assurance to the client regarding the appropriateness of the ATO's actions. Any IGTO investigation should not prejudice proceedings in the Administrative Appeals Tribunal (AAT) or the Courts.
- 1.13. The IGTO does not investigate the ATO's handling of Freedom of Information requests (including decisions, delays or refusal or failure to act), Public Interest Disclosures (PID) or the non-tax elements of cross-agency complaints that involve the ATO. Where complaints about such issues are received by the IGTO, they are referred to the Commonwealth Ombudsman with the client's consent.⁷
- 1.14. The IGTO, as a policy, does not investigate complaints previously considered by the Ombudsman on taxation administration matters unless there are exceptional circumstances, for example, new material information has come to light.

IGTO COMPLAINTS HANDLING PROCESS

- 1.15. Clients who approach the IGTO may lodge complaints through a number of channels, primarily through the IGTO's website form or dedicated complaints telephone line. The IGTO may also receive complaints that are referred to it by other government agencies including the Commonwealth Ombudsman, the Australian Small Business and Family Enterprise Ombudsman, the ATO, or the Tax Practitioners Board (TPB). Parliamentarians may also refer complaints to the IGTO that have been raised by their constituents.
- 1.16. The IGTO categorises all approaches made to it on a scale from 'Category 0' to 'Category 5' to indicate the resources needed for their resolution.
- 1.17. Category '0' to '2' cases are resolved by IGTO staff without involving the ATO as the IGTO aims to minimise unnecessary run-arounds for clients and demands on ATO resources. IGTO staff may alert

² s. 7 of the *Inspector-General of Taxation Act 2003*. The IGTO can also investigate any actions by a tax official under an administrative scheme, including the Scheme for Compensation for Detriment caused by Defective Administration.

³ s. 5(2)(d) of the *Ombudsman Act 1976* which has application pursuant to s. 15 of the *Inspector-General of Taxation Act 2003*.

⁴ s. 7(2) of the *Inspector-General of Taxation Act 2003*.

⁵ Part IVC of the *Taxation Administration Act 1953*.

⁶ s. 15 of the *Ombudsman Act 1976*.

⁷ The initial requirement is consultation with the Commonwealth Ombudsman, following which the Ombudsman may determine that the IGTO needs to transfer the matter and may deal with both the tax and non-tax components — see ss. 10(1)-(2) of the *Inspector-General of Taxation Act 2003*.

the ATO Complaints Unit to such cases to assist the ATO to improve tax administration and improve the community experience with the tax system. For example, the IGTO case officer may forward to the ATO Complaints Unit feedback about the client's experience with the ATO and client suggestions for improvement. If requested by the client, the IGTO officer will await the ATO's acknowledgement of the feedback and provide a response to the client.

IGTO COMPLAINT INVESTIGATIONS

- 1.18. Category '3' to '5' cases require the ATO's involvement and are raised as formal complaint investigations. An investigation invokes the IGTO's legislative powers of information gathering and allows both ATO and IGTO staff to share information about the case which would otherwise be prohibited by the relevant secrecy provisions.⁸
- 1.19. Where the IGTO decides to investigate a complaint,⁹ the IGTO case officer provides official notification to the ATO's Complaints Unit by way of an investigation notice. This notice also helps to highlight the client's concerns and preferred outcomes in the relevant tax administrative framework. In particular, it sets out:
 - the client's experience, concerns and preferred (or agreed) outcomes as well as the supporting information and documents provided by the client to the IGTO, where authority to do so has been provided; and
 - the IGTO case officer's analysis of the key administrative issues that need to be addressed and potential options for resolution, based on the information available at that time.
- 1.20. The IGTO case officer sends such investigation notices to a single designated ATO email address within the ATO Complaints Referral Unit. This ensures visibility and allows for its formal registration as a complaint on the ATO's systems for prompt allocation to an ATO case officer.

TYPES OF IGTO COMPLAINT INVESTIGATIONS

- 1.21. Category 3.1 cases are a service support mechanism for the client as they provide the option to have their complaint addressed directly by ATO staff where they have not already availed themselves of the ATO's own complaints resolution processes. These cases are also known as 'No Prior' complaints by the IGTO and as 'Complaint Transfers' by the ATO.
- 1.22. Category 3.1 cases may be triggered where the ATO Complaints Unit identifies complaints that have not previously been raised formally with it and asks the IGTO case officer for opportunity to resolve the complaint with the client directly without the need for ongoing IGTO management of the case. The IGTO case officer may agree to this request where the complainant is open to such an approach by affording the ATO staff with opportunity to quickly address identified issues. This approach empowers clients in their dealings with the ATO and promotes a direct ATO client relationship whilst supporting them if their concerns remain unresolved. It also improves the client experience and their confidence in the tax system.
- 1.23. In assuring the client of IGTO support in Category 3.1 cases, the IGTO case officer will:
 - ensure that the complaint is formally registered on the ATO systems; and
 - inform clients that if they remain dissatisfied with the ATO's handling of their matter, they may re-approach the IGTO case officer at any time.

