

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

By the Inspector-General of Taxation

October 2021

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The Inspector-General of Taxation and Taxation Ombudsman (**IGTO**) is pleased to present this report of our *Investigation into the Effectiveness of ATO Communications of Taxpayer Rights to Complain, Review and Appeal*. The IGTO acknowledges and thanks officers of the Australian Taxation Office for their professionalism, assistance and insights during the conduct of this investigation.

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- CPA Australia
- Financial Services Council
- Institute of Certified Bookkeepers
- Institute of Public Accountants
- Law Council of Australia
- Society of Trust and Estate Planners
- Tax Practitioners Board
- The Tax Institute

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Executive summary

This review investigation seeks to understand how effectively the Australian Taxation Office (**ATO**) communicates taxpayer rights to complain, appeal and review administrative decisions and actions taken by the ATO and correspondingly, seeks to identify any opportunities for improvement.

Statutory rights to receive reasons for administrative decisions are in many cases limited or not available unless and until a taxpayer commences litigation. However, good tax administration creates an expectation that taxpayers should receive reasons for decisions which affect them. The ATO can volunteer to provide a taxpayer with reasons and the ATO's own guidance (see for example, PS LA 2013/1¹ and the *Taxpayers' Charter*) encourages this. Accordingly, if a taxpayer does not get reasons or sufficient reasons from the ATO to understand their experience in the tax system, they may lodge a complaint with either or both:

- the ATO complaints unit; or
- the Taxation Ombudsman (the IGTO)

to obtain that understanding. This is important because as the Organisation for Economic Co-operation and Development (**OECD**) notes ...:

Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply.

Effective communication of taxpayer rights to complain, review and appeal ATO decisions and actions is important because it:

- Aids in voluntary compliance – and as the OECD notes ... *The promotion of voluntary compliance should be a primary concern of revenue authorities. The ways by which revenue authorities interact with taxpayers and employees impact on the public perception of the tax system and the degree of voluntary compliance.*
- Provides assurance to taxpayers that they have been treated fairly;
- Provides assurance to the Commissioner of Taxation (**Commissioner**) that ATO decisions are correct and based on facts and law;
- Informs next steps and disputes;
- Minimises unnecessary disputes;

¹ Australian Taxation Office (ATO), *Law Administration Practice Statement PS LA 2013/1: Statements of reasons pursuant to section 13 of the Administrative Decision (Judicial Review) Act 1977*, 7 February 2013. ('PS LA 2013/1')

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- Reduces red tape costs of compliance – agreed facts/issues; and
- Safeguards against inconsistent outcomes.

This investigation and the IGTO findings and recommendations as included in this report are therefore important to:

- improve ATO communications to support voluntary compliance and fairness in the taxation administration system;
- help taxpayers understand their rights – legal, administrative, and consistent with expectations of fairness and good tax administration practice;
- provide educational support – including by the ATO in educating stakeholders and this includes reminding tax practitioners when rights are available, in what circumstances and when they are not available, what other options are accessible; and
- help to resolve and minimise disputes in the tax administration system – for the benefit of all taxpayers, advisers, the ATO, the Administrative Appeals Tribunal and the Courts.

Karen Payne
Inspector General of Taxation and Taxation Ombudsman
14 October 2021

Background

There are existing statutory rights for taxpayers to complain, review and appeal administrative decisions and actions taken by tax officials.

Rights to Complain

A function of the Inspector-General of Taxation, as set out in section 7 of the *Inspector-General of Taxation Act 2003* (Cth) (**IGT Act**), is:

(a) to investigate action affecting a particular entity that:

(i) is taken by a tax official; and

(ii) relates to administrative matters under a taxation law; and

(iii) is the subject of a complaint by that entity to the Inspector-General;

Such investigations are akin to Taxation Ombudsman investigations and invoke similar investigation rights as set out in the *Commonwealth Ombudsman Act 1976* (Cth). Additionally, the IGTO has limited discretions not to investigate – that is, only where the Inspector-General considers:

(c) the complaint is frivolous or vexatious or was not made in good faith; or

*(d) the complainant does not have a sufficient interest in the subject matter of the complaint;
or*

(e) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances; or

(f) the complainant has not yet raised the complaint with the Commissioner or the Tax Practitioners Board (as applicable); or

(g) the action came to the complainant's knowledge more than 12 months before the complaint was made; or

(h) the complainant has not exercised a right to cause the action to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under a law of the Commonwealth.

Rights to Review

A person who is dissatisfied with an assessment, determination, notice or decision, or with a failure to make a private ruling, may object against it or seek a review in the manner set out in Part IVC of the *Taxation Administration Act 1953* (Cth) (**TA Act**):

- An objection may be lodged directly with the Commissioner (refer Division 3 of Part IVC of the TA Act)
- An application for a review of the objection decision (reviewable objection decision) may be lodged with the Administrative Appeals Tribunal (**AAT**) (refer Division 4 of Part IVC)

Background

In some circumstances, the Commissioner may reconsider its objection decision where it has made an obvious mistake or if there is new information that was not previously considered by the ATO.

Extracts from the TA Act

14ZY Commissioner to decide taxation objections

(1) Subject to subsection (1A), if the taxation objection has been lodged with the Commissioner within the required period, the Commissioner must decide whether to:

(a) allow it, wholly or in part; or

(b) disallow it.

14ZZC Modification of section 29 of the AAT Act

Section 29 of the AAT Act applies in relation to a reviewable objection decision as if subsections (1) to (6) (inclusive) of that section were omitted and the following subsection were substituted:

An application to the Tribunal for a review of a decision:

(a) must be in writing; and

(c) must set out a statement of the reasons for the application; and

(d) must be lodged with the Tribunal within 60 days after the person making the application is served with notice of the decision.”.

It is also noteworthy that there are other decisions which may be reviewed directly by the AAT. An overview of these rights is set out in further detail in Chapter F.

Rights of Appeal and Judicial Review

Appeals to the Federal Court of Australia

Taxpayers have a right of appeal to the Federal Court of Australia (**Federal Court**) in relation to certain taxation objections of the Commissioner (Division 5 of Part IVC of the TA Act). Unlike the merits review rights available to taxpayers in the AAT, the Federal Court does not stand in the shoes of the Commissioner and cannot remake the Commissioner’s decision. However, the Federal Court can rule on the legal correctness of the Commissioner’s decision and, where necessary, require the Commissioner to remake the decision in line with the Court’s judgment.

A right of appeal also exists for taxpayers from the AAT to the Federal Court on a question of law (section 44 of the AAT Act). That is, taxpayers cannot appeal to the Federal Court simply because they are dissatisfied with the outcome in the AAT. Rather, a taxpayer seeking to appeal must identify the reasons why they say the AAT decision is wrong at law.²

² *Haritos v Commissioner of Taxation* [2015] FCAFC 92.

Judicial Review

Some decisions of the Commissioner are not reviewable or appealable under Part IVC – for example, a decision by the Commissioner to not remit General Interest Charge (**GIC**), or a decision to issue a garnishee notice. In these circumstances, taxpayers may have a right of judicial review under the *Administrative Decisions (Judicial Review) Act 1975* (Cth) (**ADJR Act**).³ In contrast to merits reviews available in the AAT, judicial review under the ADJR Act is available for taxpayers seeking review of administrative decisions on a number of grounds set out in the ADJR Act (e.g., unreasonableness, breach of the rules of natural justice, lacking in jurisdiction, taking into account irrelevant considerations...etc.). Where a deficiency is found in the decision, the Court will refer the decision back to the Commissioner to be re-made in accordance with its judgment. It is worthwhile noting that a taxpayer who succeeds in an ADJR application may not necessarily achieve their desired outcomes as the Commissioner may nonetheless arrive at the same decision, albeit that the decision-making process has been undertaken in a manner consistent with the Court's judgment.

Rights to Reasons

There is no general duty at common law for the Commissioner to give reasons for an administrative decision.⁴

Any obligation to give reasons is sourced in legislation, including the following Acts:

1. *TA Act*;
2. *Administrative Appeals Tribunal Act 1975* (Cth) (**AAT Act**); and
3. *ADJR Act*.

The statutory requirements to provide reasons tends to be conditional on the existence of particular circumstances or the satisfaction of certain requirements. For example:

- requirements to give reasons under the AAT Act and the ADJR Act are not automatically triggered by the making of the decision. In some cases, they only arise if reasons are requested by the taxpayer, and then, only if requested within the specified time frame and in writing.
- In other cases, somewhat curiously, they only arise if an application to the AAT for review of the decision has been made – that is, a taxpayer could be put in the position of having to decide whether or not to contest the decision without necessarily knowing the basis on which the decision was made

³ Judicial review rights also exist under section 39B of the *Judiciary Act 1903* (Cth) (see for example *Federal Commissioner of Taxation v Multiflex* [2011] FCAFC 142) and section 75 of the *Commonwealth of Australia Constitution Act 1900* (Cth).

⁴ *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656. There have been rare cases where written reasons have been required in the absence of a legislative requirement because of the “exceptional circumstances” contemplated in *Osmond*. See Robinson SC, *Administrative Law: The Laws of Australia* (Thomson Reuters, 2016) at [2.3.320].

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– or, as might be the case for practical reasons, of having to incur the costs of initiating the dispute for the purpose of obtaining and understanding the reasons.⁵

Obligations to give reasons under the TA Act are an exception to this rule, as they arise automatically once a specified decision is made. However, the range of decisions covered by the TA Act is very limited and does not extend to decisions regarding the imposition of substantive tax.

This design may lead to a number of disputes commencing but not proceeding once the reasons for the decision become clear, which potentially places unnecessary strain on the resources of taxpayers, the Commissioner, the AAT and the Courts.

The Commissioner may choose to give reasons ... and internal instructions, guidance and policies suggests that he intends for ATO Officers to do so

The Commissioner may choose to give reasons, even in the absence of a statutory or common law obligation to do so, as a matter of good tax administration ... and ATO internal guidance suggests that he intends for ATO Officers to do so. This is confirmed in the Chief Executive Instructions (CEI), the *Taxpayers'*

⁵ Section 14ZZB of the TA Act provides that s 28 of the TA Act does not apply to a reviewable objection decision. There is a requirement to give a statement of reasons in relation to a reviewable objection decision under s 37 of the TA Act as modified by s 14ZZF of the TA Act, but s 37 only applies if the decision is the subject of an application to the Tribunal for review. See also the decision of Aickin J in *Bailey v Federal Commissioner of Taxation* [1997] HCA 11 at [13] where his Honour expresses the view that, “[t]here is nothing in the policy of the Act nor in general considerations of policy to require that the Commissioner should not inform the appellant prior to the commencement of the hearing of those details so that the case may proceed in an orderly and comprehensible manner. It is not in the interests of the proper administration of justice that, when the matter comes before the court, the appellant should have to speculate about, and adduce evidence to negate, every possible kind of agreement or arrangement and avoidance which the imagination of his advisers can conjure up. Such a process is not merely time-wasting but is likely to obscure the real issues.”

Background

*Charter*⁶, Practice Statement Law Administration PS LA 2013/1⁷ (**PS LA 2013/1**)⁸ and the *ATO Disputes Policy*. This is also consistent with the Commonwealth obligations as a Model Litigant (see below).

The *Taxpayers' Charter* contemplates that the Commissioner will be “*open, transparent and accountable*” in his dealings with taxpayers and that he will explain the decisions the ATO makes about taxpayers.⁹

In PS LA 2013/1, the Commissioner acknowledges that it may be appropriate to respond favourably to a request for reasons, even where the requirements of s 13 are not satisfied and there is otherwise no obligation to provide them¹⁰.

While there is no statutory or common law obligation, experience suggests (including as informed by IGTO complaint investigations and stakeholder engagement), that the ATO would typically provide reasons for its decisions.

⁶ Extract from the *Taxpayers' Charter*:

Explaining the decisions we make about you

We explain to you the decisions we make about your affairs and provide you with a contact number or email address for the area of the ATO handling your case. We will explain our decisions clearly. If you have questions, think we made a mistake, or have not given adequate reasons for our decision, contact us using the details provided to you or your nominated representative.

Generally, we explain our decision in writing. If we give you our decision verbally, we will give you the explanation at the same time. In some very limited circumstances, we will not be able to explain our decisions fully, although we still provide as much information as we can. For example, if:

another person is involved, releasing information about our decision may breach their privacy or the secrecy provisions in the tax laws

we suspect fraud, we may not release information because it might jeopardise our investigations.

Under the Administrative Decisions (Judicial Review) Act 1977 (ADJR), you are entitled to get a free written statement setting out the reasons for some decisions we make about your tax affairs. The Act does not cover all decisions and there are some important exceptions – for example, decisions about assessments.

⁷ See above n 1.

⁸ Extract from PS LA 2013/1:

Provision of statement if no entitlement exists

48. In some circumstances, a request for a statement of reasons will be received where no entitlement under section 13 [of the ADJR Act] exists. In these circumstances, the decision maker should consider whether it is appropriate to provide a statement setting out the reasons for the relevant decision to assist the person requesting the statement to better understand the decision. Provision of a statement of reasons in these circumstances would generally be consistent with our commitment under the Taxpayers' Charter to explain our decisions and be accountable for our actions, and would align with the beneficial aims of the ADJR Act. However, the decision maker should make it clear to the applicant that the statement of reasons has not been provided pursuant to section 13.

⁹ ATO, *Taxpayers' Charter – what you need to know* (Web Page, 3 December 2020) <[¹⁰ Refer to PS LA 2013/1 at \[48\].](https://www.ato.gov.au/Print-publications/Taxpayers--charter--what-you-need-to-know/#:~:text=The%20Taxpayers%E2%80%99%20Charter%20%28the%20Charter%29%20outlines%20your%20rights,.with%20you%20or%20a%20representative%20of%20your%20choice.>>.</p></div><div data-bbox=)

The obligations on the Commonwealth to act as a Model Litigant

In litigious matters, the Commissioner must also consider the Commonwealth's obligation to act as a Model Litigant as set out in Appendix B of the *Legal Services Direction 2017*. Whereas the obligation does not specifically require reasons to be given, it imposes duties that would be difficult or impossible for the Commissioner to discharge without being transparent as to the reasons for making a decision in dispute. For example, r 2(e) requires the Commissioner to keep the costs of litigation to a minimum, where possible, by not requiring the other party to prove a matter which the ATO knows to be true and by engaging in alternative dispute resolution processes. He is also required to endeavour to “*avoid, prevent and limit the scope of legal proceedings wherever possible*” under r 2(d). It is difficult to imagine how these objectives could be achieved if the taxpayer is not made aware of the Commissioner's reasons for making the disputed decision.

In practice, these principles likely underpin the Commissioner's practice of providing reasons to taxpayers, even in the absence of a statutory requirement to do so. For example, reasons usually accompany reviewable objection decisions, which is not a requirement of s 28 of the AAT Act or s 13(1) of the ADJR Act and is not necessary under s 37 of the AAT Act until proceedings are commenced.

The IGTO may issue a report to the Commissioner and the Minister if she is of the opinion the Commissioner has failed to provide reasons

The IGTO may report to the Commissioner and provide a copy of that report to the Minister after an investigation if she is of the opinion that the complainant (in an investigation) should have been provided with reasons from the Commissioner for exercising one of his discretionary powers and the Commissioner has failed to provide such reasons.¹¹ The IGTO may recommend, as a remediation action, that the Commissioner provides reasons for his decision.

¹¹ *Ombudsman Act 1976* (Cth) s 15(1)(c), as incorporated by s 15 of the *Inspector-General of Taxation Act 2013* (Cth).

15 *Reports by Ombudsman*

(1) *Where, after an investigation under this Act into action taken by a Department or prescribed authority has been completed, the Ombudsman is of the opinion:*

...

(c) *in a case where the action comprised or included a decision to exercise a discretionary power in a particular manner or to refuse to exercise such a power:*

(i) *that irrelevant considerations were taken into account, or that there was a failure to take relevant considerations into account, in the course of reaching the decision to exercise the power in that manner or to refuse to exercise the power, as the case may be; or*

(ii) *that the complainant in respect of the investigation or some other person should have been furnished, but was not furnished, with particulars of the reasons for deciding to exercise the power in that manner or to refuse to exercise the power, as the case may be;*

this section applies to the decision, recommendation, act or omission constituting that action.

Introduction

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

For the purpose of this investigation, the IGTO reviewed a tranche (in excess of 120 in number) of written ATO template decision letters and decisions to evaluate how clearly taxpayer rights to review, complain and appeal the ATO decisions mentioned, were communicated.

The communication of taxpayer rights is an important feature of procedural fairness and is consistent with the *Taxpayers' Charter*. These rights and the community's awareness of them are important for maintaining confidence in the fairness of the tax administration system. A summary of the current obligations to provide reasons for administrative decisions is set out below, along with related protocols. More detail is provided at Chapter F for completeness.

The IGTO intends that the investigation report and recommendations will assist to improve communication between the ATO and taxpayers and their representatives. That is, to improve:

- how effectively (clearly and completely) the ATO communicates appropriate information to taxpayers and their representatives. This includes taxpayer rights to review, complain and appeal decisions made, and actions taken by the ATO; and
- informed decision making and actions taken by taxpayers to request appropriate further information in circumstances where they dispute, do not accept, or do not understand a decision or action taken in relation to their taxation affairs.

Procedural Fairness

Although the terms procedural fairness¹² and natural justice¹³ 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 principles of procedural fairness require:

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

¹² 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.

¹³ 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').

Taxpayers' Charter

The *Taxpayers' Charter* outlines taxpayer rights and obligations. It also explains what taxpayers and their representatives can expect in their dealings with the ATO in administering the taxation and superannuation systems. The ATO has stated publicly on its website that it is committed to following the *Taxpayers' Charter* in all its dealings with the taxpayer community.¹⁴

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.¹⁵

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*”.

ATO Disputes Policy

The *ATO Disputes Policy* sets out the ATO’s approach to managing disputes.¹⁶ The policy sets out the principles for managing complaints, various types of disputes and compensation. The following is an extract from this policy:

Objectives

By providing information about our overall approach to dispute management, and how we deal with specific types of disputes, we aim to promote a resolution culture based on all of the following:

- *effective communication*
- *genuine engagement*
- *collaboration*
- *strategies that are*
 - *fair and proportionate to the matters in dispute*
 - *lead to early resolution at minimal cost.*

To help us achieve our objectives, we will work with our dispute management stakeholders – our employees, the community, other agencies, courts and tribunals, legal and accounting bodies, dispute resolution practitioners and our various external scrutineers – to identify and promote best practice in dispute management.

We will continue to develop better tools to assess risk and manage disputes, and review our communication approach to minimise disputes – for example, by encouraging more phone

¹⁴ ATO, *Taxpayers' Charter* (Web Page, 22 October 2018) <<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/>>.

¹⁵ ATO, *Taxpayers' Charter – Essentials* (Web Page, 22 October 2018) <<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter---essentials/>>.

¹⁶ ATO, *Disputes policy* (Web Page, 20 December 2017) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Disputes-policy/>>.

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contact and clearer written communications. We will also continue to review and evaluate our dispute policies and processes, and update them as necessary.

Importantly and relevantly to this review investigation, one of the key principles of dispute management outlined in the policy is that *“everybody should have access to, and seek out, information that enables them to choose suitable dispute resolution processes.”*

Terms of Reference

This investigation seeks 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 the 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 investigation has examined and considered:

- whether ATO written communications to taxpayers appropriately provide 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.

ATO and Other Public Reporting about Taxpayers Exercising Rights to Complain, Review and Appeal Decisions and Actions

Although this review investigation has not examined public reporting of taxpayers exercising rights to complain, review and appeal administrative decisions and actions, this is nonetheless important context to consider in light of the IGTO's observations and recommendations.

Some high-level statistics are set out in Tables 1 to 4 below:

Table 1 – AAT Applications - AAT Small Business Taxation Division				
	FY20	FY19	FY18	FY17
Applications lodged	274	123	N/A	N/A
Outcomes				
Number of outcomes	72	4	N/A	N/A
Outcome of applications which was withdrawn by the Applicant	28% (20 applications)	0% (0 applications)	N/A	N/A
Outcome of applications which was determined by the AAT as having no jurisdiction on the matter	22% (16 applications)	50% (2 applications)	N/A	N/A

Source: Figures from AAT Annual Reports for 2018-19 and 2019-20 financial years.

Table 2 – AAT Applications - Taxation and Commercial Division				
	FY20	FY19	FY18	FY17
Applications lodged	577	670	826	854
Outcomes				
Number of outcomes	719	642	717	920
Outcome of applications which was withdrawn by the Applicant	27% (195 applications)	27% (175 applications)	35% (254 applications)	29% (263 applications)
Outcome of applications which was determined by the AAT as having no jurisdiction on the matter	10% (71 applications)	13% (85 applications)	17% (123 applications)	3% (32 applications)

Source: Figures from AAT Annual Reports for the 2016-17 to 2019-20 financial years.

Table 3 – Federal Court of Australia Applications				
	FY20	FY19	FY18	FY17
Appeals filed with the Federal Court of Australia	130	132	124	76
Appeals finalised by the Federal Court of Australia	123	76	111	117

Source: Figures from Federal Court of Australia Annual Reports for the 2016-17 to 2019-20 financial years.

Introduction

Further to the above, statistics obtained from the ATO's annual reports are as follows:

Table 4 – Complaint, Review and Appeal Statistics				
	FY20	FY19	FY18	FY17
Number of complaints received by the ATO	24,778 complaints (including 1,382 complaints received via the IGTO)	19,826 complaints (including 1,391 complaints received via the IGTO)	20,241 complaints (including 1,431 complaints received via the IGTO)	25,073 complaints (including 1,274 complaints received via the IGTO)
Objections resolved	22,290	26,276	24,350	24,490
Test Case Litigation matters finalised	10	7	5	2
Total Part IVC cases lodged to courts/ tribunals	455	441	478	456
Total dispute cases resolved by litigation	375	314	326	456
Part IVC cases resolved prior to court/tribunal hearing	222	212	224	315
Part IVC cases proceeded to a decision	153	102	102	141

Source: Figures from Australian Taxation Office Annual Reports for the 2016-17 to 2019-20 financial years.

Communication of Taxpayer Rights in Other Jurisdictions

Organisation for Economic Co-operation and Development

The OECD *Principles of Good Tax Administration – Practice Note*⁶⁹ outlines the views of the Centre for Tax Policy and Administration on the principles of good tax administration. The OECD’s Practice Note supports the communication of taxpayer rights and obligations, as well as the complaint mechanisms that are available. It encourages revenue authorities, such as the ATO, to, amongst other things:

1.2 outline and communicate to taxpayers their rights and obligations as well as the available complaint procedures and redress mechanisms

Europe

The European Commission’s *Guidelines for a Model for a European Taxpayers’ Code*⁷⁰ (**Code**) also supports the communication of taxpayer rights to complain, review and appeal a decision made by a revenue authority. The European Taxpayers’ Code is a model of behaviours and it is a non-binding instrument. It states that *“taxpayers should be informed about when and how they can challenge tax administrations’ decisions and actions, including their right to court or tribunal review where legal appeal rights exist.”*

United States of America

A *Taxpayer Bill of Rights* in the United States of America (**USA**) sets out the rights taxpayers have when dealing with the USA revenue authority, the Internal Revenue Service (**IRS**). The rights include comments on the communication of taxpayer rights to complain, review and appeal a decision. Under the *right to be informed*, it states what taxpayers can expect:⁷¹

When the IRS fully or partially disallows your claim for a refund, it must explain the specific reasons why.

If the IRS proposes to assess tax against you, it must explain the process – from examination (audit) through collection – in its first letter. This letter should explain your options for a review by an independent Office of Appeals and how the Taxpayer Advocate Service may be able to help you.

The USA tax system also provides a mechanism for an independent reviewer (the Tax Advocate) to order reasons to be provided (Tax Orders and Tax Directives) which cannot be ignored by the IRS unless the Commissioner confirms this in writing and then only once reasons are provided (which are reported publicly) to state why the taxpayer should not be provided with reasons.

⁶⁹ Organisation for Economic Co-operation and Development (OECD), Centre for Tax Policy and Administration, *Principles of Good Tax Administration – Practice Note* (2 May 2001).

⁷⁰ European Commission, *Guidelines for a Model for A European Taxpayers’ Code* (2016).

⁷¹ Internal Revenue Service (IRS), *Taxpayer Bill of Rights 1: The Right to be Informed* (Web Page, 25 May 2021)

<https://www.irs.gov/newsroom/taxpayer-bill-of-rights-1>.

United Kingdom

In the United Kingdom, *Her Majesty's Revenue and Customs (HMRC) Charter* outlines that the HMRC will provide clear information to taxpayers to help them meet their obligations and understand their rights.⁷² It provides that if taxpayers disagree with the HMRC, the HMRC will tell them about the options available to them and work with them to reach an appropriate outcome quickly and simply. The HMRC Charter also outlines that if taxpayers are not happy with a decision or a service they have received, they can make a complaint and if they disagree with a tax decision, the decision letter from HMRC will provide instructions on what to do.⁷³

⁷² Her Majesty's Revenue and Customs (HMRC), *The HMRC Charter* (Web Page, 5 November 2020) <<https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>>.

⁷³ See *ibid.*

Guide to this report

Overview of Our Investigation Process

As part of this review investigation, the IGTO conducted a survey to understand community perceptions about the range of formal and informal review rights available to taxpayers and how they are communicated by the ATO (with particular emphasis on written correspondence). The responses gathered from the survey assisted the IGTO in identifying potential areas of concern or uncertainty to be explored further in the IGTO's review investigation.

As part of the information request to the ATO, the IGTO requested a list of written correspondence templates currently used by the ATO across the following business areas:

- Individuals and Intermediaries (**I&I**);
- Small Business (**SB**);
- Superannuation Employer Obligations (**SEO**);
- Review and Dispute Resolution (**RDR**); and
- Debt.

The IGTO selected the above business areas of focus for this review investigation as a result of both:

- the survey responses; and
- data collated from her complaint investigations.

The ATO provided a tranche containing over 280 written templates and the IGTO independently and randomly selected a sample of approximately 50 templates across the above business areas.

In addition to the sample selected, the IGTO also undertook to consider some written templates that had been previously reviewed as part of other investigations to make note of any updates. Observations arising from each letter template examined were recorded.

Further to viewing the sample of written templates (which is issued externally to taxpayers and/or their representatives), the IGTO sought to understand what taxpayer rights are communicated to ATO Officers internally. The IGTO also independently reviewed the ATO's internal procedures, scripting, and guidelines available to ATO Officers on taxpayer rights to complain, review and appeal. The IGTO also independently accessed the ATO's internal training courses in relation to taxpayer rights to review and the *Taxpayers' Charter*.

The ATO also held detailed walk-throughs with the IGTO in relation to nominated scenarios. The purpose of these walk-throughs was to assist the IGTO in understanding the ATO's standard end-to-end process in terms of the ATO's interactions with the taxpayer and/or their representative leading up to and after the written correspondence is issued for different business areas.

Guide to this report

The IGTO also sought to understand the type of information that is communicated during each of these interactions, which provided greater context to the observations made in reviewing the letter templates (as opposed to reviewing the written templates in isolation). The IGTO nominated scenarios based on data from the complaints received and responses provided from the IGTO's survey.

Walk-throughs were conducted on the following topics:

- I&I work-related expense deductions audit;
- SEO Early Release of Superannuation Benefits (**ERSB**) application process; and
- Debt request to enter a payment plan.

The ATO also held walk-throughs to provide a general overview on the role of particular areas of the ATO in written communications. These included:

- Outbound Capability and their role; and
- the ATO website and development process.

In addition to understanding what should occur during the ATO's interactions with taxpayers, the IGTO sought to understand what occurs in practice. The IGTO requested a list of decisions previously made by the ATO in the 2019 and 2020 financial years in relation to audit, Cashflow Boost, objections and ERSB application decisions. The IGTO also reviewed written templates to communicate decisions from the I&I, SB, SEO, Private Groups and High Wealth Individuals (**PW**) and Public Group and Individuals (**PGI**) business areas. This included adverse decisions.

The IGTO then randomly selected a sample of approximately 70 decisions from the list of over 400,000 decisions (including approximately 280,000 adverse decisions) provided by the ATO and independently accessed the ATO's records and contemporaneous notes to review the following:

- how the decision was communicated;
- whether the decision contained the reasons for the decision, the adequacy of the reasons and the details of the Officer who made the decision; and
- what information was communicated in terms of the taxpayers' formal and informal rights to complain, review and appeal. This included the communication of whether the taxpayer had a right to pursue the avenue, timeframes, and the form of lodgement.

Based on the information gathered from her independent investigation and the ATO's walk-throughs, the IGTO has made observations and formulated recommendations for the ATO to consider.

Overview to the Report

An overview to the chapters in this report is set out below:

Chapter A – Survey on ATO’s written communications of taxpayer rights to review, investigate and appeal

The IGTO undertook a survey to understand what information is typically provided (or not) to taxpayers and/or their representatives on their rights to review, complain and appeal a decision. Chapter A provides a summary of the survey results which were used to better direct this review investigation into the relevant business areas within the ATO.

Chapter B – Our Key Findings, Recommendations and Reasons

Chapter B provides a summary of the key findings of this review investigation. It also provides a summary of the IGTO’s recommendations and supporting reasons. Further details are set out in Chapters C – E.

Chapter C – ATO Executive Guidance and Governance Arrangements for its Communications on Taxpayer Rights to Complain, Review and Appeal

Chapter C examines the governance arrangements that are in place within the ATO for the purposes of confirming the effective communication of taxpayer rights to complain, review and appeal an ATO decision. Governance arrangements (including internal guidelines and protocols) ensure that there is integrity, transparency, and accountability within the ATO in confirming external communications with taxpayers, which in turn strengthens taxpayers’ confidence in the ATO’s actions and the tax system.

Chapter D – Practical Implementation of ATO Communication Governance Arrangements on Taxpayer Rights to Complain, Review and Appeal

Chapter D provides an overview of how the ATO has implemented the governance arrangements in practice and what mechanisms exist to ensure accountability on the ATO’s communication of taxpayer rights.

Chapter E – Investigation Results for ATO Template Letters

Chapter E provides an overview of our analysis on a sample of the ATO’s written correspondence templates to determine whether they provide complete and adequate information on taxpayer rights to complain, review and appeal an ATO decision.

Chapter F – ATO obligations to provide reasons for its decisions

Chapter F provides an overview of the Commissioner’s obligations to provide a taxpayer with reasons for its decisions. This background is relevant and related to understanding taxpayer rights to review, complain and appeal decision made. That is because understanding the reasons for an administrative decision is instructive in informing and determining which right or option to review, dispute, challenge or complain about the decision is appropriate, effective, and least costly in the circumstances.

A. Survey on ATO's written communications of taxpayer rights

Introduction

A.1. At the outset of this review investigation, the IGTO sought to understand existing community awareness of the range of rights available to taxpayers, and their perceptions as to how the ATO communicated these rights. To this end, the IGTO conducted a short survey through Orima Research Pty Ltd.

A.2. The survey ran from 12 August 2020 until 30 September 2020. The survey was promoted through the IGTO website, IGTO newsletter and a range of industry newsletter publications. The survey was not intended to be a definitive assessment of the effectiveness of ATO communications on taxpayers' rights. Taxpayers' experience may also vary as certain rights of review are not available for all decisions and all market segments. Rather, the survey result was used to provide the IGTO and the ATO with some insights into the community's perceptions in this area and to provide the IGTO with a starting point for inquiry, to focus information requests and inform further questioning on areas of concern or uncertainty that had been identified.

A.3. The survey consisted of 10 questions, 3 of which were demographic questions for participants. This chapter sets out the details of, and results from, the survey.

A.4. Where the IGTO considers the results were unexpected or unusually low these results are depicted in the graphs below using a colour coding of red. Unusual but not significant or material outcomes are depicted in yellow. Therefore, the responses depicted in either red or yellow are areas that are identified as requiring further exploration in the course of the review investigation.

Survey Results – Demographic Information

Participants and their demographics

A.5. A total of 69 survey participants responded to at least one question in the survey. For some questions, survey participants were able to select more than one response. Accordingly, the total count of responses to particular questions may exceed the total of survey participants.

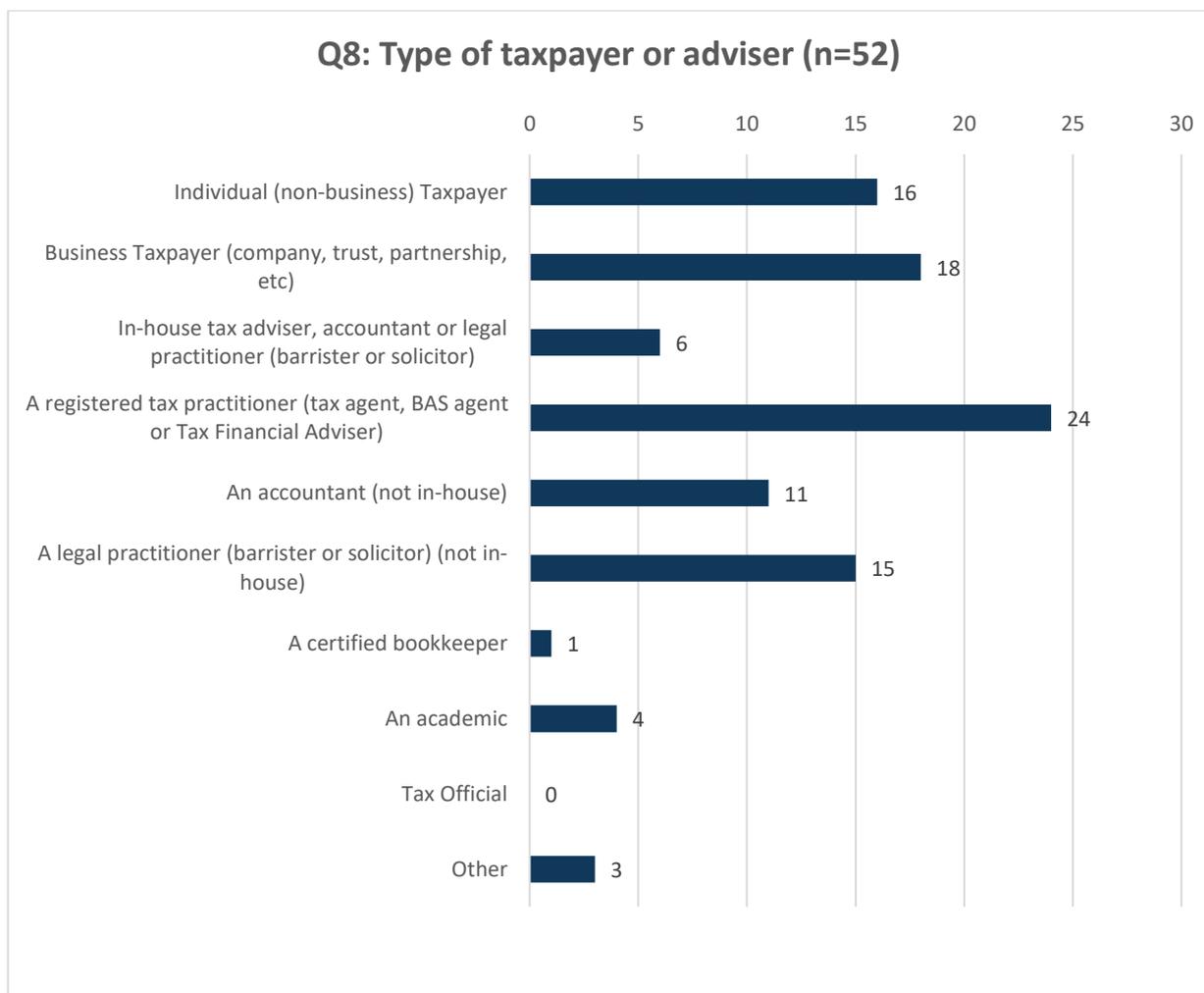
Type of taxpayer or adviser

Question 8

What type of taxpayer or adviser best describes you? (Please select all that apply)

- Individual (non-business) Taxpayer
- Business Taxpayer (company, trust, partnership, etc.)
- In-house tax adviser, accountant or legal practitioner (barrister or solicitor)
- A registered tax practitioner or BAS agents
- An accountant (not in-house)
- A legal practitioner (barrister or solicitor) (not in-house)
- A certified bookkeeper
- An academic
- Tax Official
- Other, please specify

Figure 1: Type of taxpayer or adviser



A.7. As set out in Figure 1, 52 respondents answered Question 8 in relation to the type of taxpayer or adviser that best describes them. There was an option to select more than one response and, accordingly,

A. Survey on ATO's written communications of taxpayer rights

98 responses were received. Of these 98 responses, more than half (57%) identified themselves as being a tax professional in some advisory capacity – registered tax practitioner, legal practitioner, accountant, or certified bookkeeper.

If a tax adviser, the type of taxpayer they typically represent

A.8. Question 9 was a follow up question, specific to tax advisers, which sought to understand the type of taxpayer that they typically represented.

Question 9

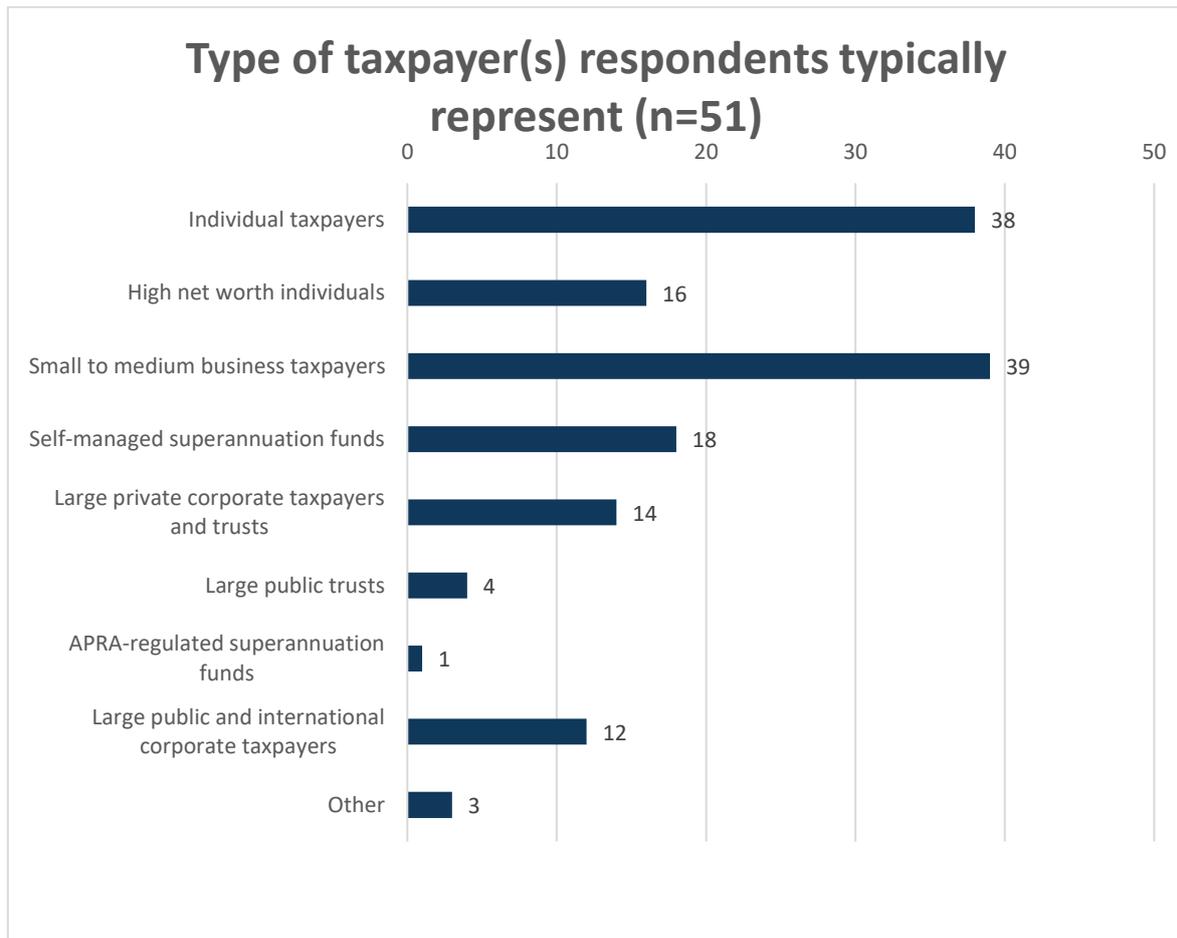
What type of taxpayers do you typically represent?

- Individual taxpayers
- High net worth individuals
- Small to medium business taxpayers
- Self-managed superannuation funds
- Large private corporate taxpayers and trusts
- Large public trusts
- APRA – regulated superannuation funds
- Large public and international corporate taxpayers
- Other, please specify

A.9. A total of 51 respondents answered this question (which allowed for multiple selections) with 145 responses. This is not surprising as it is often the case that advisers would have a range of taxpayer clients, across the taxpayer spectrum including individuals, small proprietary companies, large public corporations, and trusts. Individual taxpayers (26%) and small to medium business taxpayers (27%) featured most prominently amongst the responses – see Figure 2.

A. Survey on ATO's written communications of taxpayer rights

Figure 2: Type of taxpayer represented



Geographic location of practice

Question 10

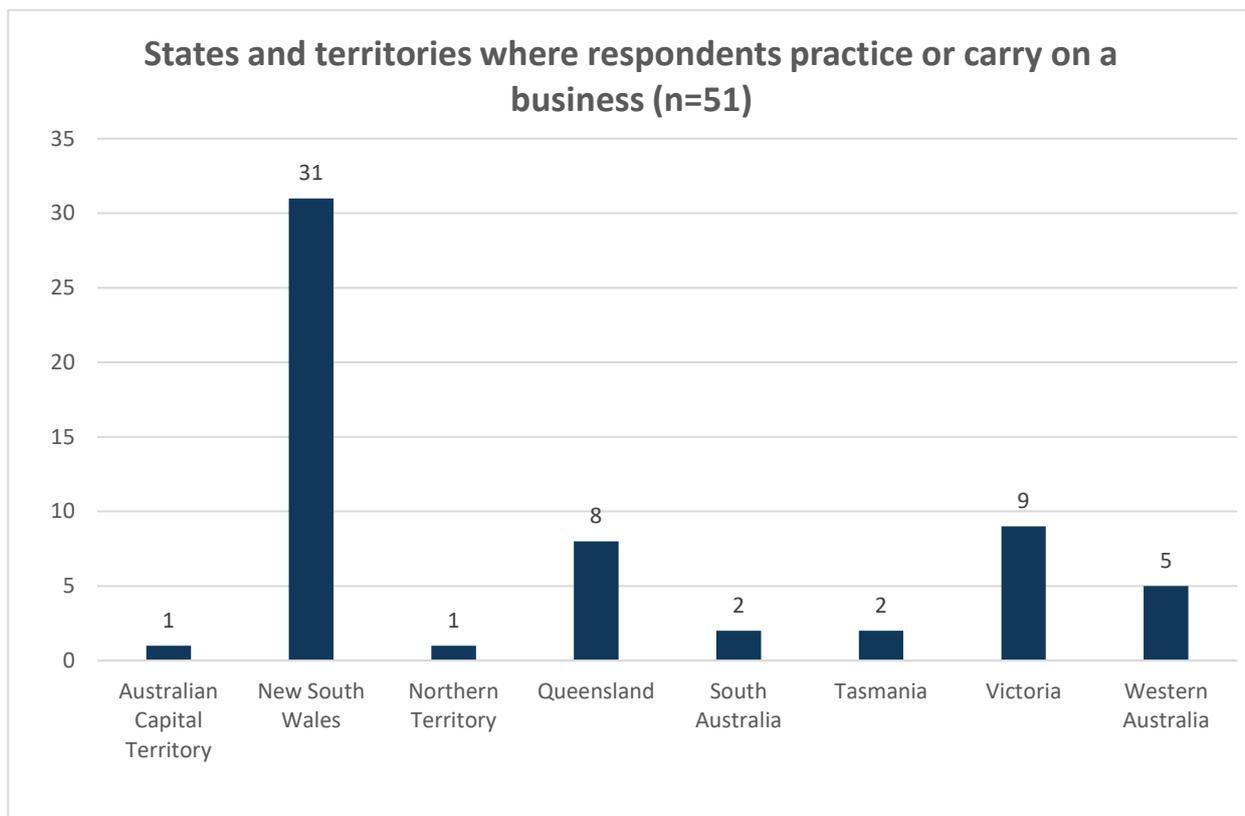
In which State or Territory do you practice or carry on business (please select all that apply)?

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia

A.10. 51 participants provided a response in relation to the location where they carried on business. 59 responses were received, suggesting at least some of the respondents carried on business in more than one state or territory. By a significant majority, survey participants identified that they carried on business in New South Wales (53%) with Victoria (15%) and Queensland (14%) being the second and third highest choices, respectively.

A. Survey on ATO’s written communications of taxpayer rights

Figure 3: Geographic distribution of practice



The importance of effective communication of taxpayer rights

Question 4

In your opinion, how important is the effectiveness (clear expression and complete information) of the ATO written communications of these rights to taxpayers?

In answering this question, you may wish to consider whether the information is otherwise available and readily accessible to all taxpayers. However, we are particularly interested to understand the community’s expectations in relation to information that is or should be provided in written communications about an ATO decision, action or outcome that affects an individual taxpayer.

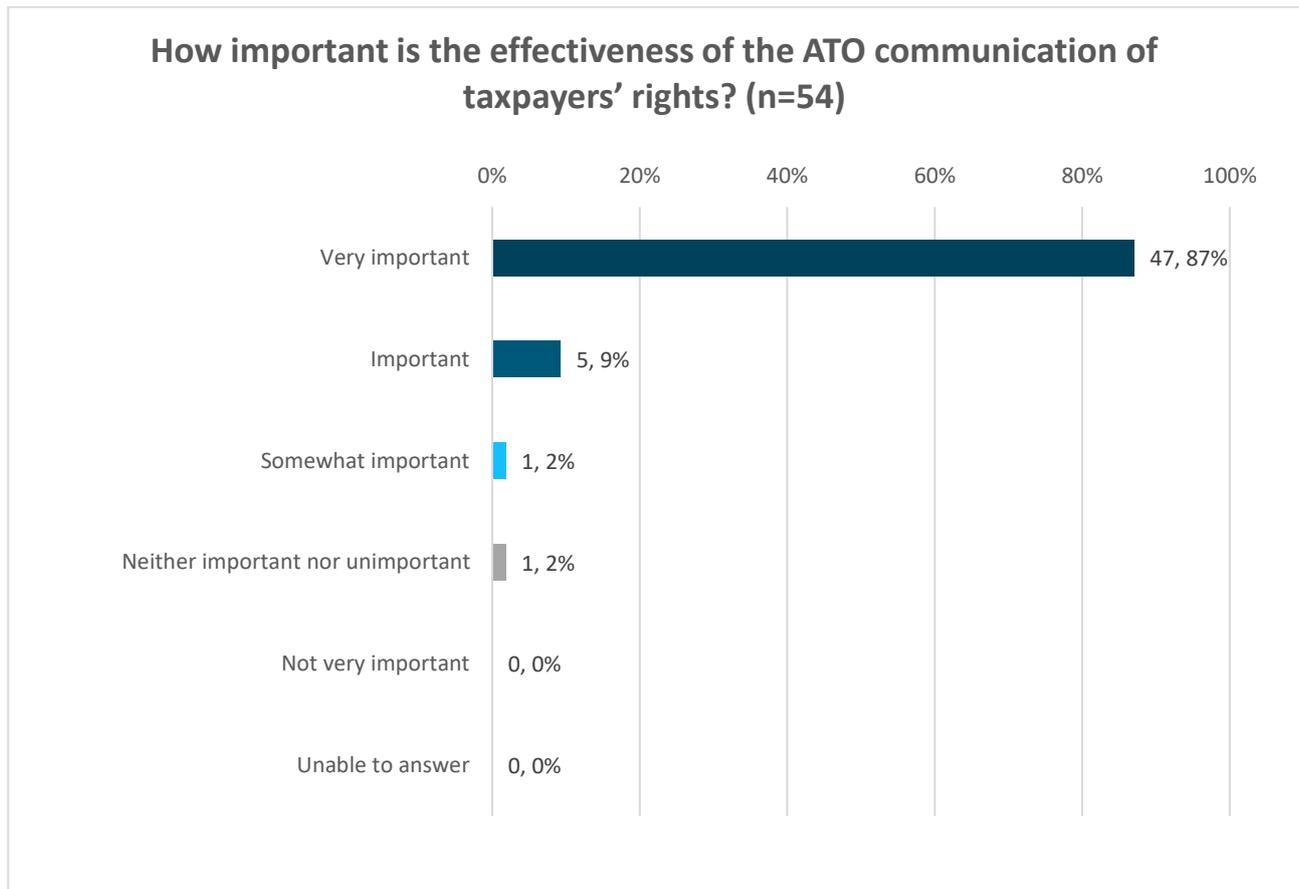
- 1 = Not very important
- 2 = Somewhat important
- 3 = Neither important nor unimportant
- 4 = Important
- 5 = Very important
- 6 = Unable to answer

Please provide your reasons in the space below

A.11. 54 participants provided a response to this question. Of these, 96% considered the effective communication of taxpayers’ rights by the ATO to be either very important (87%) or important (9%). No respondent indicated that it was not important.

A. Survey on ATO's written communications of taxpayer rights

Figure 4: The importance of effective communication of taxpayers' rights



What taxpayer rights are regularly communicated?

Question 1

In your experience, which of the following rights does the ATO regularly communicate in their written communications to taxpayers or their representatives when advising of an ATO decision, action or outcome? (Please select all that apply)

- Taxpayer right to request an internal ATO review
- Taxpayer right to lodge a formal ATO complaint
- Taxpayer right to request an independent investigation by the Taxation Ombudsman
- Taxpayer rights under Part IVC of the *Taxation Administration Act 1953*
 - Right to lodge a taxation objection
 - Right to request a review by the Administrative Appeals Tribunal (AAT)
 - Right to appeal to the Federal Court of Australia
- Taxpayer rights to appeal to the AAT Small Business Taxation Division
- Taxpayer rights of judicial review under the *Administrative Decisions (Judicial Review) Act 1977*
- Other, please provide details

A. Survey on ATO's written communications of taxpayer rights

Question 2

Which types of ATO written communications have you considered in answering Question 1? (Please select all that apply)

- Decision in relation to a debt matter. For example, request for remission of interest charges, request for remission of penalties and application for a release of tax debt.
- Decision in relation to a primary tax matter. For example, audit and objection decision.
- Decision in relation to superannuation matter. For example, application for a release of superannuation on compassionate grounds.
- Other, please specify.

A.12. All 69 survey participants provided a response to the question on the rights that the ATO regularly communicates. Most participants were considering either a decision in relation to primary tax matters (e.g., an audit or objection decision) or a decision relating to debt.

A.13. Overwhelmingly (72%), survey participants were of the view that Part IVC objection rights are regularly communicated by the ATO.

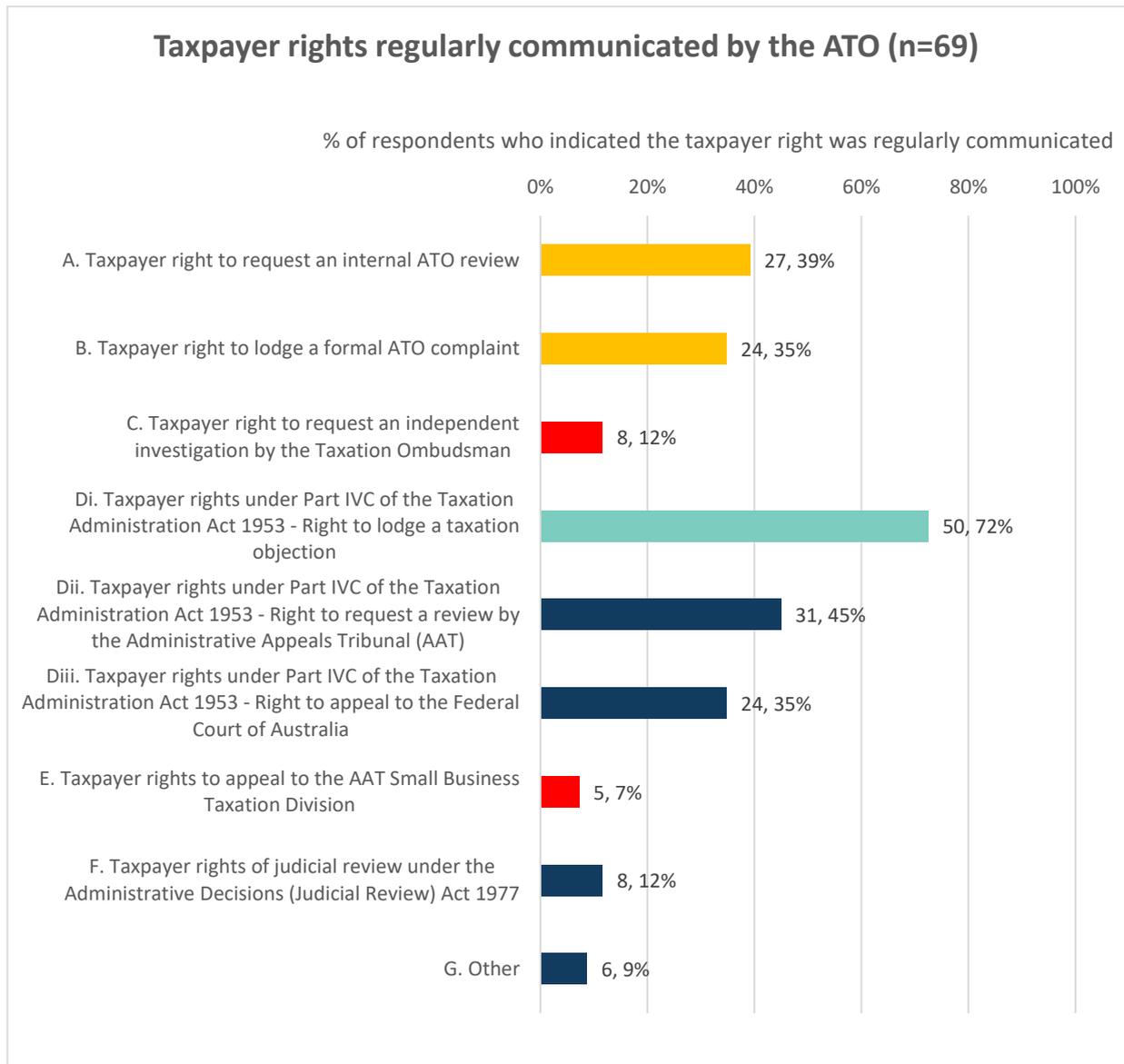
A.14. The following rights were also identified by participants:

- Part IVC rights to seek a review by the AAT (45%);
- rights to seek internal ATO review (39%);
- rights to lodge a complaint with the ATO (35%); and
- Part IVC rights to appeal to the Federal Court (35%).

A.15. Rights which participants felt were less regularly communicated included the right to an independent complaint investigation by the Taxation Ombudsman (12%), rights to seek review in the Small Business Taxation Division of the AAT and rights under the ADJR Act.

A. Survey on ATO’s written communications of taxpayer rights

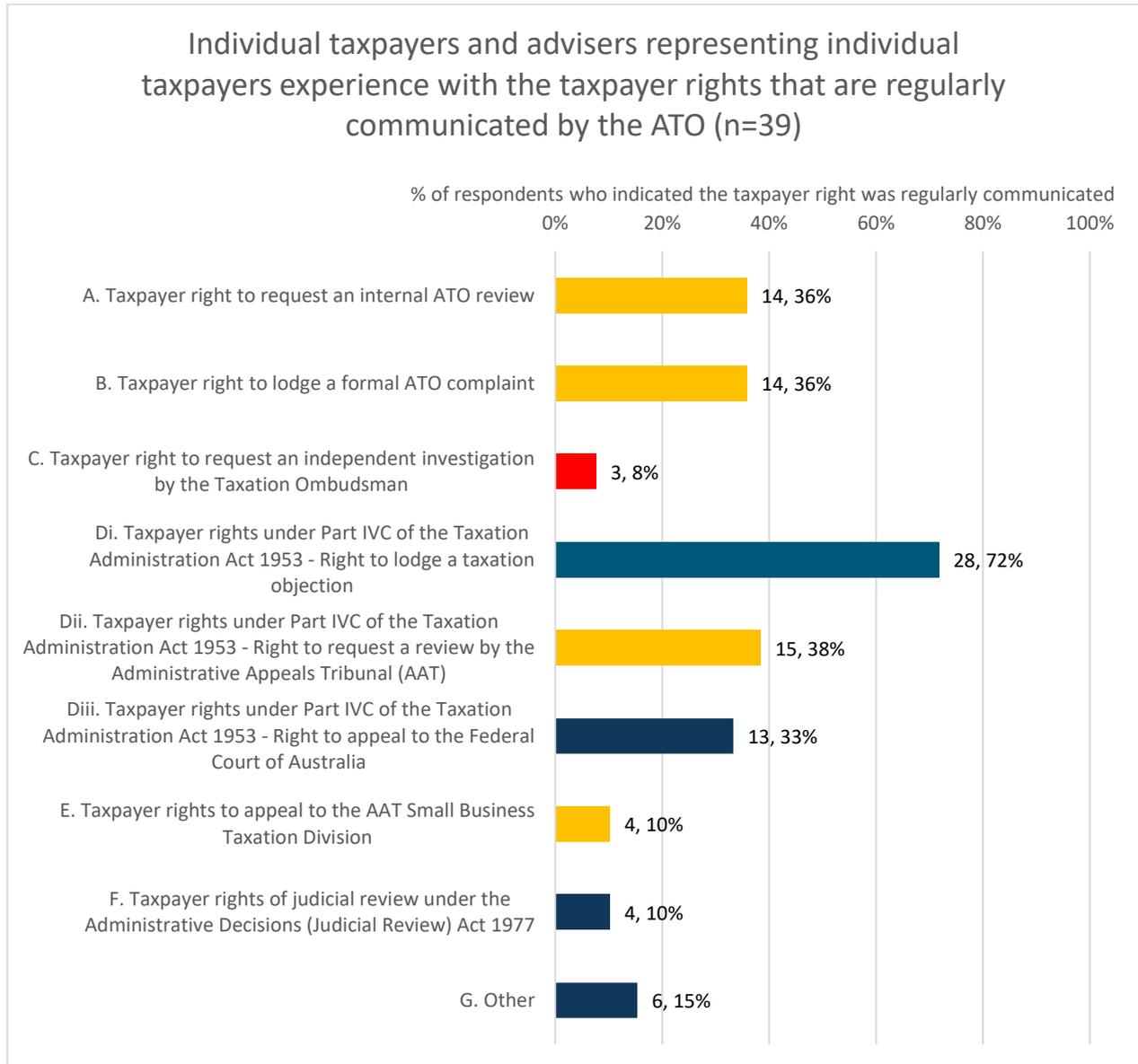
Figure 5 – What rights are regularly communicated?



A.16. Having regard to the different needs of different types of taxpayers, the above results can be broken down to further examine responses given by participants who identified as representing different types of taxpayers (Figures 6 to 9).

A. Survey on ATO's written communications of taxpayer rights

Figure 6 – What rights are regularly communicated? – responses from the Individuals taxpayer market segment



A.17. The results for individual taxpayers largely mirror the overall results, with a high emphasis on formal review rights under Part IVC of the TA Act. This was followed by:

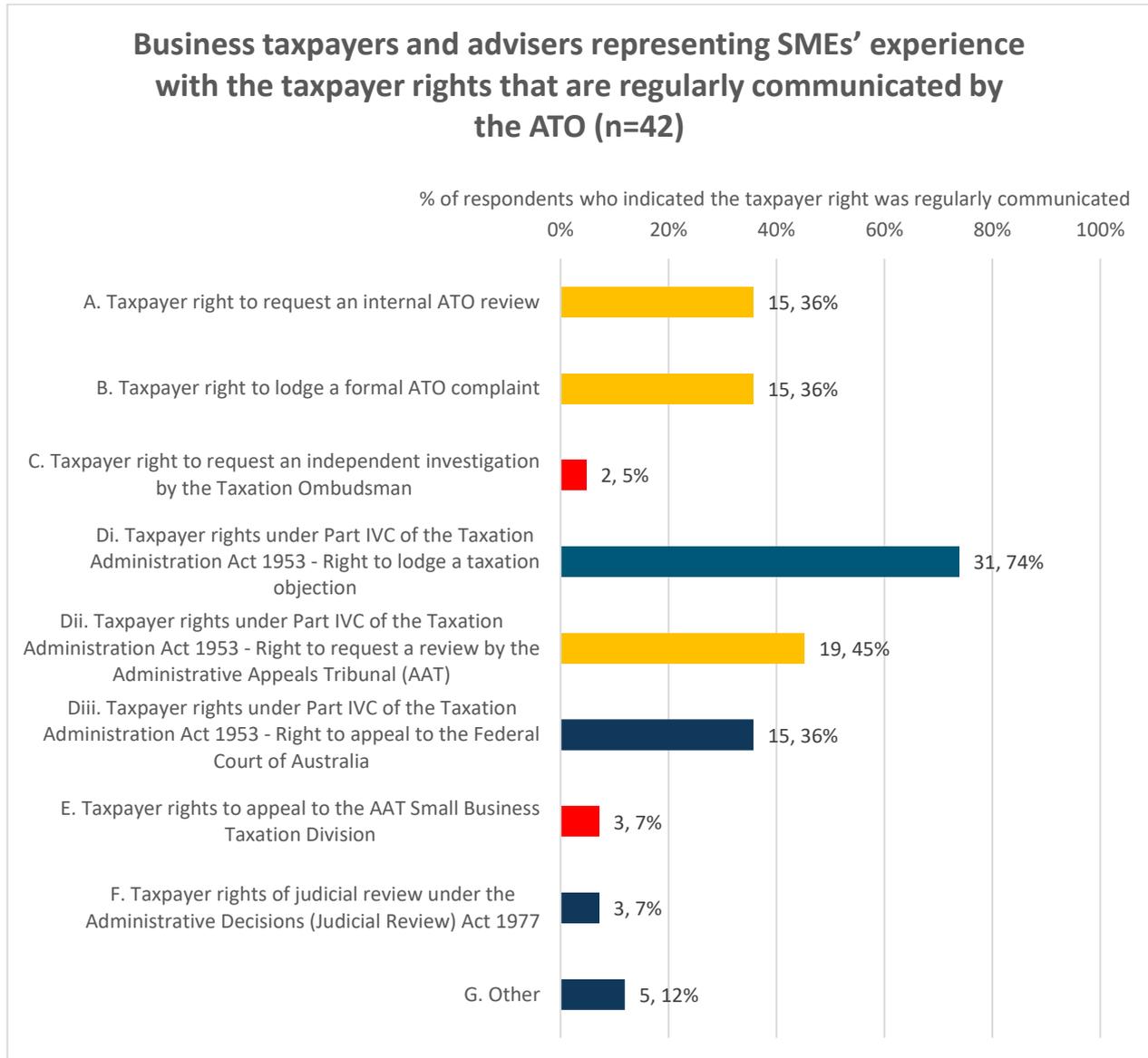
- internal ATO review (36%),
- ATO complaints (36%) and
- Part IVC appeals to the Federal Court (33%).

A.18. Curiously, the right to seek assistance from the Taxation Ombudsman is only 8%.

A.19. Similar results are observed in responses relating to small to medium businesses. The level of communication to the specialist and cost-effective division of the AAT dealing with small business matters is very low (7%) and complaints to the Tax Ombudsman were only identified in 5% of responses.

A. Survey on ATO’s written communications of taxpayer rights

Figure 7 – What rights are regularly communicated? – responses from the Small to Medium Business taxpayer market segment



A.20. Although the communication of formal Part IVC legal rights is important for individuals and small businesses (like all taxpayers), it is also possibly not the most useful solution that taxpayers in this group should consider when seeking to resolve a dispute with the ATO. This is because of the time and costs associated with formal legal challenges.