⁸ s. 355-65 (table 4, item 5) of Schedule 1 to the *Taxation Administration Act 1953*.

⁹ The IGT conducts complaints investigations pursuant to s.8 of the *Ombudsman Act 1976* (as incorporated into the *Inspector-General of Taxation Act 2003* by s.15(h) of that Act).

- 1.24. Category 3.2 cases require minimal IGTO involvement in the handling of the complaint and are expected to be resolved in a timely manner. In such cases, independent verification of ATO information and source documents on ATO systems by IGTO case officers is sufficient to resolve the complaint.
- 1.25. Category 4 cases warrant direct and ongoing IGTO involvement in the handling of the case. IGTO case officers assist clients in obtaining a greater understanding of the ATO's process. IGTO officers provide assurance that they will discuss with ATO staff the appropriateness of ATO proposed resolutions before they are offered to clients.
- 1.26. Category 5 cases require the senior executive service officers (SES) responsible for the delivery of programs or functions that are the subject of the complaint to be involved in the resolution of the matter. Such cases may provide senior management with 'early warning' of emerging risks. They also provide senior management with the opportunity for early involvement to address cases with sensitive issues and minimises the risk of issues being compounded. This provides the client and case officers with a greater level of assurance regarding the resolution of the matter. Categorising a case as a 'Category 5', of itself, does not mean that any previous steps in the complaint handling process has 'failed', but rather is an important recognition of its appropriateness for escalation.

EARLY ASSESSMENT MEETINGS (EAM)

- 1.27. The objective of an 'Early Assessment Meeting' (EAM) is to improve the complaints handling process. This meeting:
 - improves IGTO and ATO accountability by identifying the case officers in both agencies who are responsible for the ongoing management of the case;
 - expedites the resolution of the client's case by allowing IGTO and ATO case officers, at the outset, to reach a common understanding of the issues, the potential options for resolution and the type of resources needed; and
 - increases the client's confidence in the handling of their case by facilitating early agreement on the action required to progress the case, including what tasks will be undertaken by whom and the expected timeframes for those tasks.
- 1.28. The ATO complaints referral unit schedules an EAM with IGTO and ATO case officers for all investigations, except for Category 3.1 cases or as otherwise specified in these guidelines. ATO case officers use their best endeavours to ensure EAMs take place within 3 business days of the ATO receiving an investigation notice. This timeframe aligns with the ATO's internal standards for case allocation. It also assists the ATO to reduce the impact on ATO resources by ATO case officers having opportunity to confirm the scope of work with IGTO case officers before commencing their efforts.
- 1.29. More detail on the EAM process is set out in the *IGTO-ATO Complaints Handling Operational Instructions*.

PROGRESS ASSESSMENT MEETINGS (PAM)

- 1.30. The IGTO case officer may convene a 'Progress Assessment Meeting' (PAM) with ATO officers at any time after an EAM has been held. The purpose of the PAM is to:
 - improve both the ATO and IGTO case officers' understanding of the client's concerns and the proposed options for resolution as well as facilitate discussion on any additional issues raised or subsequent communications with the client;

- resolve issues with IGTO and ATO senior officers before agency responses are formalised and communicated to the client;
- resolve concerns with either agency's involvement in or handling of the complaint, for example, delays; and/or
- improve broader administration of the tax system by discussing with ATO senior officers any proposals to make such improvement (see 'Agreed Business Improvements' below).