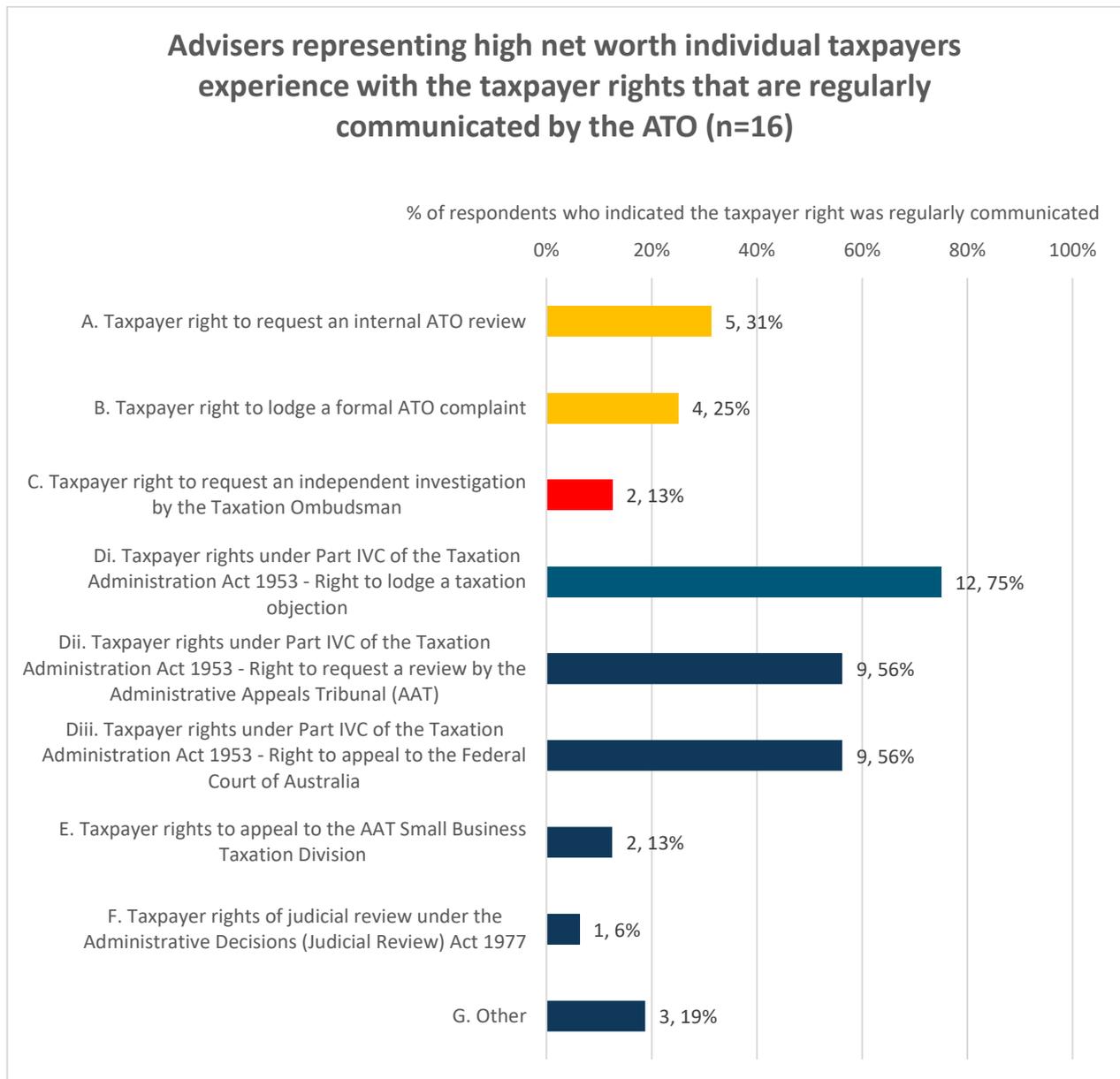
A.21. It may be more intuitive if respondents to this question had also been made aware of the more informal, cost-effective and time efficient dispute resolution alternatives.

A. Survey on ATO's written communications of taxpayer rights

A.22. This contrasts with the results for high-net-worth individuals and large (private and public) taxpayers. In these categories, it is expected that they would be better resourced and well-advised and represented to deal with more complex taxation transactions and so the channels for resolution lead to more formal resolution of legal disputes rather than informal engagement. As such, the significantly higher proportion of awareness of formal legal rights to object, review in the AAT and appeal to the Federal Court (particularly for large entities) is not unexpected.

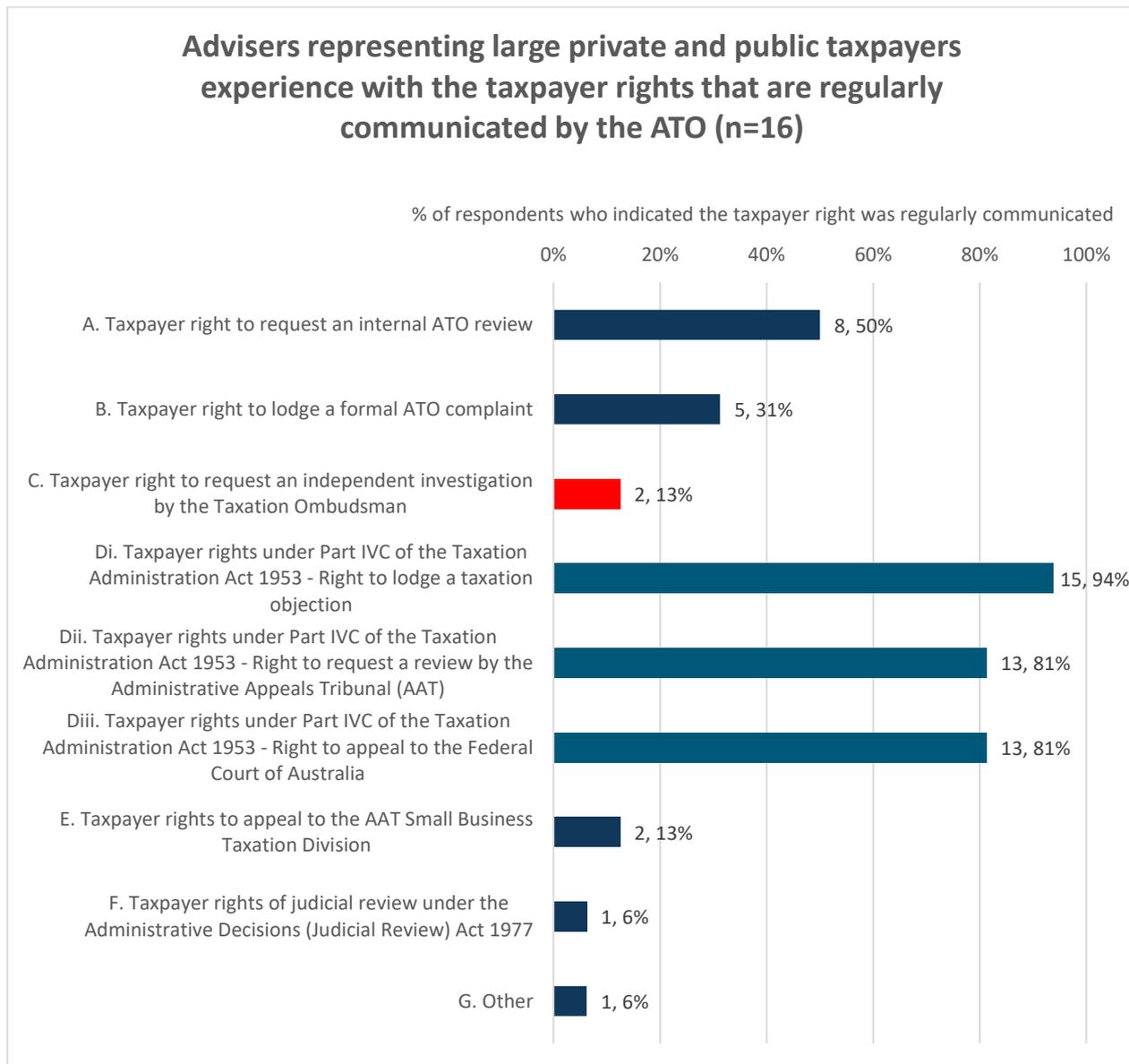
A.23. Interestingly, in both groups - High Net Worth Individuals and Large Private and Public taxpayers' - responses indicated that communication about rights to complain to the Tax Ombudsman were higher (13%) than Individuals and Small business – although it should be noted that this could be a result of the smaller sample size when compared with Individuals and Small Businesses.

Figure 8 – What rights are regularly communicated? – responses from the High Net Worth Individuals taxpayer market segment



A. Survey on ATO’s written communications of taxpayer rights

Figure 9 – What rights are regularly communicated? – responses from the Large (private and public) taxpayer market segment



A.24. While the communication of legal rights under Part IVC of the TA Act (objections, reviews and appeals) is important, it is also important to be aware that not all decisions of the ATO can be resolved via these formal channels. In the case of ATO debt decisions, there are no applicable Part IVC rights which, consequently, requires that other rights are communicated to taxpayers who are adversely affected.

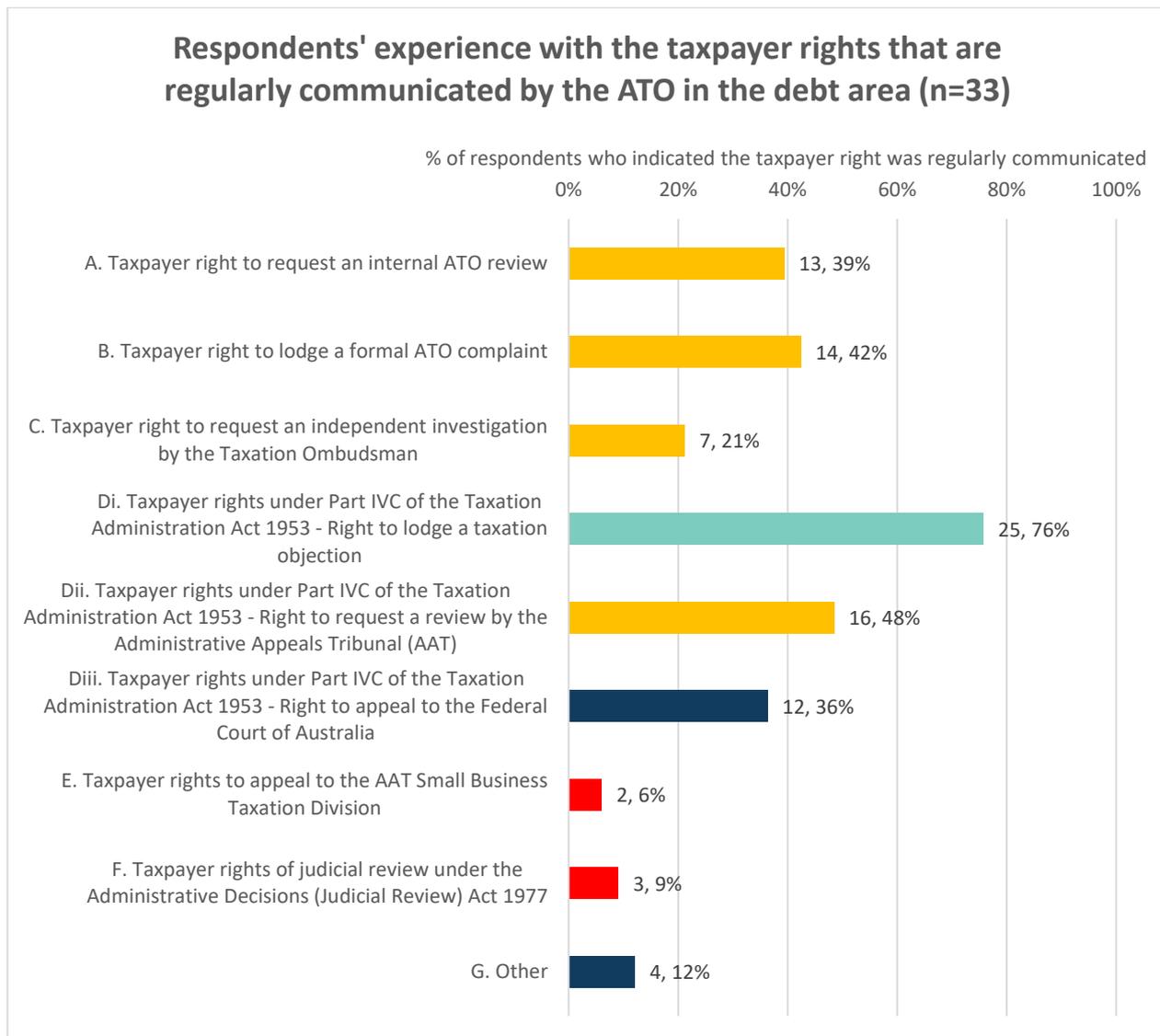
A.25. As set out in Figure 10, even though objection rights do not exist in relation to debt recovery matters, they are nonetheless perceived by the survey respondents to be regularly communicated by the ATO. It is possible that this survey result arises from a conflation of what was communicated at other parts of the process leading to debt collection, such as the audit process which led to the assessment giving rise to the debt.

A.26. Where Part IVC rights are not available to challenge particular decisions, it would be expected that communication of other rights would register higher. However, even in relation to debt matters

A. Survey on ATO’s written communications of taxpayer rights

where a taxpayer cannot seek merits review or appeal under Part IVC, the responses still suggest that communication of formal Part IVC rights was frequent. Encouragingly, communication of rights to complain to the ATO (42%) and Tax Ombudsman (21%) were higher, although details of judicial review or ADJR rights did not register highly (9%). This is outlined in Figure 10 below.

Figure 10 – What rights are regularly communicated? – responses in relation to Debt matters



Perceptions on the effectiveness of the ATO's communications in respect of particular rights

Question 3

For each of [the rights identified in Question 1], how would you rate the effectiveness (clear expression and complete information) of the ATO's written communication of the taxpayer rights?

- 1 = Not very effective
- 2 = Somewhat effective
- 3 = Neither – effective nor ineffective
- 4 = Effective
- 5 = Very effective
- 6 = Unable to answer

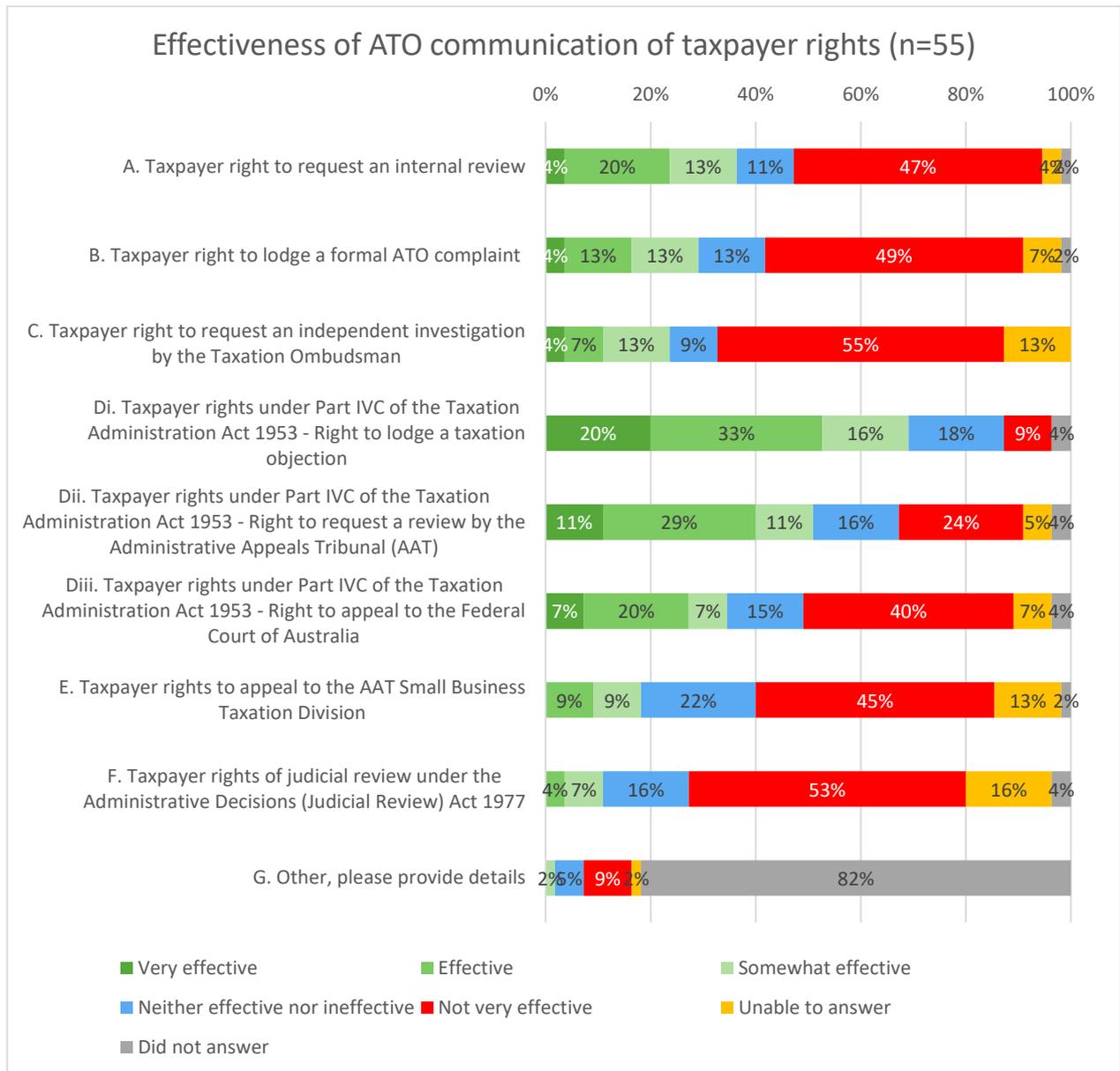
A.27. Overall, participants in the survey rated the ATO's communications in relation to Part IVC objection rights (69%) and rights to seek a review in the AAT (51%) as being the most effectively communicated – refer to Figure 11.

A.28. Close to 50% of respondents rated ATO communications as not very effective in the following areas:

- Taxpayer right to request an internal review;
- Taxpayer right to lodge a formal ATO complaint;
- Taxpayer right to request an independent investigation by the Taxation Ombudsman;
- Taxpayer rights to appeal to the AAT Small Business Taxation Division; and
- Taxpayer right of judicial review under the ADJR Act.

A. Survey on ATO’s written communications of taxpayer rights

Figure 11 – Effectiveness of ATO communication on particular taxpayer rights

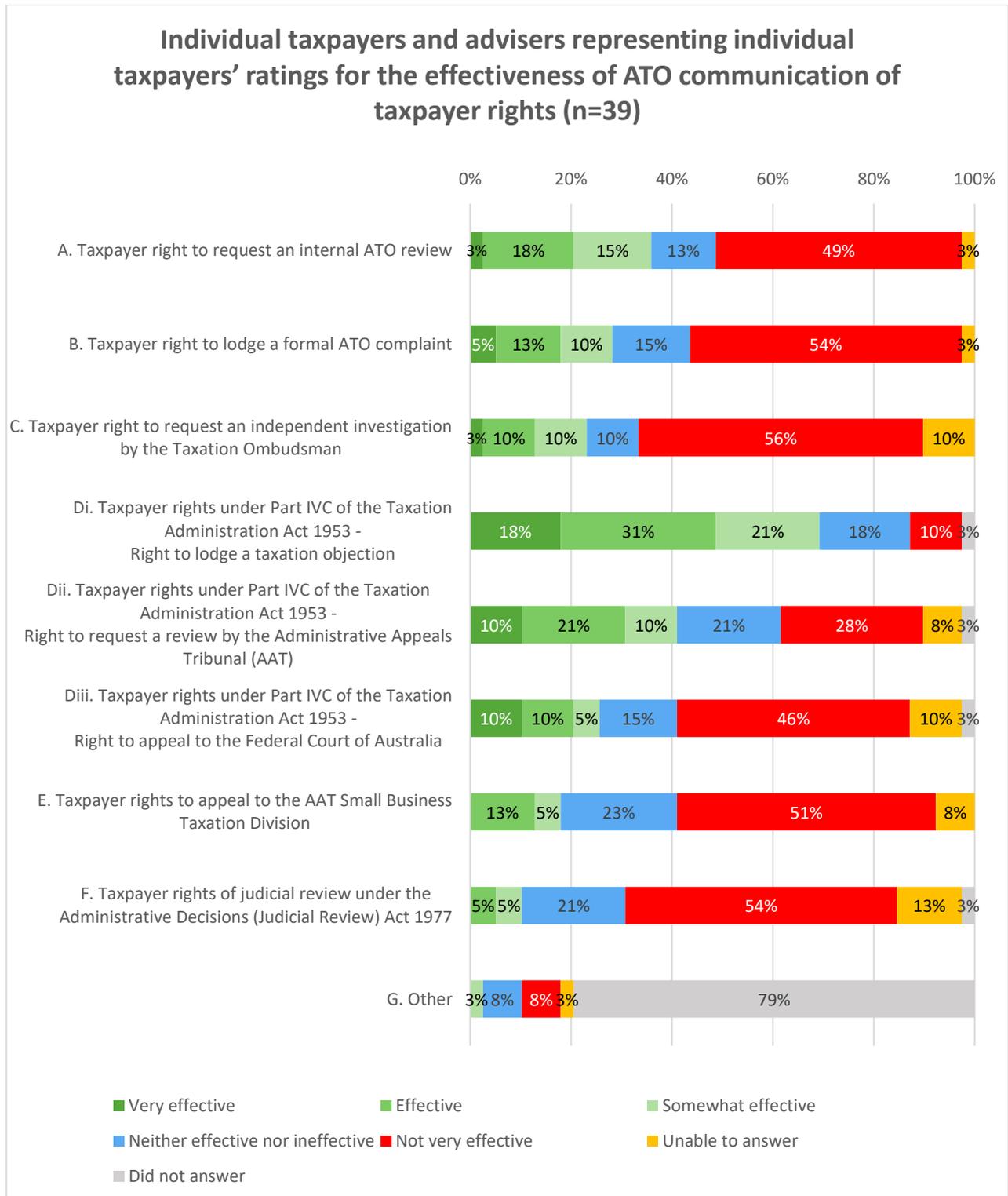


A.29. A further breakdown of the survey responses across different taxpayer segments is represented in Figures 12 to 15. As with earlier analysis, the perceptions of effectiveness vary between different market segments – that is, types of taxpayers and their advisers.

A. Survey on ATO's written communications of taxpayer rights

A.30. In respect of individual taxpayers, or advisers representing individual taxpayers, the only right in which a majority of respondents indicated the ATO communicated somewhat effectively, effectively or very effectively, was rights to object under Part IVC (70%) – refer to Figure 12.

Figure 12 – Effectiveness of ATO communication on particular taxpayer rights – Individual taxpayers

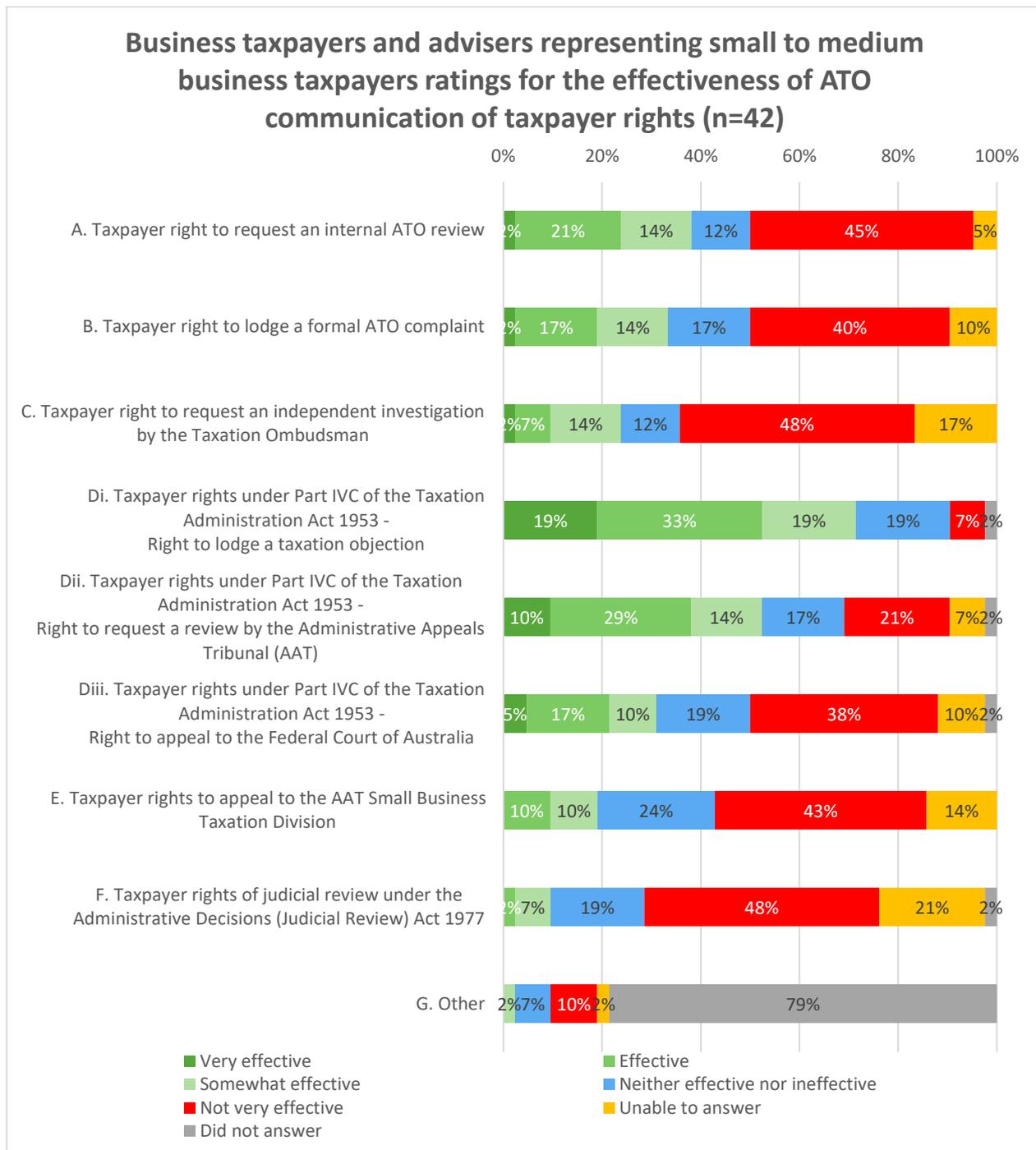


A. Survey on ATO’s written communications of taxpayer rights

A.31. For small to medium businesses, like the overall results, Part IVC objection rights (71%) and Part IVC review rights to the AAT (53%) were most effectively communicated.

A.32. In both groups (Individuals and Small Businesses), communication of any rights other than those under Part IVC were largely rated as being ‘not very effective’. This raises a potential concern as, for many individual and small business taxpayers, the costs and time associated with an exercise of formal review and appeal rights can be prohibitive, making communication of alternate rights all the more critical.

Figure 13 - Effectiveness of ATO communication on particular taxpayer rights – small to medium businesses

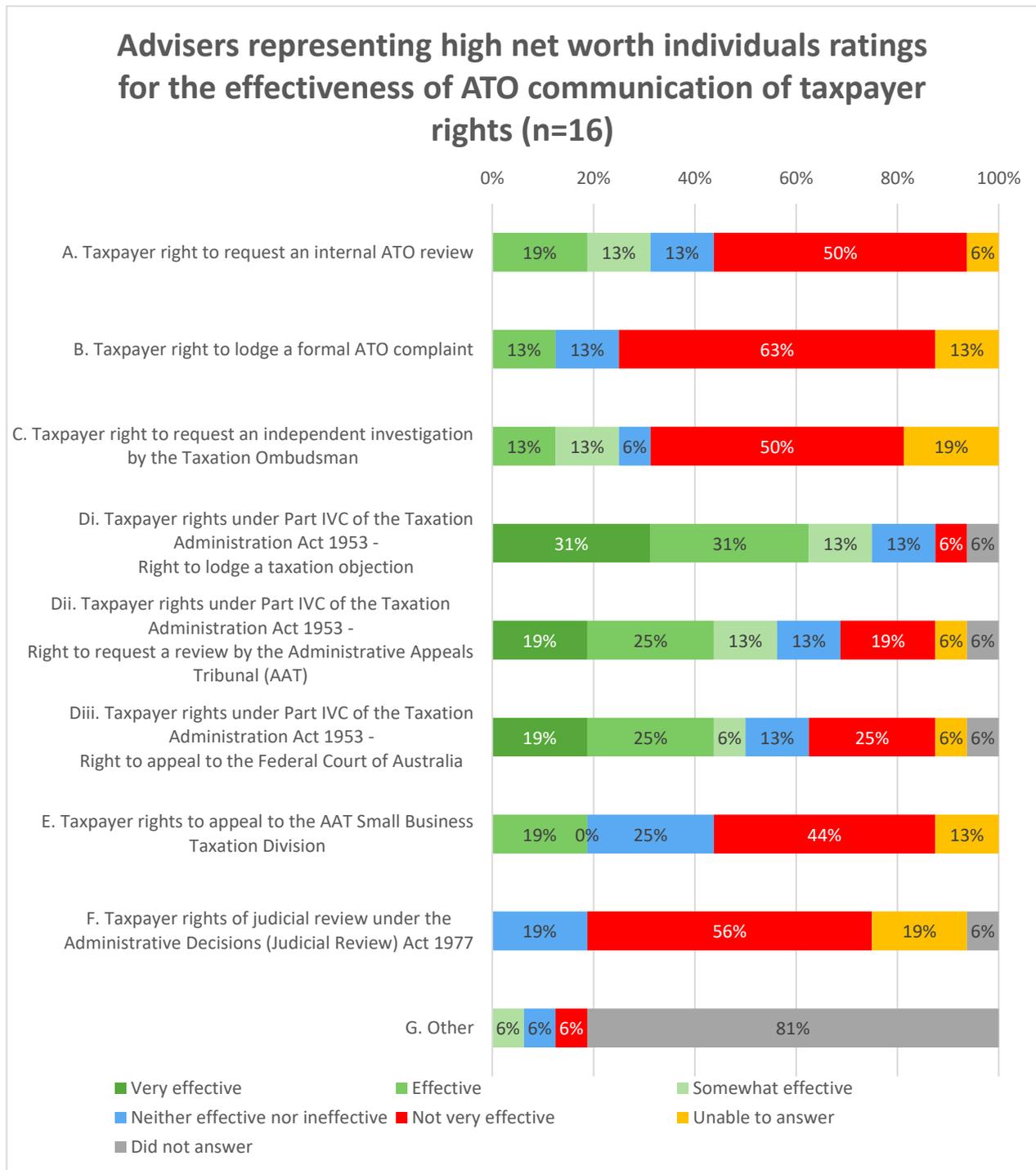


A. Survey on ATO's written communications of taxpayer rights

A.33. Where high net worth individuals and large businesses were concerned, the responses clearly showed that the communication of Part IVC legal rights was most effective – refer to Figures 13 and 14.

A.34. In the case of high-net-worth individuals, 75% of respondents ranked the communication of Part IVC objection rights to be somewhat effective or higher. 57% provided the same rating for AAT review rights and 50% rated communication of appeals to the Federal Court similarly – refer to Figures 13 and 14.