SHARING OF INFORMATION AND VIEWS

- 1.31. IGTO case officers may seek information from any ATO officer (including external contractors¹⁰) that is relevant to the issues examined in the complaint investigation.¹¹ ATO officers may provide information in response to such requests without breaching the tax law secrecy provisions or privacy law.¹² Legal professional privilege is also maintained where information is provided to the IGTO.¹³
- 1.32. IGTO case officers aim to obtain relevant information without the need to invoke the compulsory information gathering powers. ATO staff seek to provide information in such investigations cooperatively and voluntarily.
- 1.33. IGTO case officers may request information at meetings or during other interactions with ATO staff, either orally or in writing. IGTO case officers will seek to explain the reasons for information requests at the time of making the request. ATO staff may also seek to better understand the reasons for the request to further assist in identifying relevant information.
- 1.34. Where the ATO's actions, which are the subject of the complaint, are found to be reasonably based, the IGTO case officer performs a role of assuring clients of the appropriateness of the ATO's actions. Such assurance must be based on that IGTO officer's independent assessment of the relevant evidence. This may require verification of ATO information by viewing source documents. IGTO case officers seek to reach a shared understanding with both the ATO and clients on each party's perspective so that clients can be provided with explanations which demonstrate that their concerns have been appropriately considered.
- 1.35. Where the IGTO case officer considers that the ATO's actions may not have been reasonably based or may form an opinion that is critical of the ATO or its actions, the IGTO case officer convenes a PAM to provide the ATO case officer with opportunity to discuss the issue and potential outcomes as well as highlighting the facts which may warrant further consideration. If the ATO is not persuaded or the matter is not completely resolved after the PAM, the IGTO case officer provides the ATO case officer with a written position called a "preliminary view", to which the ATO may formally respond, before the view is communicated to the client. This approach ensures that the facts are fully appreciated between the IGTO and ATO. More information about the preliminary view process can be found in the *IGTO-ATO Complaints Handling Operational Instructions*.

DISCLOSURE OF ATO INFORMATION

- 1.36. ATO staff provide full disclosure of information relevant to the issues being investigated by IGTO officers to assist the IGTO reach a balanced view based upon all available information. If on-disclosure of that information to the client would give rise to serious personal or legal concern — for example, disclose third party confidential information, jeopardise an ongoing investigation, abrogate

¹⁰ s.8(2A) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*

¹¹ s.8(3) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

¹² s.8(2A)(ii) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*; s. 355-65 (table 4, item 5) of Schedule 1 to the *Taxation Administration Act 1953*.

¹³ s.8(2E) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

Legal Professional Privilege or expose ATO staff to Work Health and Safety risks, ATO staff must clearly identify the specific information that should not be on-disclosed and the reasons why.

- 1.37. The IGTO case officer subsequently makes their own assessment of the information to be on-disclosed to the client as part of their complaint investigation taking into account the ATO concerns raised. If the IGTO case officer proposes to on-disclose information that the ATO has identified concerns about, the IGTO General Manager must contact the ATO Assistant Commissioner, Corporate to discuss the issue prior to any on-disclosure.
- 1.38. If ATO staff are unsure whether they may disclose information to the IGTO, that officer must seek advice from the ATO Complaints Director in the ATO Corporate BSL. If the ATO Complaints Director is of the view that such information may not be disclosed, they must contact the IGTO Complaints Director to discuss the reasons for non-disclosure and explore whether alternative information may be provided.

SYSTEMS INFORMATION ACCESS

- 1.39. The ATO provides the IGTO complaints handling officers with direct access to ATO systems (via ATO provided terminals), ATO staff and information to facilitate a quick complaint resolution for the client. Such access allows IGTO case officers to provide independent assurance to clients. It also reduces demands upon ATO resources through alleviating the need for ATO staff to compile documents in preparation for discussions. This approach also assists to minimise ATO and IGTO resources in responding to any FOI requests for documents relating to complaint cases. It also enhances security of protected taxpayer and agency information by only having it stored on a single ATO system.
- 1.40. IGTO staff have baseline security clearances and are subject to the same security and accessibility legislation and policy requirements as ATO officers. For example, IGTO case officers must only access particular systems and records to the extent that they relate to a current complaint investigation. IGTO staff are also subject to the same fraud control measures as ATO staff in accessing ATO systems, for example, monitoring of staff access to information. The ATO Assistant Commissioner, Corporate assists the IGTO General Manager to ensure that IGTO staff are provided with mandatory fraud awareness and ethical conduct training consistent with that provided to ATO staff pursuant to ATO policy.