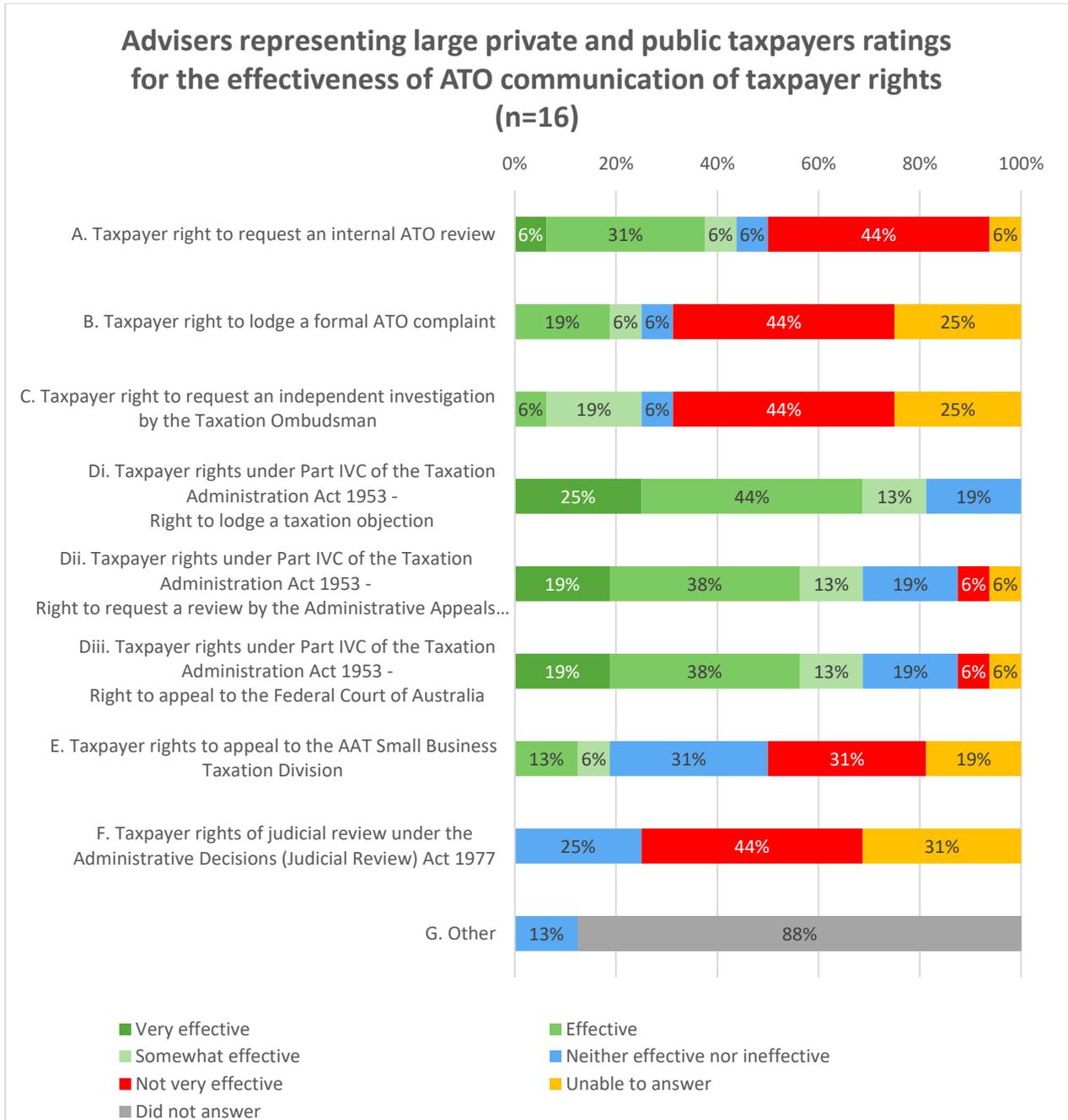
Figure 14 - Effectiveness of ATO communication on particular taxpayer rights – HNWI taxpayers



A. Survey on ATO’s written communications of taxpayer rights

A.35. The perception from large businesses – Figure 15 – is similar to that of high-net-worth individuals, but more pronounced, with 82% rating objections communication to be effective, and 70% rating communication about AAT review rights and Federal Court appeal rights to be effective.

Figure 15 - Effectiveness of ATO communication on particular taxpayer rights – Large businesses (public or private)



A.36. As noted earlier, in relation to debt matters for which Part IVC rights are not available, it would be expected that communication about less formal rights would be more important. However, even in relation debt matters, the only right which was considered by more than 50% of respondents to be effectively communicated was objection rights. Informal engagement such as ATO internal review (33%), ATO complaints (24%) and IGTO complaints (21%) were not rated highly by survey respondents.

What information is typically provided by the ATO in its communication of decisions?

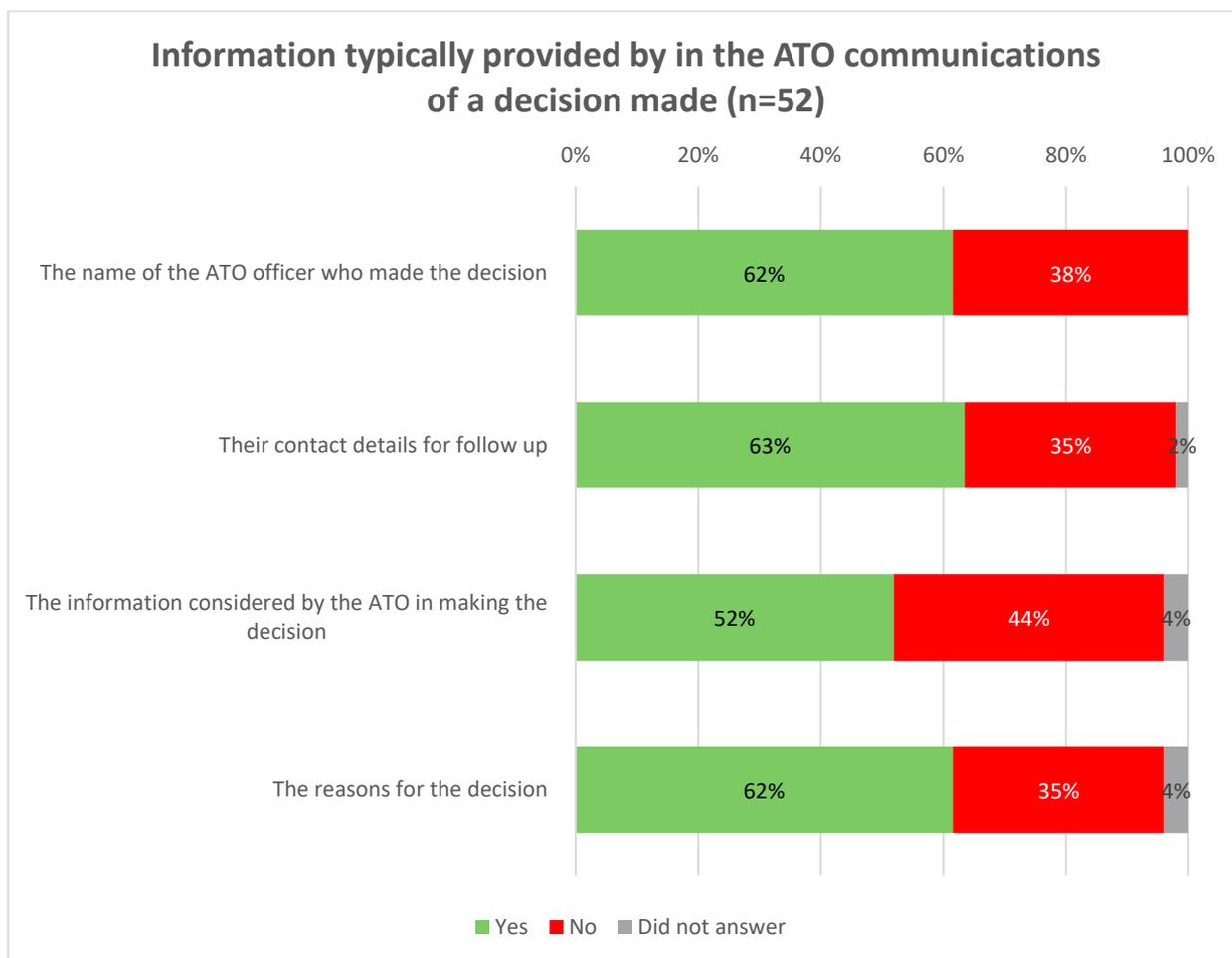
Question 6

In your experience, do ATO written communications also typically provide:

- A. The name of the ATO Officer who made the decision? Y/N
- B. Their contact details for follow up? Y/N
- C. The information considered by the ATO in making the decision? Y/N
- D. The reasons for the decision? Y/N

A.37. Respondents were largely in agreement that in a majority (62-63%) of ATO decisions, the name and contact details of the Officer are provided together with the reasons for decision. A smaller majority (52%) believed that details of the information that was considered in arriving at that decision were typically provided.

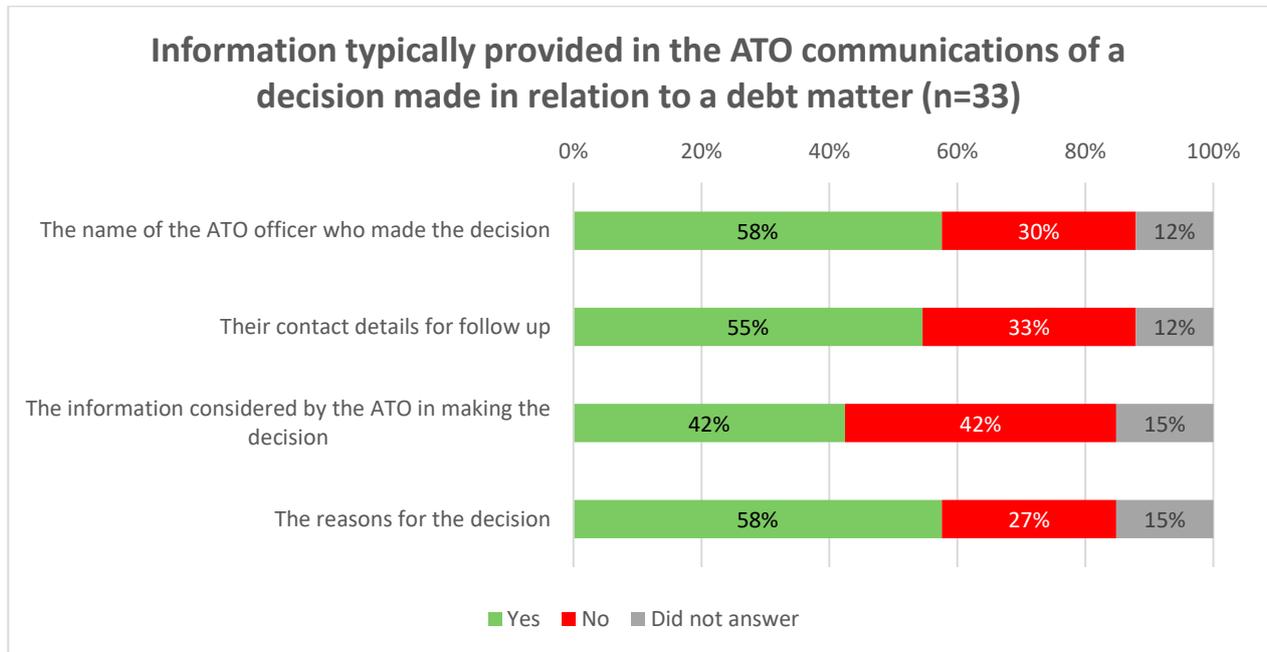
Figure 16 – Information typically communicated



A. Survey on ATO's written communications of taxpayer rights

A.38. The only area in which there was a discrepancy was in relation to the information considered in arriving at debt decisions – Figure 17. For debt matters, only 42% of respondents indicated that the ATO provided details on what information it had considered in arriving at the decision. A further 42% said the ATO did not communicate this detail and 15% did not answer this question.

Figure 17 – Information typically communicated – debt matters



Awareness and use of ATO complaints service and IGTO complaints service

Question 5

Were you aware of or have you made use of the following services to resolve issues or disputes with the ATO:

[Options to respond to below are Y/N/NA]

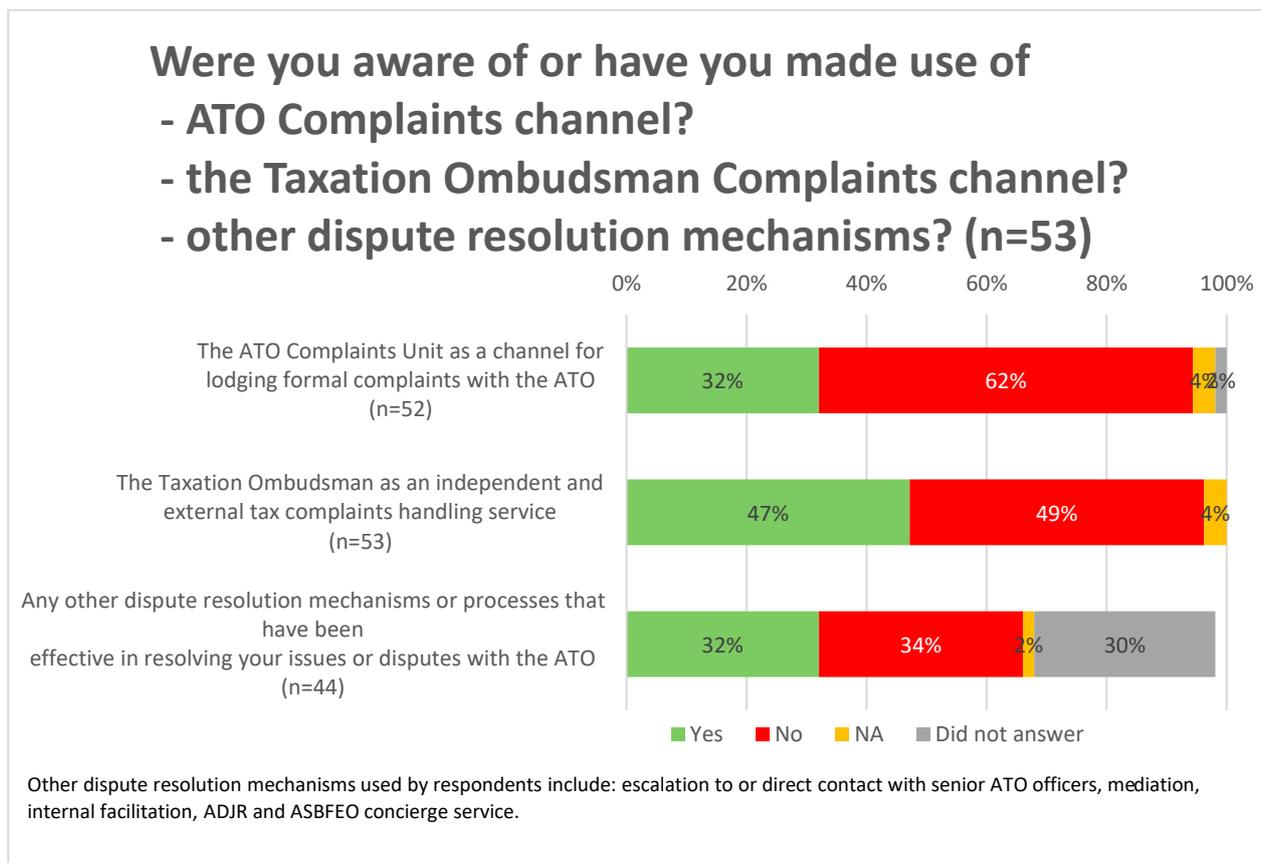
- A. The ATO Complaints Unit as a channel for lodging formal complaints with the ATO;
- B. The Taxation Ombudsman as an independent and external tax complaints handling services;
- C. Any other dispute resolution mechanisms or processes that have been effective in resolving your issues or disputes with the ATO. Please list or describe these below.

Please provide any further comments

A.39. 53 participants provided a response to Question 5.

A.40. In no category did the majority of respondents indicate they were aware and/or had used the informal dispute resolution channels such as A - lodging a complaint with the ATO, B - raising concerns for investigation with the IGTO or C - other services available in the ATO such as escalation and direct contact with senior Officers, mediation, facilitation, ADJR and the ASBFEO concierge service.

Figure 18 – Awareness and use of ATO complaints, IGTO complaints or other dispute resolution



A.41. The results for this question, particularly in relation to awareness of the ATO’s Complaints Unit as an avenue for lodging formal complaints aligns with the IGTO experience. In many cases received by our office, taxpayers often claim to have raised their concerns with the ATO previously even though it transpires after the IGTO has engaged with the ATO that in fact no formal complaint had been lodged with the ATO Complaints Unit. Similarly, the low rates of awareness of the Taxation Ombudsman’s complaints handling service also accords with the feedback that we have received from stakeholders.

Suggestions for improvement

Question 7

In your experience, how could the effectiveness (clear expression and complete information) of the ATO written communications of taxpayer rights be improved? For example does the ATO provide you with all the information you need to consider your options and exercise any rights to question, challenge or appeal the decision.

You may also include any examples of good practices that you have observed either in your dealings with the ATO or any other organisations.

A.42. This was a free text question that invited participants to posit ideas and suggestions for improvement. We have extracted some examples of the written feedback below, grouped by themes.

- Plain English/ Easily understood language

“Learn to communicate in easily understood language.”
- Clearer communication, clearer communication on timeframes for appeals and reviews

“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).”
- Complete and written information on review rights

“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.”
- Style and presentation – use of bolded font, different colour font to emphasise key actions

“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.”
- Separate fact sheet detailing all review (formal/informal) options

“All Outbound letters should include a separate fact sheet that detail all appeal options. There could be separate fact sheets for tax, super, debt and different products within each subtype. People may utilise these options if the information is readily available.”
- Mediation and phone calls before decision is made

“There needs to be a mediation & consultation before ANY decision is undertaken.”
- More complete reasons for decisions

“Sometimes information considered and reasons are provided. However, rarely complete. Supports the outcome rather than the process.”

B. Our key findings, recommendations and reasons

Our key findings

ATO Executive guidance supports the communication of taxpayer rights to complain, review and appeal

- The *Taxpayers' Charter* outlines that the ATO will explain the decisions made about taxpayers' tax affairs and respect taxpayers' right to question.⁷⁴ It also states that the ATO will explain how decisions can be reviewed and how review options differ if there are multiple review options available to the taxpayer in relation to a particular decision. While the *Taxpayers' Charter* contains information on lodging a complaint with the ATO and the IGTO, it does not outline that taxpayers can expect the ATO to advise them of the complaints channels when the ATO communicates its decisions.
- The ATO has two CEIs⁷⁵ instructing ATO Officers that they must:
 - provide an explanation of their decision;
 - inform taxpayers about relevant rights of review;
 - encourage taxpayers to talk to their ATO Officers if they have questions or concerns about the decision; and
 - manage complaints in accordance with the ATO's service commitments and the *Taxpayers' Charter*. It also instructs Officers to provide information to complainants about their further rights of review such as the IGTO or the Commonwealth Ombudsman.
- The *ATO Disputes Policy* sets out the key principles of dispute management. Relevantly, one of the key principles is “[e]verybody should have access to, and seek out, information that enables them to choose suitable dispute resolution processes”.⁷⁶ The *ATO Disputes Policy* is available on the ATO's website, but taxpayers and their representatives may not be aware of its existence. The IGTO also found it difficult to navigate the ATO's website to locate the webpage that contains the policy without using the keyword search.

⁷⁴ ATO, *Managing Complaints, Compliments, Feedback and Suggestion Chief Executive Instruction* (Internal ATO document, 1 April 2021).

⁷⁵ See *ibid.*

⁷⁶ See above n 16.

B. Our key findings, recommendations, and reasons

- The Commissioner has obligations as a model litigant to act honestly and fairly in litigation matters. These obligations include “endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible”⁷⁷ and “keeping the costs of litigation to a minimum”.

The practical implementation of governance arrangements of the ATO’s expectations for the communication of taxpayer rights to complain, review and appeal could be improved

- The CEIs are mandated and ATO Officers may breach the *Australian Public Service (APS) Values and Code of Conduct* if they do not follow the instructions set out in the CEIs. However, in the IGTO’s sampling of some of the business areas’ procedures, these procedures do not always refer to the CEIs. As such, there is a risk that ATO Officers are not aware of the CEIs. While some procedures refer to the CEIs, they do not always contain guidance on communicating taxpayer rights to complain and review.
- The ATO has advised the IGTO that since April 2018 it has captured information as part of its complaint investigations against the rights under the *Taxpayers’ Charter* in complaint resolution cases where a complaint resolver is allocated to the case. In these cases, the complaint resolver identifies the main right (that is, there is a single choice) under the *Taxpayers’ Charter* that applies to the complaint issue and makes an assessment on whether the right has been met or not. This assessment is recorded in the ATO’s case management system. However, this assessment does not extend to complaint cases where the complaint is resolved during the first contact between an ATO officer in the ATO’s contact centre and the taxpayer or their representative. The ATO was internally reporting on complaints against *Taxpayers’ Charter* rights at the operational level between March 2019 and October 2020 but it does not currently have internal reporting on this data. The ATO does not publicly report its complaint issues against taxpayer rights under the *Taxpayers’ Charter* and this lack of transparency can make it difficult for the community to have full confidence and assurance on the ATO’s adherence to the principles outlined in the *Taxpayers’ Charter*.
- The ATO’s internal training courses are designed to educate Officers on the *Taxpayers’ Charter* and review of ATO’s decisions but these courses are not mandatory for all ATO staff. There is no specific timeframe or requirement for periodic completion of these training courses. The ATO advised that in the last three years less than 1% of Tax Officials have attended these courses. Each business area also has their own suite of training courses for completion by their Officers. However, the training courses sampled by the IGTO do not include information on the communication of taxpayer rights to complain, review and appeal.
- There are ATO internal documents and training courses to guide its Officers to support taxpayer rights to complain, review and appeal. However, as the guidance does not extend to communicating these rights to taxpayers, implicitly they rely upon taxpayers asserting their rights. If taxpayers are not aware

⁷⁷ Attorney-General’s Department, *Legal Services Directions, Appendix B*, issued pursuant to section 55ZF of the *Judiciary Act 1903 (Cth)*, with effect from 1 September 1999. The directions are available on the [Attorney-General’s web site](#).

B. Our key findings, recommendations, and reasons

or informed of their rights, then it would be difficult for them to know what they can do in circumstances where they do have concerns or disagree with an ATO decision.

- The ATO's Outbound Capability business area is a centralised design hub responsible for providing advice to business areas on the development of high-volume correspondence templates and coordinating the end-to-end delivery of communications. Each business area has their own process and timeframe on conducting reviews to check the relevance and currency of the correspondence templates.
- Correspondence templates generally contain standard text on review rights but with the ATO also encouraging Officers to have conversations with taxpayers, the business areas' procedures do not contain guidance on communicating taxpayer rights to complain, review and appeal verbally to taxpayers.

ATO written templates do not contain complete information on taxpayer rights to review and complain, contact details of the ATO's decision-maker and the ATO does not always communicate its decisions in writing

- Not all ATO decisions are communicated in writing. Reasons may not be given in writing in instances where the ATO has spoken to the taxpayer and the decision does not concern complex issues.
- Written correspondence may serve as a useful record and future reference for the taxpayer, particularly where an unrepresented taxpayer may experience difficulty in understanding and retaining the information conveyed verbally by the ATO during a telephone conversation.
- The ATO provides information on formal Part IVC rights in its written templates but there are varying levels of detail communicated between each business area.
- All written templates reviewed in the sample referred to the taxpayers' rights and obligations under the *Taxpayers' Charter* but there is limited mention of other informal review and complaint channels. There is little guidance provided to Officers to assist in advising taxpayers of their informal review rights, such as when Officers should escalate or treat requests as formal complaints.
- There is also limited mention of ATO initiatives such as In-House Facilitation⁷⁸ or Dispute Assist⁷⁹, which are designed to assist vulnerable taxpayers and may be relevant in some taxpayers' circumstances.
- All templates included a link to the ATO's website for further information on formal review rights or the *Taxpayers' Charter*. Although the ATO's website contains extensive information, some of the suggested search terms on the ATO's written templates did not yield the relevant search results.

⁷⁸ See ATO, *In-house facilitation* (Web Page, 29 Sep 2017) <<https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/options-for-resolving-disputes/in-house-facilitation/#:~:text=In-house%20facilitation%20is%20a%20mediation%20process%20where%20an,case%20officers%20to%3A%20identify%20the%20issues%20in%20dispute>>.

⁷⁹ See ATO, *Dispute Assist* (Web Page, 27 July 2021) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/Dispute-Assist/>>.

Our recommendations and reasons

Recommendation 1

The IGTO recommends that the ATO plays a pro-active role in informing taxpayers of their rights to review, complain and appeal decisions and develop strategies to discharge this role, including by;

- a. updating the *Taxpayers' Charter* to include an express right to be informed of taxpayer rights to review, complain and appeal decisions and all relevant channels to do so; and
- b. requiring (encourages or instructs) its Officers to communicate clearly and completely (i.e. comprehensively) information to taxpayers of their rights to review, complain and appeal the relevant administrative decisions.

Note clear and complete information for these purposes would include the option and right to question and challenge the ATO's actions and decisions - including details on all relevant complaint and review channels available. This may be provided in the form of a Summary Booklet, Fact Sheet or other webpage that is available electronically, in hard copy or both.

Reasons

- The *Taxpayers' Charter* currently includes the right to question and the right to make a complaint. However, in practice, this is premised on taxpayers being aware of their rights and how they can exercise these rights to question or challenge the ATO's actions and decisions. An express right for taxpayers to be informed of their right to review, complaint an appeal an ATO's decision ensures that the ATO will proactively communicate such information and that taxpayers can expect to be provided with such information from the ATO officer when they are advised of a decision.
- Taxpayers should be equipped with clear and complete information to allow them to make an informed decision on the steps they can take to challenge or question the ATO's actions or decision. This is consistent with all the reasons noted at C.11.
- The IGTO considers that it is good administrative practice, for the ATO to actively provide taxpayers with clear and complete information about their rights to question or challenge the ATO's actions or decisions without the need for taxpayers to request or prompt the ATO for such information.

Recommendation 2

Consistent with Recommendation 1 and the premise or principle that the ATO will proactively inform taxpayers of their rights to question and challenge the ATO's actions and decisions, the IGTO recommends that the ATO:

- a. ensure all ATO Officers whose responsibilities include making decisions about taxpayers' tax affairs are aware of their obligations in this respect when engaging with taxpayers and tax practitioners; and

B. Our key findings, recommendations, and reasons

- b. support its Officers to understand the range of available channels to question or challenge ATO decisions and actions, including by requiring all ATO Officers to undertake relevant training courses on these matters that are refreshed on a regular basis.

Reasons

- The effective communication of taxpayer rights to question or challenge the ATO's actions and decisions relies on ATO Officers' awareness and understanding of their obligations in this regard. ATO Officers should also be made aware of the potential consequences for not adhering to the Commissioner's instructions, as the consequences could be severe.
- To assist ATO Officers to understand what is required of them and how to meet their obligations, they need to be supported by senior management in the form of guidance and training. Guidance helps ATO Officers to know what information they need to communicate and when they need to communicate the information. Training educates ATO Officers of the rights and obligations under the *Taxpayers' Charter* and the review rights that are available. This helps ATO Officers to relay the relevant information to taxpayers when providing information on the channels to challenge or question the ATO's actions or decisions.

Recommendation 3

The IGTO recommends that the ATO improve its data capture and reporting to measure its performance against the rights that taxpayers have under the *Taxpayers' Charter*. This should include:

- a. complete data in relation to compliance with the *Taxpayers' Charter* in respect of all complaints;
- b. whether the ATO advised the taxpayer of their right to question and right to complain; and
- c. developing public reporting on this data to assure itself and the community how it is honouring the *Taxpayers' Charter*.

Reasons

- The IGTO has previously recommended, in the *Review into Taxpayers' Charter and Taxpayer Protections*⁸⁰, that the ATO improve its monitoring and reporting of performance against the *Taxpayers' Charter* by matching complaint cases against the *Taxpayers' Charter* principles and publicly reporting on its annual performance. The ATO agreed to this recommendation, but it has yet to be implemented and reported on its annual report.
- As noted at paragraphs D.54 – D.56, there is no requirement (statutory or otherwise) for the ATO to report on its performance against the *Taxpayers' Charter*. The ATO's existing reporting on the explanation of decisions is only limited to the number of objections resolved and number of private binding rulings issued. The IGTO considers that this does not completely or accurately measure the ATO's performance against the commitments set out in the *Taxpayers' Charter*. This is because the

⁸⁰ Inspector-General of Taxation and Taxation Ombudsman (IGTO), *Review into Taxpayers' Charter and Taxpayer Protections* (Report, 2016) Rec 1d).

B. Our key findings, recommendations, and reasons

number of objections and private binding rulings does not measure whether the ATO is explaining the decision it has made.

- Similarly, in relation to the right to question, the ATO's performance measure is the number of complaints lodged. The IGTO considers that this measure also does not completely or accurately measure its commitment on the right to complain because it only includes approaches by taxpayers that have been classified by the ATO as a formal complaint.
- Since April 2018, the ATO has captured data on the rights of taxpayers under the *Taxpayers' Charter* that arises as the main complaint issue and whether a *Taxpayer's Charter* right has been met in complaint resolution cases (i.e., cases that are received and managed as a complaint by ATO complaint resolvers). However, this data capture could be improved because whereas multiple complaint issues can be recorded in the ATO systems, only one *Taxpayers' Charter* right can be recorded per complaint issue raised. The inability to select more than one *Taxpayers' Charter* right that applies to a complaint issue does not adequately measure the ATO's adherence to the principles in the *Taxpayers' Charter*. Furthermore, this data is not captured in complaints that are resolved during first contact with taxpayers by frontline ATO officers. In these first contact resolution cases, the ATO officer identifies the complaint issues but does not make an assessment whether a *Taxpayers' Charter* right may be at issue and whether it has been met.
- While the ATO captures data on its adherence to the principles set out in the *Taxpayers' Charter* in some complaints, it does not currently have reporting on this data. Improving the ATO's current data capture on the adherence to the principles set out in the *Taxpayers' Charter* to allow for Officers to select more than one *Taxpayers' Charter* right that applies to a complaint issue and extending this data capture to all complaints will provide the ATO with better information to measure its adherence to the principles set out in the *Taxpayers' Charter*. Developing reporting on this data provides accountability and assurance to both ATO senior management and the community that the ATO is adhering to the principles set out in the *Taxpayers' Charter*.

Recommendation 4

Consistent with Recommendation 1, where the ATO does not issue written correspondence to taxpayers in relation to its actions or decisions, ATO Officers should:

- a. Ensure that taxpayers are verbally informed of their rights to formally challenge or question the ATO's decisions; and
- b. Inform taxpayers that they can request the decision also be communicated in writing.

Reasons

- During the ATO walk-throughs conducted, it was identified that there may be instances when the ATO does not issue written correspondence to taxpayers. Overwhelmingly, the survey results indicate that 96% of respondents believe that the effective communication of taxpayer rights by the ATO is very important. As such, the IGTO considers that there should be consistency between the ATO's verbal

B. Our key findings, recommendations, and reasons

and written communications and the ATO should ensure that all taxpayers are informed of their rights to challenge or question the ATO's decisions.

- As noted above, there is little guidance provided to Officers to assist in advising taxpayers of their informal review rights, as well as when to escalate or treat requests as formal complaints. Rather, there appears to be reliance on the taxpayer being aware of their rights to challenge or question the ATO's decision, as well as requesting a written copy of the decision. The IGTO acknowledges the difficulty for taxpayers in knowing precisely what questions to ask or how to prompt follow up or further action from the ATO during their interactions, particularly when the ATO is communicating a decision. The IGTO also recognises the importance of having a written record of the decision, particularly when taxpayers may wish to seek advice from external parties. This is explored in greater detail in paragraphs E.14 – E.15.
- The IGTO considers that it would be good administrative practice for the ATO to take a proactive role and provide taxpayers with relevant information about their rights to question or challenge the ATO's actions or decisions. This fosters a transparent and positive relationship with the taxpayer.
- The ATO should also make it clear to the taxpayer that the information communicated can also be readily provided in writing and the taxpayer may be able to request this any time throughout their engagement with the ATO.

Recommendation 5

The IGTO recommends that the ATO ensure information relating to taxpayer rights to complain, review and appeal can be easily located on the ATO's website.