FINALISATION OF INVESTIGATIONS

- 1.41. IGTO case officers resolve complaint investigations by providing independent third-party assurance of the actions taken as well as identifying opportunities for improvement. In doing so, IGTO case officers must form an independent view based on the best available information and an understanding of the client's and ATO's views of the events and resolution options.
- 1.42. The ATO is accountable for any remedial actions flowing from a complaint investigation. The ATO is also encouraged to communicate outcomes directly with clients, unless the client indicates that such communication would not be welcome. In such cases, the IGTO case officer confirms with the client the outcome of the IGTO's investigation by communicating directly with the client first to advise them of the ATO's intention to communicate with them. The IGTO case officer also confirms what can be expected to be communicated by the ATO to the client. Such an approach recognises the importance of the client experience, the IGTO role and assists in developing improved ATO-client relationships and confidence in the system.
- 1.43. In line with complaints handling best practice, IGTO staff provide clients with the opportunity to seek an internal review of an IGTO decision. Where a decision is made to reconsider a complaint (or

aspect of a complaint investigation) as a result of an internal review, the IGTO case officer officially notifies the ATO Complaints Unit of this decision.

TAILORED 'PRE-AGREED' PROCESSES

- 1.44. The IGTO General Manager and the ATO Assistant Commissioner, Corporate may mutually agree in standard approaches for common complaints. Such agreement is appropriate where the processes are capable of providing effective service to clients and reaching appropriate resolution outcomes (tailored pre-agreed processes).
- 1.45. Tailored pre-agreed processes exist for complaints concerning:
 - ATO action on tax evasion referrals; and
 - allegations of ATO officer misconduct.
- 1.46. More information about the tailored pre-agreed process is set out in the *IGTO-ATO Complaints Handling Operational Instructions*.

AGREED BUSINESS IMPROVEMENTS

- 1.47. Opportunities to improve the broader administration of the tax system may arise in a complaint case (a 'business improvement opportunity'). Both agencies encourage IGTO and ATO staff to take advantage of business improvement opportunities as they allow the ATO to learn from client experiences and promote confidence in the tax administration system.
- 1.48. Business improvement opportunities may be identified by ATO or IGTO staff during discussions. However, agreement to implement business improvement opportunities may only be reached in EAMs, PAMs or by mutual agreement of the IGTO Complaints Director and the ATO Complaints Director. Such processes ensure that agreed business improvements are made by those with the appropriate authority to do so and that the agreements are appropriately recorded.
- 1.49. Agreed business improvements may be publicly identified by both agencies in their respective corporate reporting processes. Such an approach fosters mutual support for client experience, improvement and transparency as well as ensuring accountability for implementing improvements to the tax administration system. The IGTO may also record business improvement opportunities, with which the ATO disagrees, as topics for potential future review.
- 1.50. More information about the agreed business improvements process is set out in the *IGTO-ATO Complaints Handling Operational Instructions*.

OTHER MATTERS

WEEKLY NERVE CENTRE MEETINGS

- 1.51. The IGTO Complaints Director and the ATO Complaints Director meet weekly to monitor the operation of the complaints handling process and identify opportunities to improve that process (Complaints handling nerve centre meetings). The agenda of these meetings is mutually agreed between the ATO Complaints Director and IGTO Complaints Director. Discussion of relevant matters are communicated to relevant staff in the IGTO and ATO.
- 1.52. Matters discussed in the nerve centre may also be referred for discussion and/or resolution to the ATO Assistant Commissioner, Corporate, and the IGTO General Manager.

INTERAGENCY LIAISON OFFICER MEETING

- 1.53. The ATO Assistant Commissioner, Corporate, and the IGTO General Manager perform a formal point of liaison as well as a channel of communication for both agencies (SES liaison officers).
- 1.54. These SES liaison officers work together to ensure that their respective agencies are proactively informed of matters likely to have impact on their operations, especially where the other agency may be unaware of such matters, for example major tax administration initiatives, anticipated media on a matter of mutual interest and presentations to external bodies which are likely to generate client contact with the other agency.
- 1.55. Both SES liaison officers meet fortnightly (the interagency liaison officer meeting). If either agency seeks to raise with the other agency an issue which concerns the IGTO-ATO complaints handling function, the SES liaison officer for the escalating agency must provide advance notice to the other SES liaison officer to assist the process of improving understanding and consideration of the issues.

PROVISION OF NON-CASE SPECIFIC INFORMATION ('BRIEFINGS')

- 1.56. In the spirit of improving tax administration, the ATO Complaints Director or Assistant Commissioner, Corporate, may proactively provide information to the IGTO Complaints Director or General Manager on issues which arise from or affect complaint cases, but which are not specific to any particular case. Examples include issues that may generate numbers of complaints and enquiries from the community.
- 1.57. The IGTO Complaints Director or General Manager may also request such information from the ATO Complaints Director or Assistant Commissioner, Corporate to assist IGTO staff's understanding. Such approaches allow both agencies to better assist and manage complaints as well as improve the overall client experience and confidence in the tax system.