Reasons

- The ATO has extensive information about taxpayer rights to complain, review and appeal on its website. However, as raised in paragraphs E.28 – E.31, this information may not always be easily located by the taxpayer.
- Consistent with the points raised in Recommendation 1, the IGTO considers that it would be good administrative practice for the ATO to guide taxpayers through the relevant resources as it will assist the taxpayer in better understanding their rights to complain, review and appeal. This also assists ATO Officers (when they are speaking with taxpayers) to easily refer the taxpayer to the relevant resource.
- The IGTO considers that taxpayers should not be disadvantaged by virtue of not having access to a computer or the internet. There should be alternate avenues to access the information communicated on the ATO's webpages. This ensures that all taxpayers are properly informed of their rights to complain, review and appeal.

Recommendation 6

The IGTO recommends that, as part of its communication to taxpayers, the ATO should ensure that taxpayers are informed about:

- a. their right to lodge a complaint with the ATO (including a formal complaint with the ATO's Complaints Unit), and encourage taxpayers to do so should they have any concerns or are dissatisfied with the ATO's actions or decisions; and
- b. the availability of the IGTO's services and how to engage with the IGTO where they have been unable to address their concerns through a complaint with the ATO.

Reasons

- To accommodate instances where Part IVC rights may not be the only or most appropriate avenue to resolve the taxpayer's concerns, the taxpayer community should be made aware of other informal review channels such as making a formal complaint to the ATO Complaints Unit and the IGTO. Communicating the availability of these services provides the taxpayer other avenues to avoid or resolve disputes as early as possible.
- The IGTO's survey results indicate that rights relating to lodging a complaint with the ATO and the IGTO were the least regularly communicated rights in the ATO's communications, with 35% and 12% respectively. Additionally, close to 50% of the IGTO survey respondents rated the ATO's communications as not being 'very effective' in the areas including the Taxpayer right to lodge a formal ATO complaint and request an independent investigation by the IGTO.
- This was also a feature identified by the IGTO in this review investigation. In the sample of written templates reviewed, only one letter (within the sample of 50 templates reviewed) informed taxpayers about lodging a complaint. All other written templates in the sample referred to general information about taxpayer rights and obligations under the *Taxpayers' Charter* and included a website link to the relevant page. Taxpayers are still required to navigate through the information provided on the ATO's website to locate the relevant resources on lodging a complaint.
- Complainants, and taxpayers or their advisers in general, have previously expressed frustration to the IGTO about not being aware of its roles and functions earlier. Recommendation 6 assists in building awareness of the IGTO and its services amongst the taxpayer community, which is consistent with recommendations raised by Australian Small Business and Family Enterprise Ombudsman (ASBFEO)⁸¹ and Parliamentary Committees.⁸² The recommendation also accords with the *Taxpayers' Charter* and specifically, the ATO respecting the taxpayer's right to make a complaint. Communicating the availability of these services provides the taxpayer with another avenue which either avoids or resolves disputes as early as possible.

⁸¹ Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *A tax system that works for small business report* (Report, March 2021) 7 [15].

⁸² See Senate Economics Legislation Committee, Parliament of Australia, *Senate Economics Legislation Committee report: Performance of the Inspector-General of Taxation* (Report, 17 June 2020) 44 [3.70].

B. Our key findings, recommendations, and reasons

- 86% of the complaints lodged online with the IGTO between July 2018 and June 2020 indicated that they had lodged a complaint with the ATO, but the ATO did not have a record of a complaint having been lodged.⁸³ In these instances, the IGTO refers the complaint to the ATO Complaints Unit and provides the ATO with the first opportunity to resolve the complaint. Recommendation 6 takes into consideration the general complaint handling processes between the ATO and IGTO and, as such, includes encouraging the taxpayer to approach the ATO Complaints Unit to lodge a complaint with them in the first instance.

⁸³ IGTO, *Annual Report 2020* (Report, 2021) 14.

C. ATO Executive Guidance and Governance Arrangements for the Communication of Rights and Reasons

C.1. Good governance is important to ensure transparency and accountability of the ATO's actions, which in turn strengthens taxpayers' confidence in the ATO and the tax system.

C.2. The ATO is expected to have sound governance arrangements in place for its communications to taxpayers. The governance and guidance arrangements may include defined objectives for the ATO's communications, clear expectations on the format and content, set processes for the development of ATO's communications, appropriate reporting, and review frameworks to ensure the currency of information and relevance of the ATO's communications.

C.3. The IGTO examined some of the governance arrangements that are in place within the ATO for its communications of taxpayer rights. These include:

- The *Taxpayers' Charter*
- CEIs
- ATO Policies
- Internal Audit

C.4. The IGTO's observations and recommendations are set out below.

Taxpayers' Charter contains rights relating to complaints and review

C.5. The Australian taxation system is based on self-assessment and voluntary compliance. The ATO's actions and relationship with the community have a strong influence in shaping the behaviour of taxpayers. The *Taxpayers' Charter* defines the relationship the ATO seeks to establish and maintain with the community. It sets out the 'rights' and 'obligations' taxpayers have in dealing with the ATO on tax, superannuation and other laws that are administered by the ATO. Adhering to the principles outlined in the *Taxpayers' Charter* will promote voluntary compliance and better engagement with the ATO and the overall tax system.

C. ATO Executive Guidance and Governance Arrangements for the Communication of Rights and Reasons

C.6. Relevant to this review investigation, the 'rights' listed in the *Taxpayers' Charter* include:⁸⁴

<i>Decisions</i>	<p><i>When making decisions about you we will:</i></p> <ul style="list-style-type: none">➤ <i>Inform you of your rights or obligations</i>➤ <i>Keep you informed of our progress</i>
<i>Your right to question</i>	<p><i>We will outline your options if you want a decision or action reviewed including, legal review rights and the formal complaint process. We will:</i></p> <ul style="list-style-type: none">➤ <i>Try to resolve problems quickly and fairly</i>➤ <i>Keep you informed of progress</i>

C.7. One of the supporting pages to the *Taxpayers' Charter – Taxpayers' Charter – what you need to know*, outlines what taxpayers can expect from the ATO.⁸⁵ It provides that **taxpayers can expect the ATO to clearly explain its decision and provide taxpayers with a contact number or email address for the area of the ATO that is handling the matter.** Taxpayers are encouraged to contact the ATO if they have questions or think the ATO has made a mistake. Taxpayers also have the right to have an ATO's decision made about them reviewed. The *Taxpayers' Charter* provides that the ATO will:

- Explain how the decision can be reviewed and if there are time limits to request a review;
- Explain how review options differ if there are multiple review options available to the taxpayer in relation to a particular decision. This may include reviews that look at the merit of the decision and reviews that look at the process; and
- Allocate the review to an independent officer who was not involved in the original decision.⁸⁶

C.8. Importantly, the *Taxpayers' Charter* states that the ATO wants to fix any mistakes quickly and at the least cost to both the taxpayer and the ATO. This is an important approach as some taxpayers may not have the financial means to formally litigate a dispute. Furthermore, resolving a dispute quickly may prevent the dispute from escalating further and may strengthen the relationship between the taxpayer and the ATO.

⁸⁴ See above n 15.

⁸⁵ ATO, *Taxpayers' charter – what you need to know* (Web Page, 3 October 2018) <<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter---what-you-need-to-know/>>.

⁸⁶ See *ibid.*

C. ATO Executive Guidance and Governance Arrangements for the Communication of Rights and Reasons

C.9. Complaints can provide rich data to an organisation with feedback that can be utilised to improve its services. Taxpayers should be encouraged to make complaints about any concerns they have in relation to an action or decision of the ATO. Indeed, this is supported by the *Taxpayers' Charter* where it provides that the ATO will respect a taxpayer's right to lodge a complaint. The *Taxpayers' Charter* provides information on how taxpayers may lodge a complaint, including information on lodging a complaint with the IGTO. However, it does not state (and therefore require) that the ATO must inform taxpayers of the complaint services that are available to them in relation to an ATO decision.

C.10. In addition, the *Taxpayers' Charter* contains another supporting page – *Taxpayers' Charter – if you're subject to review or audit*, which provides further information on what taxpayers can expect from the ATO if they are subject to a review or an audit.⁸⁷ It explains that the ATO will clearly explain the basis for any adjustments made and any penalty imposed as well as informing taxpayers how they can get the decision reviewed. However, it appears that the communication as to how the decision can be reviewed, does not extend to lodging a complaint.

C.11. The IGTO considers that **the ATO should proactively communicate all channels available to taxpayers to complain, review and appeal when communicating its decision**. This equips taxpayers and their representatives with all options that are available to raise their concerns about the ATO's decision. Some concerns may be more appropriately addressed through a complaints channel. Actively informing taxpayers about their right to lodge a complaint also promotes the ATO's openness to receiving complaints. The Australian/ New Zealand Standard AS/NZS ISO 10002:2014 *Guidelines for complaint management in organisations* states that “[i]t is important all people feel encouraged to voice their concerns about an organization's product, system or services”.⁸⁸ Additionally, complaints provide a rich source of data to understand taxpayer's dissatisfaction and identify areas for improvement. Therefore, taxpayers should be encouraged to register their complaints.

Chief Executive Instructions exist in relation to taxpayer rights to complain and review

C.12. The ATO has a number of CEIs outlining the Commissioner's instructions to ATO Officers. ATO Officers must comply with the responsibilities outlined in these CEIs and **failure to do so may constitute a breach of the Australian Public Service Code of Conduct or contract terms**.⁸⁹ The IGTO identifies two CEIs relevant to this review investigation:

- *Respecting Clients Rights of Review CEI*; and
- *Managing Complaints, Compliments, Feedback and Suggestions CEI*.⁹⁰

⁸⁷ ATO, *Taxpayers' charter – if you're subject to review or audit* (Web Page, 22 October 2018) <<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter---if-you-re-subject-to-review-or-audit/>>.

⁸⁸ Australian/New Zealand Standard, *AS/NZS 10002:2014 Guidelines for complaint management in organizations* (29 October 2014).

⁸⁹ ATO, *Chief Executive Instructions* (Internal ATO document).

⁹⁰ ATO, *Respecting Clients' Rights of Review CEI* (Internal ATO document, 1 April 2021); ATO, *Managing Complaints, Compliments, Feedback and Suggestions CEI* (Internal ATO document, 1 April 2021).

C. ATO Executive Guidance and Governance Arrangements for the Communication of Rights and Reasons

C.13. The *Respecting Clients' Rights of Review CEI* sets out ATO Officers' responsibilities for respecting taxpayer rights of review in accordance with the commitments under the *Taxpayers' Charter*. It states that **ATO Officers who make decisions about taxpayers' affairs or action request for review must**, amongst other things:

- **Provide an explanation of the decision**, to the extent that the Officers can do so under the law, using clear language to help taxpayers understand the reasoning;
- **Inform taxpayers about relevant rights of review** when a decision is provided about their tax affairs; and
- **Encourage taxpayers to talk to their case officer** if they have questions or concerns about a decision.

C.14. The supplementary document to the *Respecting Clients' Rights of Review CEI*, *Respecting Clients' Rights of Review – Questions and Answers*, provides that decisions should be explained using plain and clear language and all correspondence should include contact details of the relevant ATO Officer who can deal with the taxpayer's enquiry about the decision. Importantly, it states the following about informing taxpayers of their review rights:

Informing clients about their review rights:

With the explanation of the relevant decision, provide information to the client on how to proceed to review, that is available to them under the law

*If the client is dissatisfied with an administrative decision or action, or they feel that the ATO has not met the commitments in the Charter, treat those as a complaint. Refer to the *Managing Complaints, Compliments, Feedback and Suggestions CEI**

If a client requests a review of a decision there may be several review mechanisms that could be used. When considering which is most appropriate, you are to take into account any legal requirements, the client's preferences, the relative costs and benefits to the client and the ATO of the various mechanisms available

Finalising the review

When finalising the review:

Document your decision and reasoning

Advise the client in writing of the review decision and any further rights of review available to them.

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C.15. In addition to the *Respecting Clients' Rights of Review CEI*, the CEI for complaints – *Managing Complaints, Compliments, Feedback and Suggestions CEI* provides instructions to ATO Officers on managing complaints.⁹¹ These instructions include that ATO Officers are to:

- record all complaints in the ATO's case management system, Siebel;
- manage all complaints in accordance with the ATO's service commitments and in accordance with the *Taxpayers' Charter*;
- communicate clearly with complainants and provide complainants with access to the Officer who is managing the complaint; and
- provide information to complainants about their further rights of review such as the IGTO or the Commonwealth Ombudsman.

C.16. It is encouraging to observe that at a corporate level, the ATO has policies in place in relation to taxpayer rights to complain, review and appeal. The CEI on review rights reflects the ATO's commitment to provide taxpayers with the reasons for its decisions and to communicate to taxpayers the review rights that are available to them should they wish to review and appeal the ATO's decisions. The CEI clearly sets out what is expected of ATO Officers when they make decisions about taxpayers' tax affairs.

C.17. The Commonwealth Ombudsman's *Better Practice Complaint Handling Guide* suggests that "*good complaint handling is a culture where all staff understand the value of complaints and are committed to delivering a high-quality service.*"⁹² For complaint handling to be effective and for an organisation to have a strong culture of valuing complaints, there needs to be strong commitment from the head of the agency and the executives.

C.18. The CEI on complaints shows that there is commitment at the senior level of the ATO to incorporate complaints as a part of the ATO's activities.

The ATO Disputes Policy supports the communication of information to enable taxpayers to choose suitable dispute resolution processes

C.19. The ATO's *Disputes Policy* sets out the ATO's approach and principles for managing disputes, including:

- Complaints;
- Tax and superannuation disputes;
- Debt disputes;
- Access to information disputes;

⁹¹ See above n 74.

⁹² Commonwealth Ombudsman, *Better Practice Complaint Handling Guide* (Web Page, 2007)

<<https://www.ombudsman.gov.au/publications/better-practice-guides/Better-practice-complaint-handling-guide>>.

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- Compensation (excluding workers' compensation);
- Disputes relating to a breach of contract between the ATO and its suppliers; and
- Workplace issues with ATO employees.⁹³

C.20. The policy states that:

Objectives

By providing information about our overall approach to dispute management, and how we deal with specific types of disputes, we aim to promote a resolution culture based on all of the following:

- *effective communication*
- *genuine engagement*
- *collaboration*
- *strategies that are*
- *fair and proportionate to the matters in dispute*
- *lead to early resolution at minimal cost.*

C.21. The policy also sets out the key principles of dispute management. Relevantly, one of the key principles is “[e]verybody should have access to, and seek out, information that enables them to choose suitable dispute resolution processes”. While the policy includes links to the different dispute resolution options, taxpayers and their representatives may find it difficult to know which dispute resolution options are available to them in relation to a specific ATO decision.

C.22. The ATO’s *Disputes Policy* is available on the ATO’s website. However, taxpayers and their representatives may not be aware of the existence of this policy. **The IGTO found it difficult to navigate the ATO’s website to get to the webpage that contains the policy and had to use the exact phrase in the keyword search [the keywords included disputes policy] to locate the policy.** Taxpayers who are not aware of the policy will find it difficult to find it on the ATO’s website.

C.23. The IGTO also considers that for the principle mentioned in paragraph C.20 to be achieved, the ATO should seek to actively provide clear and complete information on all complaint, review and appeal rights that are available to taxpayers in relation to a particular decision. This ensures that taxpayers and their representatives are equipped with all information to make an informed decision about the most suitable process if they have concerns or disagree with the ATO’s decision.

⁹³ See above n 16.

The ATO has an obligation to act as a Model Litigant

C.24. Under the *Legal Services Directions 2017*, the Commonwealth and all Commonwealth agencies are required to act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or a Commonwealth agency. The nature of the obligations⁹⁴ include:

(d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate

(e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:

(i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true

(ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum

(iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve the litigation, including settlement offers, payments into court or alternative dispute resolution, and

(iv) ensuring that arrangements are made so that a person participating in any settlement negotiations on behalf of the Commonwealth or a Commonwealth agency can enter into a settlement of the claim or legal proceedings in the course of the negotiations

(f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim

C.25. Under the model litigant obligations (**MLO**), the Commissioner cannot start legal proceedings until he is satisfied that litigation is the most suitable method to resolve a dispute. **The Commissioner is also required to do his best to avoid, prevent and limit the scope of litigation as well as keeping the costs of litigation to a minimum.** The MLO applies to litigation before the courts, tribunals, inquiries, and in arbitration and other alternative dispute resolution processes.⁹⁵ Where taxpayers have concerns about the ATO's adherence to the MLO, they may lodge a complaint with the ATO, and the complaint will be considered by the ATO's General Counsel area.⁹⁶

C.26. It would be difficult for the Commissioner to meet the MLO without providing reasons for his decisions or communicating all taxpayer rights to raise concerns or dispute an ATO decision. This is because reasons for decisions inform taxpayers why the decision has been made and, most importantly, the information needed to evaluate whether they should accept or dispute the decision. Communicating all taxpayer rights to complain, review and appeal also assists the Commissioner in preventing and avoiding litigation matters which can be costly and time-consuming. In some circumstances, taxpayers may have

⁹⁴ See above n 77.

⁹⁵ See *ibid.*

⁹⁶ ATO, *Our obligations as a model litigant* (Web Page, 25 October 2018) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Model-litigant/>>.

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concerns about a decision that can be better addressed through other channels (such as lodging a complaint) and therefore, minimise unnecessary litigation.

C.27. The following section of this report details the IGTO's investigation of the ATO's practical implementation of these governance arrangements and its accountability.

C.28. Chapter E of this report includes analysis of the ATO's written communications and whether all the ATO's written communications adhere to the CEIs.

Summary

C.29. The ATO's existing guidance and governance documents (as noted above) support the importance and need to communicate taxpayer rights to review, complain and appeal decisions made. However, there is no express requirement to communicate these rights. Rather, there appears to be a presumption in the ATO's guidance and governance arrangements that taxpayers themselves will know of these rights and are also aware of how and when they should assert them.

Recommendation 1

The IGTO recommends that the ATO plays a pro-active role in informing taxpayers of their rights to review, complain and appeal decisions and develop strategies to discharge this role, including by;

- a) updating the Taxpayers' Charter to include an express right to be informed of taxpayer rights to review, complain and appeal decisions and all relevant channels to do so; and*
- b) requiring (encourages or instructs) its Officers to communicate clearly and completely (i.e. comprehensively) information to taxpayers of their rights to review, complain and appeal the relevant administrative decisions.*

Note *clear and complete information for these purposes would include the option and right to question and challenge the ATO's actions and decisions - including details on all relevant complaint and review channels available. This may be provided in the form of a Summary Booklet, Fact Sheet or other webpage that is available electronically, in hard copy or both.*

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.1. Good governance arrangements and documents are only effective in achieving procedural fairness for taxpayers if these procedures are integrated and adopted in the day-to-day activities of the ATO. Corporate policies establish what an organisation strives to do and defines its expectations for its employees, but the policies are of little use if they are not actually applied across the organisation.

D.2. Accountability plays a key role in ensuring the governance arrangements in place meet the needs of the organisation, are relevant and the corporate policies are applied across an organisation. Accountability can be achieved through clearly defined goals and an appropriate reporting framework to continually monitor progress against these goals. For employees to be held accountable, they need to know and understand what is expected of them. They also need to be held responsible for their actions and their achievements against the organisation's objectives.

D.3. While it is encouraging that the ATO has established CEIs relating to taxpayer rights, for these CEIs to be effective, they need to be implemented and applied consistently across the ATO. This chapter outlines the IGTO's investigation on how the ATO implements the CEIs in practice, in particular:

- what guidelines and procedures are in place in the various business areas to support the CEIs;
- what training is provided to ATO Officers;
- what processes are in place to develop and review ATO's written communication templates; and
- how the ATO determines what information on taxpayer rights is included in its correspondence templates.

D.4. This chapter also outlines the outcomes of the IGTO's investigation on what reporting framework has been established to hold ATO Officers accountable with regards to the application of the CEIs when communicating decisions about taxpayers' tax affairs and taxpayer rights to complain, review and appeal.

Corporate level guidelines and business area specific procedures support the CEIs, but the procedures do not always refer to the CEIs or require communication to a taxpayer of their rights

D.6. The IGTO observes that in addition to the CEIs, the ATO has corporate policies on rights of review and complaints which provide further guidance to ATO Officers.⁹⁷ These policies support the *Taxpayers' Charter* and the ATO's commitments to respect taxpayer rights to review a decision made by the ATO in relation to their tax affairs, as well as lodging a complaint with the ATO.

D.7. Specifically, the *Rights of Review* guideline states that “[u]nless there is a good reason for not doing so [the ATO] must be prepared to review a decision [the ATO] make about a taxpayer's tax affairs at their request”. This guideline further advises Officers that reviews may be done through several channels, including review rights provided for under the law⁹⁸, a review done as a matter of good administration practice under the *Taxpayers' Charter*, a complaint investigation, and a simple check to ensure an obvious mistake has not been made.⁹⁹

D.8. While the *Rights of Review* provides a brief description of the different formal and informal review rights, it does not discuss the communication of these rights to taxpayers.

D.9. Similarly, the ATO's corporate procedures on complaints – *Complaints, compliments and suggestions* provides information on the difference between complaints, compliments, and suggestions. The associated internal intranet pages provide ATO Officers with information on how to action a complaint, the role of a complaint resolver, the service standard to resolve a complaint and the role of the ATO's Complaints area.

D.10. The IGTO observes that the ATO encourages its Officers to view complaints as a source of feedback and an opportunity to improve its performance. The ATO expects its Officers to contact the complainant within three business days following receipt of the complaint and resolve the complaint within fifteen business days. If the complaint cannot be resolved within fifteen business days, the ATO expects the Officer to contact the complainant to negotiate an extended resolution date.

D.11. The ATO explained that the CEIs and corporate level policies on taxpayer rights of review and complaint are further supported by internal procedures and guidance that are developed specifically for the relevant business areas. The IGTO reviewed a sample of ATO procedures across different business areas, including I&I, SB, Debt and SEO, to examine whether the ATO business areas' procedures incorporated the instructions set out in the CEIs on respecting taxpayer rights to review and complain.

⁹⁷ ATO, *Rights of review*, ATO intranet, accessed on 15 April 2021; ATO, *Complaints, compliments and suggestions*, ATO intranet, accessed on 15 April 2021.

⁹⁸ Review rights provided for under the law includes review rights under Part IVC of the TA Act and ADJR Act.

⁹⁹ ATO, *Rights of review* (Internal ATO document, 9 June 2020).

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.12. The IGTO found that **not all ATO procedures in these business areas refer to the CEIs**. The procedures in the SEO business area includes a reference to the CEIs. In comparison, the procedures in the I&I business area did not include a reference to the CEI.¹⁰⁰

D.13. The absence of a reference to the CEIs and the requirement for Officers to follow them, at least raises a question as to whether ATO Officers are aware of the existence of these instructions, what they are required to do under the CEIs, and the potential consequences (including APS Code of Conduct implications) for not following the CEIs.

D.14. Given the CEIs are Commissioner's instructions and the potential serious consequences if the CEIs are not followed, it is important that ATO Officers are informed of these CEIs – so they may strive to adhere to the instructions.

D.15. The IGTO also found that while the procedures may include a reference to the CEIs, they **do not contain guidance to ATO Officers about communicating to taxpayers their right to complain and review**. For example, in the SEO business area's procedure for superannuation guarantee audit cases, the 'communicate outcome' task includes the following guidance:

- discuss the result of the ATO's audit;
- provide further education as required;
- encourage the taxpayer to complete the ATO's education course on complying with superannuation guarantee obligations;
- discuss the repaying of the debt; and
- issue the finalisation letter to the complainant.¹⁰¹

D.16. There is, however, no guidance on communicating or discussing with the taxpayer their rights to review, complain and appeal the ATO's decision. The IGTO is of the view that, in addition to written correspondence, information on taxpayer rights to complain, review and appeal should also be provided during a telephone conversation with the taxpayer. This ensures that taxpayers understand what rights they have and may promptly clarify with the Officer before receiving the finalisation letter.

¹⁰⁰ ATO, *Individuals & Intermediaries: Engagement and Assurance – Streamlined Siebel Case Management* (Internal ATO document, April 2021); ATO, *Individuals & Intermediaries: Engagement and Assurance – TACS Siebel Case Management* (Internal ATO document, April 2021).

¹⁰¹ ATO, *Audit streamline – SG High Risk procedure* (Internal ATO document, April 2021).

ATO's internal training courses relating to taxpayer rights to complain, review and appeal are not mandatory

D.17. The ATO makes available internal training courses relating to taxpayer rights to review and complain.¹⁰² This includes courses on the *Taxpayers' Charter*, the options available to a taxpayer to seek a review of an ATO's decision and issuing apologies.

D.18. The course on the *Taxpayers' Charter* explains what the *Taxpayers' Charter* is, where it is located and what rights and obligations are included in the *Taxpayers' Charter*. It provides examples on when the *Taxpayers' Charter* principles are met or not met by the ATO. It also educates Officers on how the *Taxpayers' Charter* rights are enforced - through the complaints mechanism within the ATO and the complaints mechanism offered by the IGTO.

D.19. The *Review of ATO decisions* training course provides detailed information on the ATO's dispute management and a summary of the various avenues that may be available to taxpayers to seek a review of an ATO decisions. The avenues outlined in this course includes formal review rights and complaints channels within the ATO and external scrutineers including the Commonwealth Ombudsman and the IGTO.

D.20. While the training courses include information on respecting taxpayer rights to complain and review and how complaints should be handled by ATO Officers, the IGTO observes that **the training courses do not educate Officers on the communication of these rights to taxpayers and the importance of such communications.**

D.21. The ATO explained to the IGTO that **the training courses discussed above are not a part of the suite of mandatory training courses for ATO Officers.**¹⁰³ ATO Officers may be recommended by their managers to complete these courses if they are identified as relevant by the business area that the Officers work in.¹⁰⁴ As the training courses are not mandatory, there is no specific time limit to complete them or a requirement for periodic completion of these courses.¹⁰⁵

¹⁰² ATO, *Taxpayers' Charter – refresher* (Internal ATO training course, October 2017); ATO, *Review of ATO decisions*, (Internal ATO training course, 6 September 2018); ATO, *Apologies* (Internal ATO training course, October 2018).

¹⁰³ ATO response to the IGTO – document dated 8 January 2021.

¹⁰⁴ See *ibid.*

¹⁰⁵ *Ibid.*

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.22. The ATO advised the IGTO of the number of ATO Officers that have attended these non-mandatory courses as follows:¹⁰⁶

Course Name	Number of Attendees		
	FY21	FY20	FY19
Review of ATO decisions	10	6	2
<i>Taxpayers' Charter</i> - refresher	66	212	27

D.23. The ATO explained that it does not believe that the completion rates for these courses are indicative of Officer's awareness of these areas.¹⁰⁷ This is because, in the ATO's view, all new Officers are required to complete the *Working in the ATO* training course upon commencing their role in the ATO and the training course makes references to the *Taxpayers' Charter*.¹⁰⁸ They also referenced the mandatory annual training package which includes a brief reference to the *Taxpayers' Charter* and this has a completion rate of 99% amongst ATO Officers.¹⁰⁹

D.24. Furthermore, the ATO has explained that ATO Officers are made aware of the *Taxpayers' Charter* and review rights through on-the-job training, as references to these areas are included in audit, review, and complaint procedures.¹¹⁰ ATO Officers would also be aware of the *Taxpayers' Charter* through the inclusion of the *Taxpayers' Charter* in outbound correspondence that they deal with on a daily basis.

D.25. The IGTO observes that *Working in the ATO* training course only includes a general link to the *Taxpayers' Charter* in the section about ethical decision making and does not expand on the specific taxpayer rights and obligations that are set out under the Charter. In the IGTO's view, the **annual mandatory package and *Working in the ATO* training course does not provide sufficient training to equip ATO Officers with the relevant information and understanding required regarding taxpayer rights under the *Taxpayers' Charter* and the avenues that taxpayers have to question or dispute an ATO decision.** While ATO correspondence may include a reference to the *Taxpayers' Charter* and formal review rights available under Part IVC of the TA Act, the IGTO has observed that other avenues to question an ATO decision such as complaints or informal processes are not included. This observation will be discussed in Chapter E of this report.

D.26. The IGTO is of the view that the training for ATO Officers (particularly those Officers in the business areas that make decisions) needs to ensure they are equipped with a clear understanding and complete information about the taxpayer rights to complain, review and appeal so that the Officers can proactively communicate the appropriate information to taxpayers.

¹⁰⁶ ATO response to the IGTO – email on 29 July 2021.

¹⁰⁷ See *ibid.*

¹⁰⁸ ATO response to the IGTO – email on 11 March 2021.

¹⁰⁹ See above n 106.

¹¹⁰ See *ibid.*

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.27. During this review investigation, the IGTO was provided with a walk-through of a specific process within various business areas of the ATO and the communication that takes place between the ATO and a taxpayer. One of these walk-throughs was with the I&I business areas and their audits on work related expenses. The IGTO sought to understand what training is provided to Officers in the I&I business area relating to the communication of taxpayer rights to complain and review. The I&I business area explained that their Officers are trained in managing conversations with taxpayers and identifying cues that may suggest the taxpayer is seeking to lodge a complaint.¹¹¹ A list of the training courses that are completed by Officers in the I&I business area was provided to the IGTO.¹¹² The IGTO observed that in one of these courses there is guidance to Officers that they should assist taxpayers to lodge a complaint if that is what the taxpayer is seeking to do.¹¹³ However, the **training courses do not include guidance on communicating other taxpayer rights such as review and appeal rights.**

ATO guidance supports taxpayer rights to complain and review but they do not require pro-active communication of these rights to taxpayers

D.28. The above commentary highlights that the ATO's internal documents guide its Officers to support taxpayer rights to complain, review and appeal. However, the **ATO internal guidance presumes that taxpayers are already aware of the *Taxpayers' Charter*, their rights under the Charter and know how to exercise them.** There is little guidance to Officers about communicating these rights to taxpayers and explaining to taxpayers how they can exercise their rights.

D.29. Taxpayers should be actively informed of their rights to complain, review and appeal and the ATO's decisions regarding their tax affairs. This ensures that they are afforded procedural fairness and are equipped with sufficient information to make an informed decision about their next steps. Being more transparent with the complaint and review mechanisms that are available and providing complete information about these mechanisms will also encourage taxpayers to raise any concerns promptly with the ATO, so these disputes may be resolved quickly. The ATO's internal training course – *Taxpayers' Charter – refresher* alluded to the importance of taxpayers' awareness of their rights and obligations. It states that *"[t]he more taxpayers know about their rights and obligations to their tax affairs, the more confidence they will have in their dealings with us. We help taxpayers to be heard by telling them what they can do if they are dissatisfied with our decisions, action or service"*.¹¹⁴

D.30. The ATO's internal training course - *Review of ATO decisions* stated that *"[t]he Commissioner wants taxpayers to be confident they can come to the ATO with problems or complaints and have them resolved quickly, fairly and before they seek a resolution outside"*. It also stated that *"[e]fforts to resolve disputes should be made as early as possible, including both before and through legal proceedings"* and *"disputes should be resolved in the simplest and most cost-effective way that is*

¹¹¹ ATO response to IGTO – high-level walkthrough of work-related expenses audit for IGTO held on 1 March 2021.

¹¹² See above n 108.

¹¹³ ATO, *Respond to Challenging Clients* (Internal ATO training course, March 2020).

¹¹⁴ ATO, *Taxpayers' Charter- Refresher* (Internal ATO training course, October 2017).

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

appropriate to the circumstances".¹¹⁵ It would be difficult for taxpayers to understand what rights they should exercise if they are not provided with clear and complete information in the first instance.

D.31. The IGTO considers that the ATO's corporate level policies, business areas' procedures and training courses should not only provide guidance on supporting taxpayer rights to complain, review and appeal an ATO's decision but these documents should also direct Officers to actively provide complete information about these rights to taxpayers.

D.32. The IGTO also considers that **Officers should be assisted with discharging their obligations under the Taxpayers' Charter and the CEIs to communicate taxpayer rights to complain, review and appeal an ATO decision**. The assistance should include Officers being made aware of their obligations about informing taxpayers of their rights when communicating the decision to taxpayers and providing them with relevant training courses. The training courses will help Officers to understand the rights that are included in the *Taxpayers' Charter* and the reviews rights that are available, so they are able to communicate the relevant information to taxpayers.

D.33. The IGTO is of the view that **all ATO officers should be made aware of their obligations to inform taxpayers of their rights to question and challenge the ATO's actions and decisions**. This is reflected in Recommendation 1. The ATO could achieve this by including the following information in all procedures relating to making a decision about taxpayers' tax affairs:

- A reference to the *Respecting Clients Rights of Review CEI and Managing Complaints, Compliments, Feedback and Suggestions CEI* (discussed further below);
- A statement that all ATO Officers must follow the CEIs, which also explains the potential consequences for not following the CEIs; and
- Guidance on advising taxpayers of their rights to review, complain and appeal ATO decisions and actions as part of the task of communicating the ATO's decision.

¹¹⁵ ATO, *Review of ATO decisions* (Internal ATO training course, September 2018).

Recommendation 2

Consistent with Recommendation 1 and the premise or principle that the ATO will proactively inform taxpayers of their rights to question and challenge the ATO's actions and decisions, the IGTO recommends that the ATO:

- a) ensure all ATO Officers whose responsibilities include making decisions about taxpayers' tax affairs are aware of their obligations in this respect when engaging with taxpayers and tax practitioners; and*
- b) support its Officers to understand the range of available channels to question or challenge ATO decisions and actions, including by requiring all ATO Officers to undertake relevant training courses on these matters that are refreshed on a regular basis.*

There is a centralised area within the ATO for the development of high-volume correspondence templates

D.34. The ATO has a standard process for the development of outbound informational and transactional correspondence that generally have a large audience base. This process is managed by the ATO's Outbound Capability team. The Outbound Capability team provides advice to business areas on the appropriate outbound solution and coordinates the end-to-end delivery of communications to ensure these communications adhere to the ATO's corporate standards for brand, channel, security, style, and design.

D.35. While Outbound Capability is responsible for the design process, the relevant business area is responsible for the development of content within the correspondence. The letter templates may be tested through client collaboration and user testing, but this generally occurs during the design of high-volume correspondence templates that have a large audience base. The ATO also explained that it captures feedback received from taxpayers regarding the correspondence templates and the feedback is used to improve the templates.

D.36. The ATO explained that the **templates are reviewed every 12 months to check that the contact details contained in the templates are correct**. Each business area also conducts their own reviews to check the currency and relevance of the content. These reviews are conducted periodically based on the business areas' individual process. The ATO advised that generally, the communication co-ordinators within the business areas would work with other stakeholders such as subject matter experts and authors of the correspondence to review the correspondence templates. The consultation and verification process are generally conducted via internal email. The correspondence templates are endorsed by an officer at the executive level 2 or higher in writing before it can proceed to issue.

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.37. The IGTO considers it reasonable for each business area to have a review process in place that is appropriate to their work. The IGTO expects that to achieve good governance and to provide assurance to senior ATO management, these review processes are verified by an officer independent from that business area.

ATO decision correspondence templates generally contain standard text on review rights, but some ATO decisions are communicated verbally and not in writing

D.38. The IGTO has observed through her complaints handling service that the ATO does not always issue its decision in writing. It is acknowledged that taxpayers may have different preferences with regards to how the ATO communicates its decisions. It is also a good client experience for the ATO to contact taxpayers by telephone to discuss the decision which may then be followed with a written correspondence.

D.39. The ATO has explained that its standard process is to communicate its decisions in writing.¹¹⁶ In some cases, there is a statutory requirement on the ATO to provide the decision in writing. For example, decisions imposing and maintaining penalties and objection decisions.¹¹⁷ The ATO also explained that in some cases, it may not issue its decision in writing. For example, where the issue is more straightforward and the ATO Officer has contacted the taxpayer by telephone to discuss the decision or the taxpayer advised the ATO they do not require the decision to be sent to them in writing.

D.40. Decisions where the ATO does not always communicate in writing include:

- Notifications of the retention of a refund within 14 days for verification purposes under s 8AAZLGA of the TA Act. Where the retention is longer than the initial short period then a written notification would be provided.
- No further action decisions for less complex reviews and audits. This usually applies in the I&I and SB business areas.
- Audit decisions issued to individuals and small businesses where the issue is more straightforward and there is no penalty imposed by the ATO. In these cases, the ATO communicates the decision by telephone.
- Decisions relating to the outcome of a complaint where the taxpayer does not wish to receive written confirmation of the outcome.¹¹⁸

¹¹⁶ See above n 103.

¹¹⁷ See *ibid.*

¹¹⁸ *Ibid.*

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.41. There are established processes within the relevant business areas which sets out the circumstances where ATO Officers may decide to not communicate the decision in writing. Regardless of whether a decision is communicated in writing, **all decisions and reasons for decision are recorded on the ATO's case management system, Siebel.**¹¹⁹ The ATO has a CEI relating to records management¹²⁰ and business areas' specific procedures also provide guidance to ATO Officers on what they need to include when recording their decision on Siebel.¹²¹

D.42. The ATO has explained that correspondence template's content owners, who are usually also the relevant business process owners, determine what information on taxpayer rights is included in the templates. The content owners consult with internal legal advice. The taxpayer rights that are included depends on the outcome being communicated and their relevance to the decision made. In most correspondence templates, they contain pre-populated standard text on relevant review rights for the decision and it usually includes a link to further information contained on the ATO's website.

D.43. In circumstances where ATO Officers may need to choose what review rights are available for the decision made, the correspondence template would include standard text on the different review and complaint rights and the ATO Officer would remove the information that is not applicable before issuing the letter to the taxpayer. The ATO generally provides supporting guidance in the business areas' specific procedures where ATO Officers need to choose the relevant review rights.

D.44. As an example, review rights differ for decisions on remission of Shortfall Interest Charge (SIC). If the amount of SIC outstanding is more than twenty percent of the shortfall amount, then taxpayers may object to a decision not to remit the SIC.¹²² However, if the SIC is less than twenty percent of the shortfall amount, then there is no objection right under Part IVC of the TA Act. In the ATO's correspondence template for decision on remission of SIC, the following is included:

Your objection rights

[Include this paragraph if SIC is more than 20% of the shortfall]

<You may object to the Commissioner's decision to not remit the SIC as the amount of SIC payable is more the 20% of the additional amount of income tax on which it is calculated.>

[Include this paragraph if SIC is 20% or less of the shortfall]

< You can't object to the SIC remission decision as the balance payable is equal to or less than 20% of the tax shortfall amount. If you don't agree with our decision, you may apply to the Federal Court or the Federal Circuit Court for a review within 28 days of the date of getting this letter. For more information visit <ato.gov.au/externalreview>>

[Include if there is an amount owing]

D.45. The IGTO observes that there is little scope provided in the template for Officers to decide what review rights and information on review rights is included in the correspondence when

¹¹⁹ Ibid.

¹²⁰ ATO, *Records Management Chief Executive Instruction* (Internal ATO document, 13 November 2020).

¹²¹ See above n 103.

¹²² TA Act s 280-170.

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

communicating their decision to a taxpayer. The exception is where review rights differ based on the specific type of decision and the taxpayer's circumstances. Most ATO correspondence templates already include standard text on review rights to ensure consistency and generally ATO Officers do not change the standard text. Accordingly, it is important that, when the correspondence template is being designed and reviewed, information on all relevant review rights are included in the template. Otherwise, taxpayers may not be provided with complete information about their rights to complain, review and appeal the ATO's decision.

D.46. The following chapter of this report (Chapter E) contains an analysis of a sample of the ATO's correspondence templates to determine whether they include complete and adequate information on taxpayer rights to complain, review and appeal an ATO's decision.

Since April 2018, ATO records match complaint issues with a main right under the *Taxpayers' Charter* but the ATO does not currently report this data – either internally or externally

D.47. Performance measures and reporting drive accountability across an organisation and provides assurance that an organisation is doing what it sets out to do. Accountability also has a positive influence on employees' behaviours.

D.48. As noted previously, the *Taxpayers' Charter* includes two rights that are relevant to this review investigation:

- Respect your right to a review; and
- Respect your right to make a complaint

D.49. During this review investigation, the IGTO sought to understand whether the ATO captures data on the complaints it has received against the two rights listed in paragraph D.48. There were 20 complaints identified in each of the 2019 and 2020 financial years.¹²³ The ATO noted that these complaints arose from issues other than the review rights themselves.

D.50. The ATO explained that it has captured data on complaint issues against *Taxpayers' Charter* rights since April 2018 in the ATO's case management system, Siebel.¹²⁴ When resolving a complaint, the ATO complaint resolver identifies and records the issues raised in the complaint. The ATO complaint resolver also identifies and records the *Taxpayers' Charter* right that applies to the issues raised in the complaint and makes an assessment on whether or not relevant *Taxpayers' Charter* right have been met.¹²⁵ The ATO advised that its complaint resolvers may select multiple complaint issues but they can only select the main (one) *Taxpayers' Charter* right that applies to each complaint issue.¹²⁶ This assessment, however, is not undertaken in ALL complaint cases – namely where the complaint is

¹²³ ATO response to IGTO – document dated 22 January 2021.

¹²⁴ ATO response to IGTO – email on 19 September 2021.

¹²⁵ ATO response to IGTO – email on 9 September 2021.

¹²⁶ See above n 124.

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resolved during the first contact between an officer in the ATO's contact centre and the taxpayer or their representative (called first contact resolution cases by the ATO).¹²⁷ These first contact resolution cases account for approximately ten percent of the overall number of complaint cases.¹²⁸

D.51. The ATO also advised that it was reporting on complaints against the *Taxpayers' Charter* rights between March 2019 and October 2020, but it currently does not have reporting on this data.

D.52. The IGTO observed that when undertaking the assessment discussed in D.50, the ATO complaint resolvers can only select one *Taxpayers' Charter* right that applies to the issues raised in a complaint. The IGTO considers that **by limiting the response to one right, the ATO is not capturing adequate data to measure its adherence to all *Taxpayers' Charter* rights**. Multiple rights should be selectable as a complaint may raise concerns that are relevant to multiple rights under the *Taxpayers' Charter* and an assessment on whether or not the *Taxpayers' Charter* have been met should be made against each right identified.

D.53. The IGTO also considers that **there would be benefit in the ATO capturing data on complaint issues against the rights outlined in the *Taxpayers' Charter*, including the right to complain and review in all complaint cases and develop public reporting on this**. The IGTO believes that this would provide the ATO with information to assure the public and itself that its Officers are upholding taxpayer rights set out in the *Taxpayers' Charter* and its Officers are following the instructions set out in the CEIs. Recording complaint themes against *Taxpayers' Charter* rights in all complaint cases would also improve data accuracy.

D.54. The IGTO previously completed the *Review into Taxpayers' Charter and Taxpayer Protections* in 2016 where we examined concerns raised in relation to the ATO's adherence to the *Taxpayer's Charter* and its effectiveness as well as the limited avenues for enforcement of the Charter principles.¹²⁹ In that review, the IGTO observed that the ATO did not have "*direct and comprehensive measurement of the ATO's compliance with the Taxpayers' Charter*" and that appropriate monitoring of the ATO's complaint handling function "*may hold the key*" in "*reinforcing [the Taxpayers' Charter] role, determining the extent of breaches and devising an appropriate solution*"¹³⁰. The IGTO recommended the ATO improve its monitoring and reporting of performance against the *Taxpayers' Charter* by matching complaint cases against the *Taxpayers' Charter* principles and publicly reporting on its annual performance. The ATO agreed to this recommendation and explained that it will, on an annual basis, report against themes, how they link to the Charter principles and what the ATO has done against these themes.¹³¹

D.55. The House of Representatives Standing Committee on Tax and Revenue (SCTR), in its *Inquiry into the 2016-17 Annual Report of the Australian Taxation Office*, also noted the IGTO's

¹²⁷ ATO response to IGTO – operational meeting on 7 September 2021.

¹²⁸ See *ibid*.

¹²⁹ See above n 80.

¹³⁰ See *ibid* 63-64.

¹³¹ *Ibid* 67.

D. Practical Implementation of the ATO’s Governance Arrangements on the Communication of Taxpayer Rights

recommendation and observed that it has “*yet to be developed and reported on*”.¹³² The IGTO also commented on the absence of this reporting of complaint themes against the *Taxpayers’ Charter* principles in her submission to the SCTR’s *Inquiry into the Commissioner of Taxation Annual Report 2018-19*.¹³³

D.56. While the ATO does not publicly report on complaint issues against the *Taxpayers’ Charter* rights, the ATO’s annual report includes some data on the ATO’s overall performance against the *Taxpayers’ Charter*.¹³⁴ There is no requirement (statutory or otherwise) for the ATO to report on its performance against the *Taxpayers’ Charter*. Below is an extract of the result reported for the ATO’s performance against the *Taxpayers’ Charter* principles of explaining the decision the ATO makes and respecting the right to a review and/or to make a complaint in the 2020 financial year.

TABLE 6.1 Our performance against the Taxpayers’ Charter, 2019–20 continued

Charter element	How we measure this element ^(a)	2019–20 result ^(b)
Decisions: We explain the decisions we make about you	The ATO explains the reasons for our decisions as a matter of course. To demonstrate this, we provide outcomes of decisions for objections and private binding rulings.	Objections resolved 22,290 Private binding rulings 4,126
Your right to question: We respect your right to a review and/or to make a complaint	The ATO respects and supports taxpayers in reviewing our decisions. To demonstrate this, our review/complaint framework includes: <ul style="list-style-type: none"> ■ the right to object to an ATO decision ■ a dedicated complaints phone line and web form ■ the opportunity for independent review by the Inspector-General of Taxation and Taxation Ombudsman (IGTO). 	Complaints lodged 24,778

Source: Australian Taxation Office Annual Report for the 2019-20 financial year.

D.57. The IGTO’s view is that the commitment in the *Taxpayers’ Charter* to explain decisions is all encompassing and not limited to objections and private binding rulings only. However, **the ATO measurement and reporting against the *Taxpayers’ Charter* is limited to only objections and private binding rulings.**

D.58. Furthermore, the IGTO considers that the performance measure does not accurately measure the commitment in the *Taxpayers’ Charter*. This is because the number of objections resolved, and the number of private binding rulings issued is not itself a relevant measure as to whether the ATO is explaining the decision it has made. There may be cases where the ATO has issued an objection decision but there is insufficient reason for the decision, or the taxpayer does not understand the decision made.

¹³² House of Representatives Standing Committee on Tax and Revenue (SCTR), Parliament of Australia, *Inquiry into the 2016-17 Annual Report of the Australian Taxation Office* (Report, 2019) 129.

¹³³ IGTO, Submission to Standing Committee on Tax and Revenue, *Submission to the House of Representatives Standing Committee on Tax and Revenue’s Inquiry into the Commissioner of Taxation Annual Report 2018-19* (May 2020) 18-19.

¹³⁴ ATO, *Annual Report 2019-20* (Report, 2020) 181-182.

D. Practical Implementation of the ATO's Governance Arrangements on the Communication of Taxpayer Rights

D.59. For the performance measure on respecting taxpayer rights to review and/or make a complaint, the ATO only captures data on the number of complaints lodged. The number of complaints lodged may not be an accurate measure because it only captures the taxpayer approaches that have been classified as a complaint by the ATO. The IGTO has previously made comments about the ATO's reporting of the number of complaints received.¹³⁵ There could be a range of factors affecting the reporting of complaints received. This includes:

- How the ATO defines complaints;
- Whether certain communications are correctly classified as complaints; and
- Whether complaints are only recorded as such when they are made through specific ATO channels.

D.60. Furthermore, the performance measure does not capture any information to assess whether all taxpayers' complaints have been accepted and recorded as such. The performance measure also does not capture any data on respecting taxpayer rights of review.

D.61. Reporting on performance also assures ATO senior management that its Officers are adhering to their obligations under the CEIs. It also assures the community that the ATO is honouring the rights they have under the *Taxpayers' Charter* to challenge and question an ATO Officer's decision. Overall, the IGTO considers that the ATO has insufficient reporting to assure itself and the community that it is adhering to the *Taxpayers' Charter* principles of:

- Explaining the decision the ATO makes about taxpayers; and
- Respecting taxpayer rights to review and complain.

Recommendation 3

The IGTO recommends that the ATO improve its data capture and reporting to measure its performance against the rights that taxpayers have under the Taxpayers' Charter. This should include:

- (a) complete data in relation to compliance with the Taxpayers' Charter in respect of all complaints;*
- (b) whether the ATO advised the taxpayer of their right to question and right to complain; and*
- (c) developing public reporting on this data to assure itself and the community how it is honouring the Taxpayers' Charter.*

¹³⁵ See above n 133.

E. Investigation Results for ATO Template Letters

E.1. To understand what information is being communicated in the ATO's written templates to taxpayers, the IGTO requested to independently review a list of written correspondence templates currently being used by the ATO across the I&I, SB, SEO, RDR and Debt business areas. The ATO provided a list of over 280 written templates and the IGTO selected a sample of approximately 50 templates across the above business areas to review. The sample also included templates that had been previously reviewed by the IGTO as part of her previous complaint investigations.¹³⁶

E.2. In reviewing the sample of written correspondence templates, the IGTO made observations on the completeness and adequacy of the information provided on formal and informal taxpayer review rights.

E.3. In conjunction with reviewing the sample of templates, the IGTO also requested a list of decisions made by the ATO between the 2019 and 2020 financial years in relation to audit, Cashflow Boost, objections and ERSB applications.¹³⁷ The IGTO requested decisions from the I&I, SB, SEO, PW and PGI business areas.

E.4. From the ATO's list of over 400,000 decisions¹³⁸ (including approximately 280,000 adverse decisions), the IGTO randomly selected a sample of approximately 70 outcomes. This consisted of approximately 30 objection and 40 adverse decisions.

E.5. The IGTO then accessed the ATO's records to review the following:

- how the decision was communicated;
- whether the decision contained the reasons for decision, the adequacy of the reasons and the contact details of the Officer who made the decision; and
- what information was communicated in terms of the taxpayers' formal and informal rights to complain, review and appeal. This included the communication of whether the taxpayer had a right to pursue the avenue, timeframes, and the form of lodgement.

E.6. The ATO also held detailed walk-throughs with the IGTO in relation to nominated scenarios. The purpose of these walk-throughs was to provide the IGTO with a 'customer journey map' of the end-to-end process and an understanding on what information is communicated to the taxpayer during each of its interactions. Walk-throughs were conducted on the following topics:

- The ATO website and development process;

¹³⁶ See above n 103.

¹³⁷ See *ibid.*

¹³⁸ *Ibid.*

E. Investigation Results for ATO Template Letters

- I&I work-related expense deductions audit;
- SEO ERSB application process; and
- Debt request to enter a payment plan.

E.7. The IGTO's observations and recommendations are set out below.

The ATO does not always communicate its decisions in writing and where it does not, the ATO should proactively inform taxpayers of their complaint and review rights

E.8. The *ATO Communications Ecosystem* sets out the different forms of engagement the ATO has in informing taxpayers of the ATO's various complaint, review, dispute, and appeal options.¹³⁹ Taxpayers can find out information about their complaint and review rights through channels including targeted correspondence (e.g. letters and emails), speaking with staff in the ATO call centre or volunteers in the ATO Tax Help Program and publications promoting specific topics and initiatives (e.g. fact sheets, newsletters, alerts).

E.9. The ATO's **standard process is to communicate its decisions in writing**.¹⁴⁰ Where the ATO's decision-making processes involve straightforward issues, direct communication through spoken interaction is the ATO's preferred method of engagement and this may not result in written correspondence being issued.¹⁴¹ The ATO explained that speaking with the taxpayer provides the taxpayer an opportunity to ask questions and clarify the taxpayer's understanding of the ATO's decision verbally.¹⁴²

E.10. Taxpayers can request to receive written correspondence after being informed of the ATO's decision verbally or in instances where the ATO is unable to contact the taxpayer.

E.11. An example of this is set out in the case study below.

CASE STUDY – I&I WORK-RELATED EXPENSE DEDUCTIONS AUDITS

Where the taxpayer is selected for a work-related expense deductions audit, the ATO will make attempts to contact the taxpayer and/or their representative via telephone to explain the audit and request for documentation.

In instances where the taxpayer has been selected for audit activities and the ATO has determined the issues to be 'less complex', the taxpayer may not receive an audit notification letter unless requested by the taxpayer and/or their representative.

The ATO Officer will then contact the taxpayer and/or their representative where additional information is requested. After a review of the information, the ATO Officer will advise the

¹³⁹ Ibid.

¹⁴⁰ See above n 123.

¹⁴¹ See above n 111.

¹⁴² See *ibid.*

E. Investigation Results for ATO Template Letters

taxpayer and/or their representative of the ATO's decision, providing an explanation of how the ATO arrived at this decision.

Following the telephone conversation with the taxpayer and/or their representative, the ATO may issue written correspondence of the audit outcome. Where the ATO communicates its decision orally, the taxpayer and/or their representative will receive an explanation of its decision at the same time.

A copy of the I&I audit experience process map is included as Appendix C.

E.12. The IGTO is supportive of the ATO taking a collaborative approach and actively engaging in a verbal discussion with the taxpayer when explaining its decision and the options for resolving a dispute.

E.13. **The IGTO considers that a written record of the decision should be preferred**, as it may be difficult for the taxpayer to fully understand and retain the information conveyed verbally by the ATO during a telephone conversation. However, the conversation may involve multiple components, as the ATO Officer is not only communicating their decision, the reasons for reaching this outcome but also responding to any further queries raised by the taxpayer and/or their representative and providing an explanation of the next steps.

E.14. The IGTO acknowledges that tax law is complex. The complexity not only lies in the tax legislation itself, but also how the legislation is interpreted and applied by the ATO.¹⁴³ This is particularly the case for an unrepresented or vulnerable taxpayer. Issuing written correspondence will assist in providing the taxpayer, specifically those who may be vulnerable or unrepresented, with a useful record and future reference that is readily accessible where the taxpayer wishes to seek advice from external parties. This includes briefing ATO Tax Clinics, the IGTO complaints service, Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**) etc.

E.15. In instances where the ATO does not propose to issue written correspondence, the ATO should **proactively advise taxpayer of their rights to challenge or question the ATO's decision as opposed to providing the information when prompted or requested to by the taxpayer**. This accords with good administrative practices. As noted above, there may be multiple components to the conversation and the taxpayer may experience difficulty in understanding what is being communicated so it may be appropriate for the ATO, as the administrator of Australian tax laws, to actively provide guidance and inform the taxpayer of their rights.

E.16. Taking into consideration the IGTO's views about providing written correspondence to taxpayers, the ATO should also clearly identify (when advising the taxpayer of the ATO's decision verbally) that the taxpayer can request for the decision be provided in writing.

¹⁴³ IGTO, *Review into improving the self-assessment system* (Report, 2012) 123 [5.2] – [5.3].

Recommendation 4

Consistent with Recommendation 1, where the ATO does not issue written correspondence to taxpayers in relation to its actions or decisions, ATO Officers should:

- (a) Ensure that taxpayers are verbally informed of their rights to formally challenge or question the ATO's decisions; and*
- (b) Inform taxpayers that they can request the decision also be communicated in writing.*

E.17. Where the ATO has issued written correspondence informing the taxpayer of its decision, the IGTO observes that some of the templates did not include the contact details of the ATO Officer who made the decision but directed the taxpayer to the general ATO contact centre.

CASE STUDY– CORRESPONDENCE RELATING TO ERSB APPLICATIONS

The ERSB process allows taxpayers to request for the early release of superannuation benefits based on specified grounds. Taxpayers are required to submit an ERSB application with supporting documentation and these are assessed by an ATO Officer, who decides whether to accept or decline the application for release.

The IGTO observes that the letter template communicating the ATO's decision does not contain the contact details of the ATO Officer who considered the taxpayer's ERSB application. The ATO explained that the assessing ATO Officer will generally attempt to contact the taxpayer via telephone to explain their decision. The taxpayer can also contact the general telephone number provided and speak to the ATO frontline staff who will respond to any queries.

The ATO noted that as part of the ERSB consideration process, the assessing ATO Officer records detailed notes on the ATO's system. The ATO frontline staff can readily access these notes on the ATO's system and explain the assessing ATO Officer's decision to the taxpayer on their behalf.

E.18. The supplementary document to the *Respecting Clients' Rights of Review CEI, Respecting Clients' Rights of Review – Questions and Answers* states that all ATO correspondence are to include the contact details of the relevant employee who can deal with the taxpayer's enquiry.¹⁴⁴

E.19. The IGTO understands that while notes are recorded on Siebel and governance procedures are in place to ensure the ATO's notes are of a consistent standard, it **may be beneficial for the taxpayer to directly speak to the ATO Officer who assessed the application**. While ATO frontline staff can refer to the assessing Officer's notes, the IGTO is of the view that they may not have the in-depth understanding of the ERSB application necessary to explain the assessing Officer's decision and to respond to any further questions for clarification.

¹⁴⁴ ATO, *Respecting Clients' Rights of Review CEI- Questions and Answers* (Internal ATO document, 1 April 2021).

E. Investigation Results for ATO Template Letters

E.20. In the IGTO's complaints investigations, concerns raised by complainants in relation to ERSB applications usually relate to the reasons for the ATO's decision or a lack of confidence that all supporting documentation provided was properly considered by the assessing Officer. As such, it would be beneficial to both the ATO and taxpayer if applicants could directly speak to the assessing Officer, as clear communication may alleviate some of their concerns and minimise disputes.

E.21. The IGTO also observes that of the letter templates reviewed, there was one written template which provided the manager's contact details.

Complete and adequate information about formal and informal complaint and review rights should be communicated to the taxpayer

E.22. The IGTO considers that providing complete and adequate information about complaint and review rights allows disputes to be *"resolved in the most simplest and cost- effective way that is appropriate to the circumstances"*.¹⁴⁵

E.23. Unrepresented or vulnerable taxpayers may not be familiar with disputing ATO decisions and would benefit most from being advised of all the relevant options for complaint or review as they can assess options best suited to their circumstances. The content provided in the ATO's written correspondence should contain sufficient information to assist taxpayers in making this decision.

E.24. The IGTO acknowledges that **there may not be a 'one size fits all' approach** and the ATO is wary of 'overloading' information when communicating complaint and review rights, particularly as some review rights are only available to taxpayers who satisfy eligibility criteria (such as the Small Business Independent Review initiative).

E.25. The IGTO considers that **emphasis should be placed on adopting a balanced yet consistent approach across all business areas of the ATO**, ensuring the appropriate amount of information is communicated to the taxpayer, regardless of whether this is communicated verbally or in writing. The IGTO also considers the **timing of this communication to be vital** as taxpayers should be made aware of their review rights (particularly the right to complain) at the earliest point so they can exercise these when the taxpayer feels appropriate.

E.26. The IGTO is of the view that information on taxpayer review and complaint rights should be consistently communicated across all channels, particularly when it is in relation to the same type of decision. Otherwise, this may raise fairness issues and taxpayers who may benefit the most from these review rights may not be utilising them. An example of inconsistency was identified in the ATO's Notice of Decision templates for objections lodged by Small Business taxpayers. The IGTO observes that the letter template includes general information about ASBFEO, but its email template does not include references to ASBFEO. Taxpayers should not be given different information on review rights because of a preference towards a particular communication channel.

¹⁴⁵ Above n 16.

E. Investigation Results for ATO Template Letters

E.27. In exploring ways the ATO could communicate information on review and complaint rights consistently and as relevant to the taxpayer's circumstances, the IGTO notes that the ATO's website contains extensive information on formal and informal review and complaint rights.

E.28. The IGTO observes that all written templates in the sample refer to the ATO's webpages on review rights and the *Taxpayers' Charter* for further information. Whilst the ATO includes a link to the relevant webpage, it may be difficult for taxpayers to navigate through the website and find information directly relevant to their circumstances.

E.29. The IGTO accessed the website links provided on several letter templates in the sample. The IGTO observes that there were some instances where the taxpayer was directed to a general ATO webpage such as the *Taxpayers' Charter*, as opposed to content directly relevant to the taxpayer's right to seek a review or make a complaint.

E.30. The IGTO also observes that **using suggested search terms such as 'objections', 'review rights' or 'how to lodge an objection' may yield many search results which may result in the taxpayer spending additional time in reviewing the webpages to find the one that is most relevant to the taxpayer's circumstances.** For example, the first search result for 'how to lodge an objection' relates to requests for an extension of time to lodge an objection which may confuse the taxpayer as it may not be what they are searching for. Extracts of the search results are included in Appendices I to K.

E.31. The IGTO also notes that the format in which the link to the relevant ATO website is presented varies between written templates. For example, some templates use smart search terms such as Quick Codes (**QC**). QCs can be entered into the search box of the ATO's website, and this will open the relevant page. On other templates, the ATO includes a link to the relevant webpage. It may be of assistance if the ATO presents this information in a consistent format. The IGTO encourages the use of smart search terms such as QCs and NAT numbers in its communications, as it can also assist ATO Officers when speaking to taxpayers.

E.32. As part of this review investigation and given the IGTO's observations around using the suggested search terms, the IGTO considered ways in which the ATO could direct the taxpayer to the relevant information online. A webpage that the IGTO considers can provide relevant information to users is the [ASBFEO Dispute Support tool](#). The ASBFEO Dispute Support¹⁴⁶ tool (**the Dispute Support tool**) is an interactive way of referring small businesses to the most appropriate dispute resolution service. The IGTO observes that not all dispute resolution services may be relevant to the user, and this may be due to factors such as the jurisdiction, the nature of the dispute or the outcome sought by the parties in dispute. Furthermore, not all parties to a dispute are experienced or knowledgeable in dispute resolution services and the Dispute Support tool assists small businesses in finding the most appropriate service.

E.33. To assist users, small businesses are initially prompted to select the nature of their dispute and may be asked further questions to ensure the appropriate option is selected. Once this has been

¹⁴⁶ ASBFEO, *Dispute Support* (Web Page) <<https://www.asbfeo.gov.au/disputesupport>>.

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completed, the tool facilitates in presenting tailored information to small businesses in an easily, accessible format.

E.34. With the ATO's *Communication Ecosystem* focussed on directing taxpayers to the ATO's webpage as a main source of information, the IGTO considers that if the ATO adopts an interactive online navigation tool, similar to the Dispute Support tool, this can assist not only small business taxpayers but also the wider taxpayer community navigate through the ATO's extensive material available online.

E.35. However, the IGTO is conscious that there are some taxpayers who may not have access to a computer, the internet or may not be confident in using technology. The ATO may wish to complement its online resources with physical documents containing similar information so that taxpayers are not disadvantaged by virtue of their circumstances. The IGTO acknowledges that these documents may not provide tailored information on taxpayer rights to review and complain (like an interactive online navigation tool) but it ensures that all taxpayers have access to information that will assist them in making informed decisions.

E.36. One option for physical documents could be the use of fact sheets. When reviewing the sample of ATO's written templates, the IGTO observes that there were two templates referring to a fact sheet. The fact sheet contained a summary of the various informal and formal taxpayer review rights. Copies of the Small Business audit finalisation letters and fact sheets for Private Rulings have been included in Appendices E and F respectively.

E.37. In addition to the content available online and in documents such as fact sheets, the IGTO considers that the ATO should still include a summary of the relevant information on complaint and review rights in the main body of its written templates for reference. The information should also contain a brief explanation of the options, including relevant time limits.

E.38. The IGTO considers that it would assist taxpayers if information is easily located on the ATO's website and this could be facilitated through:

- An interactive navigation tool on the ATO's website to communicate relevant information about the ATO's formal and informal review and complaint rights available to taxpayers;
- Fact sheets or other documentation to communicate similar information of the available review and complaint options to those taxpayers who may not be able to access the ATO's webpages;
- Greater use of smart search terms in the ATO's communications such as a QCs or NAT number (which can be available for publications); and
- Additional information regarding complaint and review rights applicable to the taxpayer's circumstances in the main body of the ATO's written correspondence.

Recommendation 5

The IGTO recommends that the ATO ensure information relating to taxpayer rights to complain, review and appeal can be easily located on the ATO's website.

Formal Part IVC review rights are included in the ATO's correspondence

E.39. Aligning with the survey results, the IGTO observes that all written templates reviewed in the sample contained standard content on formal Part IVC review rights relating to objections or external review avenues as well as a link to the ATO's website for reference.

E.40. Of the sample of 40 unfavourable ATO decisions made in the 2020 financial year, the IGTO observes that in all instances where Part IVC or external judicial review rights were available, the ATO communicated the relevant information to taxpayers. This was provided to taxpayers in writing through:

- letters;
- notices of amendment;
- emails; and
- notices of decisions.

E.41. The *Taxpayers' Charter* undertakes that the ATO will explain how the decision can be reviewed and if there are any time limits in requesting a review.¹⁴⁷ The IGTO observes that **although all letter templates in the sample referred to formal Part IVC review rights, which is in line with the Charter, the level of detail provided in each template varied.**

E.42. Formal review rights such as objections have time limits and a prescribed form in which requests should be made.¹⁴⁸ In reviewing the ATO's written templates, the IGTO identified different approaches adopted by each business area and these are outlined below.

E.43. For example, the ATO's decision to cancel Goods and Service Tax (GST) registration letter template for Small Businesses contains specific information about the basis on which an objection can be lodged, the timeframe as well as reference to the ATO's website. The following information is included on the right to object:

Review rights

You may object to our decision to cancel your GST registration and the date of cancellation if you're dissatisfied as these are GST reviewable decisions. You need to lodge the

¹⁴⁷ See above n 85.

¹⁴⁸ ATO, *How to object to a decision* (Web Page, 7 September 2021) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Object-to-an-ATO-decision/How-to-object-to-a-decision/>>.

E. Investigation Results for ATO Template Letters

objection in writing within 60 days from the date of service of this notice. For information about your objection rights, visit www.ato.gov.au/objections.

E.44. On the other hand, the SEO business area's letters disallowing excess non-concessional contributions (**ENCC**) and excess concessional contribution charge (**ECC**) provide general information about time limits and directs the taxpayer to the ATO's website for more information. The information about the right to object in the template is as follows:

Your right to object

If you don't agree with our decision you can object to it. You need to lodge your objection within the relevant time limits. You can find these limits on our website ato.gov.au/ObjectionTimeLimits You need to include a detailed explanation of why you think our decision is wrong in your objection. We recommend using our objection form, which you can find on our website ato.gov.au/objection

E.45. The IGTO observes that it may assist the taxpayer to provide specific information about the time limits (in line with the approach used in the GST letter template). An explanation regarding the method of lodgement and what to include in the objection should also be provided.

E.46. The IGTO observes that the Debt business area's template for Director Penalty Notices (**DPN**) combines the above approaches:

Your right to object

If you are dissatisfied with our decision you can object. Your objection needs to:

- *be in writing*
- *be signed and dated*
- *state fully and in detail the grounds you're relying on, and*
- *be sent with 60 days of the date of this letter via...*
- *Objection forms and information about how to lodge an objection are available from our website, www.ato.gov.au by searching for 'how to lodge an objection'. Alternatively, you can contact us on 13 28 61 between...*

E.47. From the above examples, the IGTO prefers the approach adopted by the Debt business area as it succinctly captures the key points a taxpayer should take into consideration, should they exercise their formal review rights. **Additionally, the IGTO considers that even though the ATO satisfies its obligations under the Taxpayers' Charter, there are varying levels of detail employed by the business areas when communicating about the same formal review right.**

E.48. The IGTO acknowledges that the taxpayer can ordinarily find this information on the ATO's website. As noted above, the IGTO is of the view that there should be sufficient information within the body of the written correspondence and the taxpayer may choose to access additional online resources should they require further information.

Informal complaint and review rights are not always included in the ATO's correspondence

E.49. The IGTO observes that all written templates reviewed referred to taxpayers' rights and obligations under the *Taxpayers' Charter* and included a general link to the ATO's website. The IGTO also observes that there is **limited mention of the ATO's informal review rights and initiatives such as In-House Facilitation or Dispute Assist, which may be relevant to the taxpayer's circumstances.**

E.50. In reviewing the sample of 70 ATO decisions made across the 2019 and 2020 financial years, the IGTO was unable to locate information relating to the taxpayer rights to internal reviews and complaints avenues to either the ATO Complaints Unit or IGTO. The IGTO observes that the ATO does communicate information to taxpayers regarding review requests for unfavourable ERSB decisions.

E.51. Particularly where Part IVC rights such as seeking an external review may not be available (such as seeking the remission of GIC or the ERSB decisions), the IGTO considers that **all taxpayers should be informed of their informal review rights as they may be more appropriate in addressing their concerns.** The adoption of an inappropriate dispute resolution avenue may result in **additional costs in time and resources for the taxpayer, ATO and external review bodies such as the AAT and Federal Court.**

E.52. An example of this is demonstrated in the case study below:

CASE STUDY – REMISSION OF GIC CORRESPONDENCE

The IGTO achieved a favourable outcome in its complaint investigation regarding the ATO's decision not to remit GIC.

The complainant's tax practitioner had inadvertently failed to lodge tax returns for the 2007 financial year. The complainant had not received any correspondence from the ATO with regards to the non-lodgement of the tax return and the non-lodgement had only been discovered in 2019 after the ATO transitioned to a new digital platform for tax agents.

Upon discovering the non-lodgement, the complainant then voluntarily lodged the outstanding tax return for the 2007 financial year to the ATO and paid the tax liability resulting from the lodgement. As a result of the delayed lodgement, the ATO imposed GIC on the tax liability (which was close to \$300,000 and continued to accrue).

The complainant had previously lodged a request for remission of the GIC and this was declined by the ATO. The complainant then approached the IGTO seeking an investigation into the ATO's decision. The ATO agreed to internally review its decision not to remit the GIC and ultimately decided to remit the entirety of the GIC imposed on the complainant.

Further to the complaint investigation, the IGTO observed that the ATO's decision letter on GIC remission did not inform the taxpayer of any internal review channels or the IGTO as an avenue to raise their concerns. Rather, the written correspondence directed taxpayers to the Federal Court of Australia for a review under the ADJR Act. In response to the IGTO's broader concerns raised, the ATO noted that it was working to include a reference to the *Taxpayers' Charter* in its letter templates.

E. Investigation Results for ATO Template Letters

As part of this review investigation, the IGTO has reviewed the ATO's current decision letter template on GIC remission. Although the current letter template refers to taxpayer's rights and obligations, the IGTO observes that the current letter template still refers taxpayers to the Federal Court where they are dissatisfied with the ATO's decision. The IGTO is of the view that the option to seek an internal review should be made clear to all relevant taxpayers in the body of the ATO's written correspondence. Taxpayers should be made aware of these avenues in the first instance.

Similar to the ATO's ERSB decision letters, the IGTO also observes that the decision letter does not include the direct contact number of the ATO Officer who made the decision. The letter instead directs the taxpayer to the general ATO contact centre. The IGTO is of the view that where possible, the taxpayer should be able to speak to the relevant Officer who made the decision as they would be best placed to explain the reasons for their decision.

Copies of the original and current GIC remission decision letters are included in Appendices G and H.

E.53. Statistics from the AAT Annual Report for the 2020 financial year indicate that 77% of applications lodged in the Taxation and Commercial Division are not finalised by a decision of the AAT.¹⁴⁹ In particular, the IGTO notes that 39% of applications have been either withdrawn by the applicant, dismissed by the AAT or the AAT had no jurisdiction. This is similar to the 2019 financial year, where 42% of applications had been withdrawn, dismissed or there was no jurisdiction.¹⁵⁰

Table 5 – AAT Applications lodged with the Taxation and Commercial Division				
	FY20	FY19	FY18	FY17
Applications lodged with the AAT Taxation and Commercial Division were not finalised by a decision of the AAT	77% (551 applications)	88% (564 applications)	89% (636 applications)	85% (781 applications)
Applications lodged with the AAT Taxation and Commercial Division were either withdrawn by the applicant, dismissed by the AAT or AAT had no jurisdiction	39% (281 applications)	42% (267 applications)	55% (391 applications)	44% (403 applications)

Source: Figures from AAT Annual Reports for the 2016-17 to 2019-20 financial years.

¹⁴⁹ AAT, *Annual Report 2019-20* (Report, 2020) 157.

¹⁵⁰ AAT, *Annual Report 2018-19* (Report 2019) 145.

E. Investigation Results for ATO Template Letters

E.54. Statistics from the AAT Small Business Taxation Division are detailed below:

Table 6 – AAT Applications lodged with the Small Business Taxation Division				
	FY20	FY19¹⁵¹	FY18	FY17
Applications lodged with the AAT Small Business Taxation Division were not finalised by a decision of the AAT	91% (66 applications)	50% (2 applications)	N/A	N/A
Applications lodged with the AAT Small Business Taxation Division were either withdrawn by the applicant, dismissed by the AAT or AAT had no jurisdiction	51% (37 applications)	50% (2 applications)	N/A	N/A

Source: Figures from AAT Annual Report 2018-19 and AAT Annual Report 2019-20.

E.55. Although the percentage of AAT applications not finalised by a decision for both Divisions appears to be decreasing, the IGTO considers that this may be further reduced through greater public awareness and knowledge of review rights.

E.56. The underlying basis for the taxpayer's dispute may be a misunderstanding of the reasons provided or a lack of confidence that their circumstances had been properly considered. This can be remedied by a further explanation facilitated by the ATO Officer's manager, the ATO Complaints Unit or an investigation by an independent agency such as the IGTO. **Attaining further explanation may assist the taxpayer in refining their scope for exercising a formal review right such as an objection.**

¹⁵¹ Please note that the AAT Small Business Taxation division had commenced on 1 March 2019.

E. Investigation Results for ATO Template Letters

E.57. An example of this is set out in the case study below.

CASE STUDY – JOBKEEPER CORRESPONDENCE

The IGTO made observations in her Report on *Aspects of The Australian Taxation Office's Administration of JobKeeper (JK) and Boosting Cash Flow Payments for New Businesses* that “[t]he objection process may not be well-suited to address every particular concern or issue which generates a dispute. For example, the IGTO has previously observed that many disputes on the pathway to external merits review can be quickly resolved via informal facilitated discussions...”.¹⁶⁴

In her Report, the IGTO observed that the ATO template decision letters for JK applications did not advise taxpayers of these other avenues or rights of review — the letters reviewed only advised entities of the Part IVC objection process.

The IGTO observed in her Report that “[o]f the 9,000-odd objections that the ATO has received, it is likely that a substantial portion are due to a genuine disconnect between the community's understanding of the JK and CashFlow Boost (BCF) integrity rules and the ATO's administration of them, which could be addressed by one of the informal complaints processes...”.¹⁶⁵

For the purposes of this review investigation, the IGTO reviewed the JK and BCF template finalisation letters which are currently being used by the ATO. The IGTO observes that although the ATO referred to general rights and obligations under the *Taxpayers' Charter*, it only advised the taxpayer of the objection process as an avenue where the taxpayer does not agree with the ATO's decision. The IGTO observes that the template viewed does not make clear what informal review rights are available to the taxpayer.

For completeness, the IGTO also reviewed written correspondence issued by the ATO for favourable JK objection decisions as part of the ATO's *Apted* remediation process¹⁶⁶. The IGTO observes that although a favourable decision was made, the ATO's decision letter does not explain what the decision is in relation to (specifically on what aspect of JK the decision is in relation to) or the reasons for the ATO's decision.

In one IGTO complaint investigation, the complainant informed the IGTO that he contacted the ATO Officer listed on the correspondence, but the ATO Officer was unable to elaborate on the contents of the letter, particularly the reasons for the ATO's decision. As stated above, the IGTO considers that, regardless of the outcome of the ATO's decision, it is important for the taxpayer to speak to the ATO Officer who is best placed to explain the ATO's decision and assist the taxpayer with any subsequent queries.

A redacted copy of the ATO's decision letter for favourable JK objection decisions is included in Appendix D.

¹⁶⁴ IGTO, *A Report on Aspects of the Australian Taxation Office's Administration of Jobkeeper and Boosting Cash Flow Payments for New Businesses* (Report, December 2020) 45.

¹⁶⁵ See *ibid.*

¹⁶⁶ ATO, *JobKeeper Payment and the 'late time' discretion* (Web Page, 21 May 2021)

<<https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/JobKeeper-Payment-and-the--later-time--discretion/>>.

E. Investigation Results for ATO Template Letters

E.58. The *A tax system that works for small business* report (**Report**) published by ASBFEO in February 2021 recommended that “[t]he ATO should consistently promote and notify small business taxpayers of the availability of the [Small Business Independent Review], as well as review by the IGTO and support via the ASBFEO Small Business Tax Concierge service”.¹⁶⁷ In particular, ASBFEO noted that “the process should be promoted on all relevant ATO webpages, notifications etc. especially those that include information regarding dispute resolution process”.¹⁶⁸

E.59. The IGTO observes that in the sample of templates reviewed, the ATO consistently promotes the ATO Small Business Independent Review initiative. However, the IGTO observes that information about ASBFEO and the ATO’s Small Business Litigation Funding Program are not always mentioned in their written templates issued to Small Business taxpayers.

E.60. Additionally, the IGTO notes that **the IGTO and its services are not always referred to in the ATO’s written templates**. The IGTO observes only one letter template in the sample includes information on lodging a complaint. Communicating the availability of complaint services accords with *Taxpayers’ Charter* and is in line with the principle of early dispute resolution.

Recommendation 6

The IGTO recommends that, as part of its communication to taxpayers, the ATO should ensure that taxpayers are informed about:

- (a) their right to lodge a complaint with the ATO (including a formal complaint with the ATO’s Complaint Unit), and encourage taxpayers to do so should they have any concerns or are dissatisfied with the ATO’s actions or decisions; and*
- (b) the availability of the IGTO’s services and how to engage with the IGTO where they have been unable to address their concerns through a complaint with the ATO.*

¹⁶⁷ See above n 81.

¹⁶⁸ See *ibid.*

F. Obligations for the ATO to Provide Reasons for Its Decisions

When is the Commissioner of Taxation required to give a taxpayer reasons? ... Understanding a Taxpayer's Rights

F.1. Setting clear expectations and providing a framework for determining when the Commissioner should or must provide a taxpayer with reasons for a decision, and clarity on what those reasons should contain, are touchstones of good tax administration.¹⁶⁹

Taxpayer rights to reasons supports voluntary compliance

F.2. In its Practice Note on Principles of Good Tax Administration, the OECD encourages revenue authorities to apply tax laws in a *“fair, reliable and transparent manner”*.¹⁷⁰ The OECD also notes that:

The promotion of voluntary compliance should be a primary concern of revenue authorities. The ways by which revenue authorities interact with taxpayers and employees impact on the public perception of the tax system and the degree of voluntary compliance. Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply.

¹⁶⁹ IGTO, *Community Expectations for Tax Administration* (Web Page) <<https://www.igt.gov.au/our-investigations/community-expectations-for-tax-administration-2/>>. These principles are also reflected in the IGTO's summary of features of good tax administration, many of which support the need for clear communication of reasons for decisions and actions, including:

- providing accountability for decisions;
- improving certainty and consistency;
- ensuring correct administration; and

providing administration that is professional, respectful and collaborative.

¹⁷⁰ *General Administrative Principles – GAP001 Principles of Good Tax Administration* – Practice Note, OECD Committee of Fiscal Affairs Forum on Strategic Management (2 May 2001). The OECD guidance under Taxpayer Relations also encourages revenue authorities to:

1.2 outline and communicate to taxpayers their rights and obligations as well as the available complaint procedures and redress mechanisms;

1.3 consistently deliver quality information and treat inquiries, requests and appeals from taxpayers in an accurate and timely fashion;

1.4 provide an accessible and dependable information service on taxpayers rights and obligations with respect to the law ...

A Taxpayer's Perspective

F.3. From the taxpayer's perspective, a statement of reasons provides assurance that the taxpayer has been dealt with fairly and transparently.¹⁷¹ Also, a statement of reasons is often critical to the taxpayer making an informed decision about whether to accept a decision or take action to dispute it. Apart from highlighting any facts or issues in dispute, reasons may be necessary for a taxpayer to understand the precise nature of the decision that was made or action that was taken and what review rights are available.

F.4. Put another way, reasons are necessary to achieve administrative and procedural fairness and for the efficient handling of disputes within the taxation administration system.

The Commissioner's Perspective

F.5. From the Commissioner's perspective, a requirement to give reasons is a safeguard against decisions being made improperly or without due consideration. It requires the ATO decision maker to meaningfully consider and articulate:

- what is the relevant law;
- what are the relevant material facts (with reference to the information and documents in the ATO's possession);
- what factors and circumstances have been considered; and
- what ATO guidance should be followed to ensure consistency of outcomes?

Overview - legislative requirements for giving reasons

F.6. Considering the importance and utility to the tax system of taxpayers understanding why a decision has been made in relation to their obligations to pay tax, many taxpayers and practitioners might be surprised to learn that there is no general duty at common law for the Commissioner to give reasons for an administrative decision.¹⁷² Any obligations to give reasons are sourced in legislation, including the following Acts:

- TA Act;
- AAT Act; and
- ADJR Act.

F.7. The statutory requirements to provide reasons tend to be conditional on the existence of particular circumstances or the satisfaction of certain requirements. Obligations to give reasons under

¹⁷¹ An application made under the *Freedom of Information Act 1982* (Cth) (FOI Act) may also assist in this regard, but FOI applications often take a considerable amount of time to be processed and can, in some cases, be protracted and costly; for example, if there is a dispute with the Commissioner regarding the material to which the applicant is entitled. At the outset of making an FOI application and in light of the exclusions in the FOI Act, there is little certainty for taxpayers as to whether, at the end of the process, they will be in a position to reliably piece together the Commissioner's reasons for making a decision with reference to the material that is provided.

¹⁷² See above n 4.

F. Obligations for the ATO to Provide Reasons for Its Decisions

the TA Act are an exception to this rule, as they arise automatically once a specified decision is made. However, the range of decisions covered by the TA Act is very limited and does not extend to decisions regarding the imposition of substantive tax.

F.8. In contrast, requirements to give reasons under the AAT Act and the ADJR Act apply to a more extensive range of decisions and extend to the imposition of substantive taxes, but they are not automatically triggered by the making of the decision. In some cases, they only arise if reasons are requested by the taxpayer, and then, only if requested within the specified time frame and in writing. In other cases, somewhat curiously, they only arise if an application to the Tribunal for review of the decision has been made – that is, a taxpayer could be put in the position of having to decide whether or not to contest the decision without necessarily knowing the basis on which the decision was made – or, as might be the case for practical reasons, of having to incur the costs of initiating the dispute for the purpose of obtaining and understanding the reasons.¹⁷³ This design may lead to a number of disputes commencing but not proceeding once the reasons for the decision become clear, which potentially places unnecessary strain on the resources of taxpayers, the Commissioner and the Tribunal.

¹⁷³ Section 14ZZB of the TA Act provides that s 28 of the TA Act does not apply to a reviewable objection decision. There is a requirement to give a statement of reasons in relation to a reviewable objection decision under s 37 of the TA Act as modified by s 14ZZF of the TA Act, but s 37 only applies if the decision is the subject of an application to the Tribunal for review.

See also the decision of Aickin J in *Bailey v Federal Commissioner of Taxation* [1997] HCA 11 at [13] where his Honour expresses the view that, “[t]here is nothing in the policy of the Act nor in general considerations of policy to require that the Commissioner should not inform the appellant prior to the commencement of the hearing of those details so that the case may proceed in an orderly and comprehensible manner. It is not in the interests of the proper administration of justice that, when the matter comes before the court, the appellant should have to speculate about, and adduce evidence to negate, every possible kind of agreement or arrangement and avoidance which the imagination of his advisers can conjure up. Such a process is not merely time-wasting but is likely to obscure the real issues.”

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F.9. An overview of the rules for some categories of decisions and actions is set out below in Table 7 below by way of introduction.

Table 7 – Overview of Statutory requirements to provide reasons for administrative decisions

Type of Decision	Is the Commissioner required to provide reasons under various Tax statutes?			
	<i>Taxation Administration Act 1953 (Cth)</i>	<i>Administrative Appeals Tribunal Act 1975 (Cth) – s 28 – i.e. before a review by the Tribunal is commenced?</i>	<i>Administrative Appeals Tribunal Act 1975 (Cth) – s 37 – i.e. after a review by the Tribunal is commenced?</i>	<i>Administrative Decisions (Judicial Review) Act 1977 (Cth) – s 13</i>
<p>Reviewable objection decision – see footnote 179.</p> <p><i>Examples include:</i></p> <p><i>A decision to deny or allow an objection to an assessment.</i></p> <p><i>A decision to retain a refund while the Commissioner verifies information.</i></p>	<p>There is no general rule.</p> <p>The TA Act prescribes that certain decisions require reasons to be provided. This does not depend on whether the decision is a reviewable objection decision.</p> <p>There is some overlap; for example, a decision about the imposition of administrative penalties is both a reviewable objection decision and a decision in respect of which reasons must be given under the TA Act.</p> <p>See section 1 below.</p>	<p>No.</p> <p>This outcome arises because of the modification of s 28 by s 14ZZB of the TA Act.</p> <p>See section 2 below.</p>	<p>Yes</p> <p>Section 37 is modified to this effect by 14ZZF of the TA Act.</p> <p>See section 2 below.</p>	<p>There is no general rule.</p> <p>The ADJR Act generally allows a request for reasons to be made for decisions of an administrative character which are eligible for judicial review under s 5 of the ADJR Act.</p> <p>The requirement to give reasons does not depend on whether the decision is a reviewable objection decision. Many types of reviewable objection decisions fall within the various exclusions (e.g. decisions about the calculation or assessment of tax are specifically excluded under Schedule 1).</p> <p>A request must be made in writing and other requirements must be satisfied.</p> <p>See section 3 below.</p>
<p>Decision reviewable directly by the Tribunal (no reviewable objection decision required) – see footnote 179.</p>	<p>There is no general rule.</p> <p>The Act prescribes which decisions require reasons to be provided and this does not depend on whether the</p>	<p>Yes. A request must be made, and other requirements must be satisfied.</p> <p>See section 2 below.</p>	<p>No general requirement, but under s 37(1AB) the Tribunal can require a statement of reasons to be filed.</p>	<p>No, as there is a specific exclusion if s 28 applies.</p>

F. Obligations for the ATO to Provide Reasons for Its Decisions

Type of Decision	Is the Commissioner required to provide reasons under various Tax statutes?			
	<i>Taxation Administration Act 1953 (Cth)</i>	<i>Administrative Appeals Tribunal Act 1975 (Cth) – s 28 – i.e. before a review by the Tribunal is commenced?</i>	<i>Administrative Appeals Tribunal Act 1975 (Cth) – s 37 – i.e. after a review by the Tribunal is commenced?</i>	<i>Administrative Decisions (Judicial Review) Act 1977 (Cth) – s 13</i>
<i>Examples include: A decision to refuse to vary or revoke a departure prohibition order</i>	decision is directly reviewable by the Tribunal.			
Decisions not reviewable by the Tribunal <i>Examples include: A refusal to grant early release of superannuation Refusal to remit general interest charge</i>	There is no general rule. The Act prescribes which decisions require reasons to be provided and this does not depend on whether the decision is reviewable by the Tribunal. A decision to decline to issue a private ruling is an example of a decision that is not reviewable by the Tribunal, but reasons are nevertheless required to be given under the TA Act.	No.	No.	There is no general rule, but decisions that are not reviewable by the Tribunal are less likely to be excluded as the s 28 exclusion will not apply. The ADJR Act generally allows a request for reasons to be made for decisions of an administrative character which are eligible for judicial review under s 5 of the ADJR Act. A request must be made in writing and other requirements must be satisfied. See section 3 below.

The Commissioner may choose to give reasons in the absence of a statutory requirement ... and frequently does

F.10. The Commissioner may choose to give reasons, even in the absence of a statutory or common law obligation to do so, as a matter of good tax administration ... and frequently does. This is confirmed in both the *Taxpayers' Charter*¹⁷⁴ and PS LA 2013/1.¹⁷⁵

F.11. The *Taxpayers' Charter* contemplates that the Commissioner will be “*open, transparent and accountable*” in his dealings with taxpayers and that he will explain the decisions the ATO makes about taxpayers.¹⁷⁶

F.12. In PS LA 2013/1, the Commissioner acknowledges that it may be appropriate to respond favourably to a request for reasons, even where the requirements of s 13 are not satisfied and there is otherwise no obligation to provide them. In this regard, the Commissioner states the following:

Provision of statement if no entitlement exists

48. In some circumstances, a request for a statement of reasons will be received where no entitlement under section 13 exists. In these circumstances, the decision maker should consider whether it is appropriate to provide a statement setting out the reasons for the relevant decision to assist the person requesting the statement to better understand the decision. Provision of a statement of reasons in these circumstances would generally be consistent with our commitment under the Taxpayers' Charter to explain our decisions and be accountable for our actions, and would align with the beneficial aims of the ADJR Act. However, the decision maker should make it clear to the applicant that the statement of reasons has not been provided pursuant to section 13.

F.13. In litigious matters, the Commissioner must also consider the Commonwealth's obligation to act as a Model Litigant as set out in Appendix B of the *Legal Services Direction 2017*. Whereas the obligation does not specifically require reasons to be given, it imposes duties that would be difficult or impossible for the Commissioner to discharge without being transparent as to the reasons for making a decision in dispute. For example, r 2(e) requires the Commissioner to keep the costs of litigation to a minimum, where possible, by not requiring the other party to prove a matter which the ATO knows to be true and by engaging in alternative dispute resolution processes. He is also required to endeavour to “*avoid, prevent and limit the scope of legal proceedings wherever possible*” under r.2(d). It is difficult to imagine how these objectives could be achieved if the taxpayer is not made aware of the Commissioner's reasons for making the disputed decision.

F.14. In practice, these principles likely underpin the Commissioner's practice of frequently providing statements of reasons to taxpayers, even in the absence of a requirement to do so; for example, reasons

¹⁷⁴ See above n 6.

¹⁷⁵ See above n 8.

¹⁷⁶ Refer to footnote 174 and 175.

F. Obligations for the ATO to Provide Reasons for Its Decisions

usually accompany reviewable objection decisions, which is not a requirement of s 28 of the AAT Act or s 13(1) of the ADJR Act and is not necessary under s 37 of the AAT Act until proceedings are commenced.

Detailed Analysis - legislative requirements for giving reasons

1 *Taxation Administration Act 1953 (Cth)*

F.15. The Commissioner is required to give reasons under the TA Act in the following circumstances:

	TA Act, Schedule 1
A decision not to remit a shortfall interest charge in certain circumstances	Section 280-165
A liability to pay an administrative penalty, including the reasons why the entity is liable to pay the penalty	Section 298-10
A decision not to remit an administrative penalty; or to remit only part of the penalty	Section 298-20
A decision declining to make a private ruling	Section 359-35
A refusal of an Education Direction variation	Section 384-35
A decision to suspend a trustee of an ancillary fund, change the time the suspension of a trustee of an ancillary fund ends or remove a trustee of an ancillary fund, the Commissioner must give to the trustee a written notice: (a) setting out the decision; and (b) giving reasons for the decision; and (c) where appropriate, setting out the time the suspension ends.	Section 426-125

F.16. As noted above, these provisions impose an automatic requirement for the Commissioner to give reasons when certain decisions are made – that is, a request for reasons by the taxpayer is not required. The decisions are typically based on the conduct of a taxpayer or a related individual or the refusal to exercise a discretion.

F.17. None of the specified circumstances relate to a decision made by the Commissioner in relation to the imposition of a substantive tax liability.

2 Administrative Appeals Tribunal Act 1975 (Cth)

Overview

F.18. Taxation decisions are generally subject to a merits review in the AAT¹⁷⁷ in two ways:

1. **Reviewable objection decisions** - Where a person who is dissatisfied with the tax decision lodges an objection against that decision with the ATO and the ATO after reviewing that objection, provides an objection decision in the manner set out in Part IVC of the TA Act.
2. **Other decisions** - Tax decisions that can be lodged directly with the Tribunal.

Decisions which are reviewable objection decisions – that is, where the taxpayer must first raise a formal objection under Part IVC of the TA Act

F.19. The Tribunal may review a decision that is a reviewable objection decision under Part IVC of the TA Act. Decisions to which Part IVC of the TA Act applies, pursuant to s 14ZZ(1)(a)(i) of the Act include a decision to:

Decision to:	Reference
retain a refund	s 8AAZLGA(1)
to amend an assessment of an assessable amount	s 155-35
issue an assessment of an outstanding tax-related liability in relation to a deceased person's estate	s 260-140
determine the total amount of outstanding tax-related liabilities in relation to an un-administered estate	s 260-145

F.20. This means that the taxpayer must first lodge an objection with the ATO before the decision can be reviewed by the Tribunal. As the taxpayer is limited to the grounds stated in their objection decision¹⁷⁸ in any later appeal (with the Tribunal or Federal Court), the objection is advisedly fulsome in its content. In many cases, the ATO is under no obligation to provide reasons to enable or assist with the preparation of this objection notice.

Other Decisions - which are not reviewable objection decisions

F.21. There are a number of decisions that fall within this category; i.e. decisions that can be reviewed directly by the Tribunal, in the absence of a reviewable objection decision, and are therefore subject to s 28.¹⁷⁹ Examples include a decision to:

- i. refuse to vary or revoke a departure prohibition order under s 14T of the TA Act;
- ii. issue, or refuse to issue, a certificate authorising a person to depart from Australia for a foreign country on or before the seventh day after a day specified in the certificate under s 14U of the TA Act; and
- iii. refuse to deal with an objection as if it had been lodged within the time limit under s 14ZX(1).

¹⁷⁷ The Tribunal helpfully publishes an AAT Reviewable Decisions List (last updated on 31 May 2019) which sets out the Acts and legislative instruments which state certain decisions may be reviewed by the AAT and helpfully, for present purposes, specifies whether the application for review may be made directly to the AAT or whether the AAT only has jurisdiction to review a decision following the making of an objection and objection decision.

¹⁷⁸ TA Act ss 14ZV and 14ZZK – that is unless the Tribunal orders otherwise.

¹⁷⁹ See: [List of reviewable decisions as at 31 May 2019 \(RTF\) \(aat.gov.au\)](http://aat.gov.au)

F. Obligations for the ATO to Provide Reasons for Its Decisions

F.22. It is also worthwhile noting that, while not strictly a decision to which Part IVC would apply, a recent budget measure has been announced to extend the AAT's powers to *"pause or modify ATO debt recovery action in relation to disputed debts that are being reviewed by the Small Business Taxation Division (SBTD)"*.¹⁸⁰ The scope of these new powers will ultimately rest in the details of the relevant legislative changes.

Statutory requirements to provide reasons under the AAT Act

F.23. Sections 28 and 37 of the AAT Act impose a requirement for the Commissioner to provide reasons for a decision in certain circumstances. Section 28 relates to the period prior to the initiation of proceedings in the Tribunal (i.e. proceedings need not be commenced for s 28 to apply) and s 37 applies after the commencement of proceedings (i.e. s 37 applies only if, and after, proceedings are commenced).

F.24. An explanation of when these sections give rise to a requirement to give reasons is set out below.

Section 28

F.25. Section 28(1) of the AAT Act requires a statement of reasons to be given to a taxpayer on request, even prior to, or in the absence of, the commencement of proceedings in the Tribunal¹⁸¹. Whilst s 28 is far reaching in terms of creating an obligation to provide reasons for administrative decisions that are reviewable by the Tribunal (regardless of whether a review has been commenced), it has limited application in the context of tax decisions, due to the modification of the section by s 14ZZB of the TA Act¹⁸².

F.26. As a consequence of the modification in s 14ZZB of the TA Act, s 28 will only have the effect of requiring the Commissioner to provide reasons for a tax decision where the decision is reviewable by the Tribunal and is not a 'reviewable objection decision'.¹⁸³

F.27. A request for reasons can be made under s 28 regardless of whether an application for review has been made to the Tribunal. Consequently, a request for reasons can be made by taxpayers who do not wish to apply to the Tribunal for review, or who would seek to understand the reasons for the Commissioner's decision before deciding whether an application for review is appropriate.

¹⁸⁰ Parliament of Australia, *Budget 2021-22: Budget Measures Budget Paper No 2 2021-22* (11 May 2021) 19.

¹⁸¹ *Request for statement of reasons*

(1) Subject to subsection (1AAA), if a person makes a decision in respect of which an application may be made to the Tribunal for a review, any person (in this section referred to as the applicant) who is entitled to apply to the Tribunal for a review of the decision may, by notice in writing given to the person who made the decision, request that person to give to the applicant a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision, and the person who made the decision shall, as soon as practicable but in any case within 28 days after receiving the request, prepare, and give to the applicant, such a statement.

182 14ZZB Sections 27, 28, 41 and 44A of the AAT Act not to apply to certain decisions

(1) ...

(2) Sections 28 and 44A of the AAT Act do not apply in relation to a reviewable objection decision.

¹⁸³ See above n 178.

F. Obligations for the ATO to Provide Reasons for Its Decisions

F.28. Section 28 can also be of assistance to taxpayers who wish to appeal to the Federal Court rather than make an application to the Tribunal, as there is no equivalent provision in the Federal Court rules.

Time limits

F.29. There is no time limit on when a request must be made under s 28, but the decision maker can refuse to provide reasons under s 28(1A) if, in the case of a written decision, reasons were requested more than 28 days after the written decision was given to the applicant, or, in any other case, the request was not made within a reasonable time. The Tribunal can make a declaration, under s 28(1B), that the request was made within a reasonable time on application by the person making the request.

Exclusions

F.30. There is an exclusion to the requirement to furnish reasons if a document has already been given to the person that sets out the reasons for decision (s 28(4)).

F.31. There is an additional exclusion where the Attorney-General has given a certificate stating that disclosure of the matters contained in such a statement would be contrary to the public interest (s 28(2)).

Section 37

F.32. Section 37(1) of the AAT Act requires reasons for a decision to be provided to the Commissioner and the taxpayer following the commencement of Tribunal proceedings¹⁸⁴. The application of s 37 is modified in respect of *reviewable objection decisions*¹⁸⁵ by s 14ZZF of the TA Act, which relevantly states:

Section 37 of the AAT Act applies in relation to an application for review of a reviewable objection decision as if:

(a) the requirement in subsection (1) of that section to lodge with the Tribunal a copy of:

(i) a statement giving the reasons for the decision; and

(ii) the notice of the taxation decision concerned; and

(iii) the taxation objection concerned; and

(iv) the notice of the objection decision; and

(v) every other document that is in the Commissioner's possession or under the Commissioner's control and is considered by the Commissioner to be necessary to the review of the objection decision concerned; and

(vi) a list of the documents (if any) being lodged under subparagraph (v); and

¹⁸⁴ (1) *Subject to this section, a person who has made a decision that is the subject of an application for review (other than second review) by the Tribunal must, within 28 days after receiving notice of the application (or within such further period as the Tribunal allows), lodge with the Tribunal a copy of:*

(a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and

(b) subject to any directions given under section 18B, every other document that is in the person's possession or under the person's control and is relevant to the review of the decision by the Tribunal.

¹⁸⁵ See above n 178.

F. Obligations for the ATO to Provide Reasons for Its Decisions

(b) ...”

F.33. It follows from the joint operation of ss 37 of the AAT Act and 14ZZF of the TA Act that, in respect of *reviewable objection decisions*, the Commissioner may be required to file with the Tribunal and serve on the taxpayer a statement of reasons. However, **this obligation only arises after an application for review is filed in the Tribunal (if one is filed)**. Specifically, the Commissioner must file the reasons (with other documents) within 28 days of receiving notice of the application.¹⁸⁶ The Tribunal may allow the Commissioner additional time.¹⁸⁷

F.34. As s 37 only applies after the making of an application to the Tribunal, it will not apply in respect of reviewable objection decisions that are appealed directly to the Federal Court. There are separate requirements for documents to be filed under the Federal Court Rules, such as an appeal statement (which should set out the Commissioner’s contentions, as well as the facts and issues)¹⁸⁸ but not a statement of reasons for making the reviewable objection decision *per se*. However, the Court will order particulars as and when necessary.

F.35. With respect to decisions that can be reviewed directly by the Tribunal in the absence of a reviewable objection decision (discussed above), the modification to s 37 in s 14ZZF does not apply and there is a requirement to file a statement of findings on material questions of fact rather than a statement of reasons. However, under s 37(1AB), the Tribunal may direct a person who is required to lodge a copy of a statement under s 37(1) to lodge a copy of a document setting out the reasons for the relevant decision, instead.

¹⁸⁶ AAT Act s 37(1).

¹⁸⁷ AAT Act s 37(1).

¹⁸⁸ *Federal Court Rules 2011* r 33.03.

3 *Administrative Decisions (Judicial Review) Act 1977 (Cth)*

F.36. Section 13 of the ADJR Act imposes an obligation on the Commissioner to provide a written statement of reasons with respect to certain decisions that can be the subject of judicial review under s 5 of the ADJR Act¹⁸⁹. The statement of reasons need only be provided if and when reasons are requested by a person who is aggrieved by the decision and certain other conditions and requirements are satisfied (as discussed below).

F.37. Section 13 thereby imposes a number of requirements that must be satisfied in order for the obligation to give reasons to crystallise. These include the following:

- a. the request must be in writing;
- b. the request must be within the specified timeframe;
- c. the person making the request must have standing;
- d. the decision must be a decision to which the ADJR Act applies;
- e. exclusion 1: the decision must not be a decision to which s 28 of the AAT Act applies;
- f. exclusion 2: reasons must not have already been provided;
- g. exclusion 3: the decision must not be a decision listed in Schedule 2; and
- h. the decision must not be subject to any other exclusions.

¹⁸⁹ *13 Reasons for decision may be obtained*

(1) *Where a person makes a decision to which this section applies, any person who is entitled to make an application to the Federal Court or the Federal Circuit Court under section 5 in relation to the decision may, by notice in writing given to the person who made the decision, request him or her to furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.*

F. Obligations for the ATO to Provide Reasons for Its Decisions

F.38. Additionally, a wide range of tax decisions are listed in Sch 1 to the ADJR Act and are, by operation of s 13(1)(d), not subject to the requirement to give reasons¹⁹⁰. The exclusions as listed in Sch 1 include the making of assessments or calculations of tax as well as objection decisions disallowing objections to assessments of tax. It follows that no obligation for the Commissioner to provide a statement of reasons under s 13(1) of the ADJR Act arises with respect to those decisions (nor do they arise under s 28 of the AAT Act, as discussed above).

Specific exclusions in s 13(11) must not apply

F.39. As noted above, s 13(11) further narrows the circumstances in which the Commissioner is required to provide a statement of reasons under s 13(1) by excluding 3 categories of cases where the ADJR Act otherwise applies.

¹⁹⁰ *decisions making, or forming part of the process of making, or leading up to the making of, assessments or calculations of tax, charge or duty, or decisions disallowing objections to assessments or calculations of tax, charge or duty, or decisions amending, or refusing to amend, assessments or calculations of tax, charge or duty, under any of the following Acts:*

A New Tax System (Goods and Services Tax) Act 1999

A New Tax System (Luxury Car Tax) Act 1999

A New Tax System (Wine Equalisation Tax) Act 1999

Customs Act 1901

Customs Tariff Act 1995

Excise Act 1901

Fringe Benefits Tax Assessment Act 1986

Fuel Tax Act 2006

Income Tax Assessment Act 1936

Income Tax Assessment Act 1997

Petroleum Resource Rent Tax Assessment Act 1987

Superannuation Guarantee (Administration) Act 1992

Taxation Administration Act 1953, but only so far as the decisions are made under Part 2-35, 3-10, 3-30 or 4-1 in Schedule 1 to that Act

Training Guarantee (Administration) Act 1990

Trust Recoupment Tax Assessment Act 1985;

(ga) decisions under section 14ZY of the Taxation Administration Act 1953 disallowing objections to assessments or calculations of tax, charge or duty;

(gaa) decisions of the Commissioner of Taxation under Subdivision 268-B or section 268-35 in Schedule 1 to the Taxation Administration Act 1953;

F. Obligations for the ATO to Provide Reasons for Its Decisions

Exclusion 1: A decision to which s 28 of the TA Act applies

F.40. Importantly, there is no obligation for the Commissioner to provide a statement of reasons pursuant to s 13(1) if a statement may be sought under s 28 of the AAT Act – refer s 13(11)(a). As discussed above, whether s 28 applies to a decision made by the Commissioner must be considered in light of the application of s 14ZZB and, as a consequence of s 14ZZB, s 28 does not apply to reviewable objection decisions. Consequently, there may be a requirement to give reasons for the making of reviewable objection decisions under s 13(1) to the extent that they are not otherwise excluded (N.B. as noted above, objection decisions related to assessments or calculations of tax are excluded under s 13(1)(d)).

No requirement to give reasons for an amended assessment

F.41. The cumulative effect of ss 28 and 37 of the AAT Act and s 13 of the ADJR Act is that there is, in fact, no statutory requirement for the Commissioner to give reasons for a decision to amend an assessment unless, and until, proceedings are commenced in the Tribunal and a statement of reasons is required by s 37 of the AAT Act. In the case of a reviewable objection decision concerning an amended assessment, in respect of which no review or appeal is sought, or that is appealed directly to the Federal Court, no reasons for the decision need ever be provided, albeit that in the case of an appeal to the Federal Court the Commissioner will typically defend the outcome of the amended assessment in the proceedings by setting out his contentions in an appeal statement and by filing submissions.

F.42. This appears somewhat curious in the context of a self-assessment regime, where pre-populated information is increasingly relied upon. Where the Commissioner assesses tax in accordance with the return as lodged, the Commissioner is simply assessing as the taxpayer has self-assessed. No reasons may be expected in this instance because the taxpayer has provided the information upon which they are assessed. However, where the Commissioner makes a decision to amend an assessment (which may mean not accepting information as pre-populated), a failure to provide reasons will result in information asymmetry for the taxpayer and their adviser.

F.43. Of course, even if the Commissioner gives reasons, in the context of an amended assessment, he is not bound by them. Once the Commissioner amends an assessment, the burden falls on the taxpayer to persuade the Commissioner by way of objection that the amendment should not have been made, including by stating fully and in detail the grounds that the taxpayer relies on.¹⁹¹ If the objection is disallowed, the taxpayer, who is bound by the grounds of the objection (subject to being given leave by the Tribunal or Court to expand or vary the grounds) has the onus of proving that the objection decision is

¹⁹¹ TA Act s 14ZU.

F. Obligations for the ATO to Provide Reasons for Its Decisions

wrong.¹⁹² The Commissioner, on the other hand, can change his reasons for making the decision as frequently as he chooses within the parameters of what the Tribunal or Court will allow in practice.¹⁹³

F.44. Nevertheless, despite the potential for the Commissioner's reasons to shift or change, understanding what those reasons are when an assessment is amended, or when a subsequent objection decision is made, is highly valuable for taxpayers and the tax system generally. A statement of reasons helps to ensure that any facts or issues in dispute are:

- identified at the outset;
- addressed efficiently;
- resolved early in the dispute if possible; and
- dealt with in the most appropriate platform for resolution of the dispute.

F.45. It may also illuminate for the taxpayer that no further steps to dispute the amended assessment are appropriate or necessary. No less important, a statement of reasons is likely to provide confidence to a taxpayer that their matter has been considered carefully, fairly and transparently, whereas the withholding of reasons from the taxpayer is likely to have the opposite effect.

F.46. The latter point is particularly relevant in the context of fraud or evasion (**FE**) opinions.

¹⁹² See section 14ZZK with respect to Tribunal proceedings and s 14ZZO with respect to Federal Court appeals.

¹⁹³ It is noted that the Commissioner can depart from his reasons for a decision at will up to the commencement of litigation. Once a litigious dispute is progressed, the Tribunal or Court will weigh up prejudice to the taxpayer as a factor in deciding whether to allow the Commissioner to change his arguments. However, prejudice to the taxpayer is not a decisive factor and any prejudice will often be mitigated by providing the taxpayer an opportunity to respond to the new arguments (whilst bearing the time and costs that entails), rather than precluding the Commissioner from changing his approach. By way of example, in the High Court decision of *Commissioner of Taxation v MBI Properties Pty Ltd* [2014] HCA 49, the Court notes that in the appeal the Commissioner abandoned the arguments he had presented in the Full Federal Court (where he was unsuccessful) and in the Federal Court (at [26]). He was not prevented from running a new argument in his appeal to the High Court, which was ultimately successful.

Fraud or Evasion Opinions

F.47. Whereas in the ordinary course, the Commissioner is permitted to amend a taxpayer's assessment within two- or four-year periods of review, where the Commissioner forms an opinion that there has been FE, the period of review is extended indefinitely. Notwithstanding the significant impacts that an FE opinion can have on the taxpayer, there are few opportunities for the taxpayer to be informed ahead of time that such an opinion is being contemplated and very rarely would there be opportunity for the taxpayer to engage with the process before the opinion is formed.¹⁹⁴ It is also difficult to obtain the reasons which have informed the opinion, or the evidence upon which the ATO has based its opinion, as in many cases, such evidence may have been obtained as part of covert audits or there may be a need to protect the identities of third party informants. The issue has been identified previously by the IGTO as a potential area for review¹⁹⁵ and has been raised with Parliamentary committees on several occasions.¹⁹⁶

The content of the Statement of Reasons

No universal requirements

F.48. There are no universal requirements as to what the statement of reasons must contain. There are requirements pertaining to what must accompany the statement of reasons; specifically, it must be accompanied by findings on material questions of fact and refer to evidence or other materials on which those findings were based,¹⁹⁷ but these do not constitute the reasons.¹⁹⁸ A statement of reasons must do more than restate the decision.¹⁹⁹

¹⁹⁴ It is noted that Law Administration Practice Statement PS LA 2008/6 *Fraud or evasion* ('PS LA 2008/6') states the following under the heading "What work practices apply in relation to fraud or evasion cases?":

"You should consider if there is behaviour that may indicate fraud or evasion at the earliest practicable opportunity in an audit. This allows us to obtain and consider relevant evidence before any opinions of fraud or evasion are formed.

In the normal course of communication, a taxpayer should also be made aware that you are looking into the issue of possible fraud or evasion. Advise the taxpayer of our preliminary view in a position paper and invite their comment before forming any opinion about fraud or evasion."

PS LA 2008/6 also states that forming an opinion that there has been fraud or evasion requires the exercise of sound judgment and fairness. The ATO's practice and the taxpayer experience may be considered by the IGTO in the context of a future review (see footnote 195).

¹⁹⁵ IGTO, *Register of Potential Investigation Topics: Topic 2021-9* (Web Page) <<https://www.igt.gov.au/our-investigations/register-of-potential-investigation-topics/>>; IGTO, *IGT Work Program 2017* (Web Page, 2017) <<https://web.archive.org/web/20171028112507/http://igt.gov.au/our-reviews/our-work-program/>>.

¹⁹⁶ A summary of previous occasions on which the issue has been raised with Parliamentary Committees is provided in the Submission of Tax Resolve to the SCTR's *Inquiry into the Annual Report of the Australian Taxation Office 2018-19* <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/AnnualReport2018-19/Submissions>.

¹⁹⁷ ADJR Act s 13(1); see also s. 25D of the *Acts Interpretation Act 1901* (Cth).

¹⁹⁸ *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) 140 CLR 675 and other cases cited at footnote 3 of [2.3.415] of Robinson SC, *Administrative Law: The Laws of Australia* (Thomson Reuters, 2016).

¹⁹⁹ *Minister for Immigration & Multicultural Affairs v Yusuf* (2001) 206 CLR 323 and other cases cited at footnote 3 of [2.3.415] of Robinson SC, *Administrative Law: The Laws of Australia* (Thomson Reuters, 2016).

F. Obligations for the ATO to Provide Reasons for Its Decisions

F.49. The courts have, in recent cases, held that there is a limited number of factors that comprise an “adequate set of reasons”.²⁰⁰ In *Wingfoot*²⁰¹ the Court framed the requirement for reasons as forensic, indicating that in exercising a statutory function the decision-maker’s decision was an “expert opinion” rather than an adjudication and explained that the decision should provide the losing party with enough information to form a view on whether to appeal.

Court or Tribunal can order adequate reasons

F.50. If the Court considers s 13(1) reasons to be deficient, an order can be made under s 13(7) of the ADJR Act requiring the decision-maker to provide adequate reasons. Similarly, if the Tribunal considers s 28 reasons to be inadequate, the applicant can apply for the Tribunal to make a declaration that the statement does not contain adequate particulars of the reasons for the decision and the person must, as soon as practicable and no later than 28 days after the declaration, give the applicant an additional statement containing further and better particulars of the relevant matters (ss 28(5) and (6) of the AAT Act).

The template in PS LA 2013/1

F.51. With respect to a statement of reasons made under s 13(1) of the ADJR Act, the Commissioner has published guidelines, a sample template for a statement of reasons and a checklist of factors to consider when preparing reasons, in PS LA 2013/1.

F.52. In addition to requiring that the statement be contextualised with background, findings on material questions of fact and evidence and other material on which the decision is based, the template in PS LA 2013/1 calls for ATO Officers to reproduce relevant provisions or sections under which the decision is made and to indicate why the decision was made, with reference to documents and findings of fact. The practice statement also indicates that the reasons should be written in plain language and include headings where possible.

F.53. As there are no requirements as to the content of a statement of reasons that are specific to s 13 of the ADJR Act, it stands to reason that this guidance in PS LA 2013/1 could be utilised, generally, where a statement of reasons is required to be provided by the Commissioner.

What this means for Taxpayers

F.54. It is important for taxpayers to keep in mind that reasons are not always provided, nor are they required to be. The fact that they are typically provided makes any refusal to do so, when it occurs, seem exceptional and, in many cases, unfair. However, in the absence of any change in law or policy, it is ultimately a matter for the Commissioner/ATO to decide and which might be revisited only once a decision to litigate the decision has been made by the taxpayer.

F.55. The *Taxpayers’ Charter* does set an expectation that the Commissioner will be “*open, transparent and accountable*” in his dealings with taxpayers. Accordingly, despite the limitations on a taxpayer’s legal

²⁰⁰ *Wingfoot Australia Partners Pty Ltd v Kocak* (2013) 252 CLR 480 cited at [2.3.420] of Robinson SC, *Administrative Law: The Laws of Australia* (Thomson Reuters, 2016).

²⁰¹ See *ibid*.

F. Obligations for the ATO to Provide Reasons for Its Decisions

right to reasons, if a taxpayer is met with a refusal by the Commissioner to provide reasons, or receives insufficient reasons and this impedes their ability to understand a decision or weigh up next steps, the taxpayer should consider availing themselves of their right to complain, including via:

- the ATO Complaints Unit and/or
- the IGTO complaints service.

F.56. In this way, taxpayer concerns can be appropriately addressed, ensuring fairness and transparency of the system, and encouraging voluntary compliance. This is important because, as the OECD observes ... *Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply.*

Appendix A — 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.

Appendix B — ATO Response



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

Dear Karen,

Investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal

Thank you for the opportunity to comment on the final draft of your report and the collaborative way this investigation was undertaken.

Effective communication of taxpayer rights is an extremely important aspect of our work. We have welcomed your report recognising the work the ATO already undertakes to ensure taxpayers are informed about their various rights, including that the Commissioner goes beyond the statutory requirements to inform taxpayers. Your recommendations will assist us to further extend the work we are already undertaking to improve communication with taxpayers.

Many of the aspects you have raised within the recommendations are currently being reviewed while others we will be integrating more fully into existing processes.

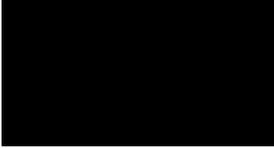
With respect to your recommendation that the ATO encourage a dissatisfied taxpayer to lodge a complaint, we are further considering the risk that this may encourage the lodgment of a complaint in preference to the exercise of a statutory review or appeal right. Given complaints are limited in their ability to resolve substantive tax issues, it would not be appropriate to encourage a complaint at the expense of the exercise of statutory review rights, particularly given the time frames governing those rights. There may be cases where it is appropriate for complaint channels to run parallel to a taxpayer exercising their statutory review rights.

We consider that there are three main areas you have noted in your review that we will be maintaining our focus on to ensure we are providing the right support to taxpayers at the right time:

- Staff understanding of the importance of communicating rights of review, complaint and appeal
- Readily available public information about those taxpayer rights
- Continued review of the Taxpayer's Charter to ensure it provides the appropriate protections.

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

Yours sincerely



Kirsten Fish
Acting Chief Law Officer

12 October 2021

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IGT Review into Review Rights

ATO response/comments regarding the preliminary draft report potential recommendations

Final draft recommendation	ATO Response
<p>REC 1 - The IGTO recommends that the ATO plays a pro-active role in informing taxpayers of their rights to review, complain and appeal decisions and develop strategies to discharge this role, including by;</p> <ul style="list-style-type: none"> a) updating the Taxpayers' Charter to include an express right to be informed of taxpayer rights to review, complain and appeal decisions and all relevant channels to do so; and b) requiring (encourages or instructs) its Officers to communicate clearly and completely (i.e. comprehensively) information to taxpayers of their rights to review, complain and appeal the relevant administrative decisions. 	<p>Recommendation 1a – Agree The ATO is currently undertaking a review of the Taxpayers Charter. As part of this review process, the ATO will take into account the IGTO's recommendation in relation to inclusion of further detail around the communication of taxpayer rights</p> <p>Recommendation 1b - Agree ATO officers that make decisions affecting taxpayers undertake a range of training and review processes that incorporate the importance of providing relevant information on review, complaint and appeal rights. The ATO will continue to review these processes.</p>
<p>REC 2 - Consistent with Recommendation 1 and the premise or principle that the ATO will proactively inform taxpayers of their rights to question and challenge the ATO's actions and decisions, the IGTO recommends that the ATO:</p> <ul style="list-style-type: none"> a) ensure all ATO Officers whose responsibilities include making decisions about taxpayers' tax affairs are aware of their obligations in this respect when engaging with taxpayers and tax practitioners; and b) support its Officers to understand the range of available channels to question or challenge ATO decisions and actions, including by requiring all ATO Officers to undertake relevant training courses on these matters that are refreshed on a regular basis. 	<p>Recommendation 2a – Agree ATO officers that undertake decision making affecting taxpayers already undertake a range of training that incorporate the importance of providing relevant information on review, complaint, and appeal rights. The ATO will continue to support staff in understanding their responsibilities in this regard. ATO Staff currently receive training in CEI's and these instructions will continue to be included in training modules.</p> <p>Recommendation 2b - Agree The ATO will continue to support staff in understanding their responsibilities and will review current mandatory training content relating to taxpayer rights to review, complain and appeal. The ATO will explore further targeted options for staff that are involved in client engagement roles.</p>

ATO response to IGTO draft report – Review of Communication Review Rights

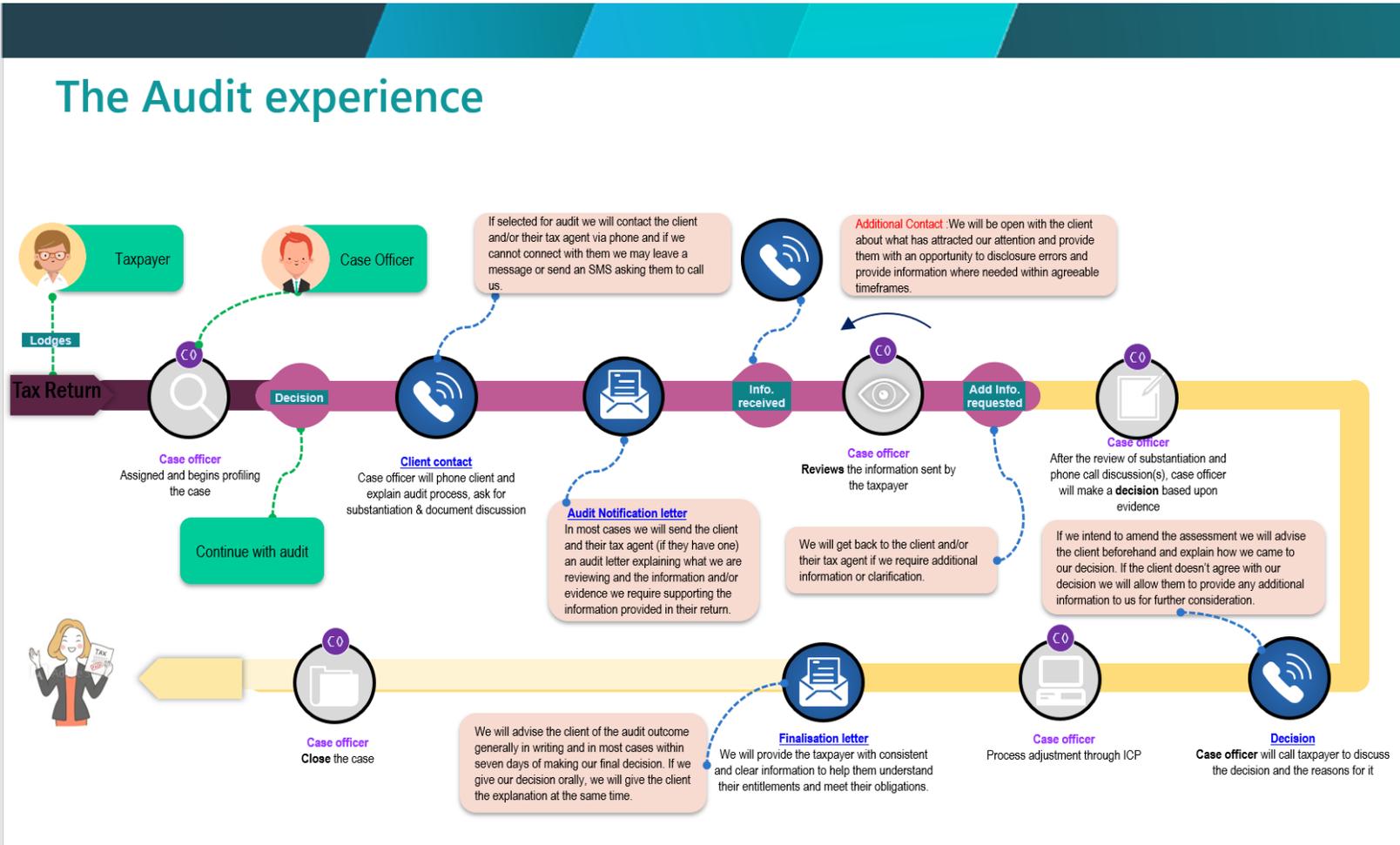
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Final draft recommendation	ATO Response
<p>REC 3 - The IGTO recommends that the ATO improve its data capture and reporting to measure its performance against the rights that taxpayers have under the Taxpayers' Charter. This should include:</p> <ul style="list-style-type: none"> a) complete data in relation to compliance with the Taxpayers' Charter in respect of all complaints b) whether the ATO advised the taxpayer of their right to question and right to complain; and c) developing public reporting on this data to assure itself and the community how it is honouring the Taxpayers' Charter. 	<p>Recommendation 3a - Agree</p> <p>The ATO complaints issue template captures data on which Charter Right is relevant to each complaint issue. The ATO is undertaking a complaints template review between October 2021 and March 2022 and will consider the feasibility of capturing this information for complaints resolved at first contact.</p> <p>Recommendation 3b – Agree</p> <p>The ATO will consider adding a question to relevant client surveys to determine whether taxpayers who have had a recent interaction with the ATO had been advised of their right to question and right to complain.</p> <p>Recommendation 3c - Agree</p> <p>The ATO will add further reporting on performance against the Taxpayer Charter to the annual report from 2021-22.</p>
<p>REC 4 - Consistent with Recommendation 1, where the ATO does not issue written correspondence to taxpayers in relation to its actions or decisions, ATO Officers should:</p> <ul style="list-style-type: none"> a) Ensure that taxpayers are verbally informed of their rights to formally challenge or question the ATO's decisions; and b) Inform taxpayers that they can request the decision also be communicated in writing. 	<p>Recommendation 4 – Agree</p> <p>The ATO will review processes within business lines to ensure officers are aware of the importance of communicating review rights and the option of a decision in writing in the limited cases where this is not provided as part of standard process.</p>
<p>REC 5 - The IGTO recommends that the ATO ensure information relating to taxpayer rights to complain, review and appeal can be easily located on the ATO's website.</p>	<p>Recommendation 5 – Agree</p> <p>The ATO will explore ways to continue to make it easier to locate information relating to taxpayer rights to complain, review and appeal on the ATO's website.</p> <p>The ATO is currently working towards procuring and building a new digital experience platform to enable us to deliver a website that is easier to navigate and find relevant information. In the meantime, the ATO will investigate opportunities to apply improvements to the current site to</p>

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Final draft recommendation	ATO Response
	bring value to our website users sooner. This includes work to improve our search functions to optimise users' interactions with the website.
<p>REC 6 - The IGTO recommends that, as part of its communication to taxpayers, the ATO should ensure that taxpayers are informed about:</p> <ul style="list-style-type: none"> a) their right to lodge a complaint with the ATO (including a formal complaint with the ATO's Complaints Unit), and encourage taxpayers to do so should they have any concerns or are dissatisfied with the ATO's actions or decisions; and b) the availability of the IGTO's services and how to engage with the IGTO where they have been unable to address their concerns through a complaint with the ATO. 	<p>Recommendation 6a – Agree in principle</p> <p>Taxpayers will continue to be informed at a relevant point in their interactions of their right to lodge a complaint with the ATO and the availability of the IGTO's services. In addition to our correspondence and website, the ATO will consider adding messaging to our inbound call lines. However, it is essential that through encouraging complaints, the ATO does not even implicitly direct taxpayers away from exercising appropriate statutory review rights. To do so would disadvantage taxpayers given time frames which govern such rights. Whether a complaint is the most effective or efficient mechanism to resolve a taxpayer's issue depends on the issue.</p> <p>Recommendation 6b – Agree</p> <p>The ATO will review procedures around complaints where the client may be unsatisfied with the outcome to ensure that clients are made aware of the IGTO's services at the appropriate time, along with other relevant review, complaint and appeal channels.</p>

Appendix C – The ATO I&I audit experience process map



Appendix D — The ATO's favourable JobKeeper objection decision letter

GPO BOX 9990 SYDNEY NSW 2001



Australian Government
Australian Taxation Office



Our Reference:
ABN:



May 2021

We have made a decision on your objection

Dear [REDACTED],

We have finished looking at your objection dated [REDACTED] April 2021.

Objection to reviewable jobkeeper decision

You objected to our decision that you were not eligible for jobkeeper payments as the eligibility criteria were not met.

We have made the decision on your objection that you are eligible to jobkeeper payments – allowed in full for the March to September jobkeeper fortnights.

Yours sincerely,
Jeremy Geale
Deputy Commissioner of Taxation

NEED HELP?

If you have any questions, you can phone us on 13 26 69 between 8.00am and 5.00pm, Monday to Friday.

Ask for [REDACTED] on extension [REDACTED] or phone them direct on [REDACTED]

It will help if you quote 'Our reference', which you will find at the top of this letter. If you can, have your tax file number or Australian business number with you when you phone.



Appendix E – The ATO’s SB audit finalisation letter template

GPO BOX 9990 SYDNEY NSW 2001



Australian Government
Australian Taxation Office

<FIRST NAME> <SURNAME>
<ORGANISATION>
<ADDRESS LINE 1>
<ADDRESS LINE 2>
<LOCALITY> <STATE> <POSTCODE>
<COUNTRY>

Our reference: <<Siebel CaseID>>
Contact officer: <<Case officer>>
Phone: 13 28 69
Client ID: <<Client ID>>

<Select date>

> We have finished our audit

> You can request an independent review

Dear <First Name> [or another approved salutation],

We have finished our audit of <<entity name>> from <Select date> to <Select date>.

[Insert if taxpayer was co-operative]

Thank you for giving us the information we needed and for your time and cooperation during the audit.

[Increasing and decreasing liability]

[*Select option if audit position paper (APP) was sent to client*]

[Option 1: Insert if client has not responded to the APP]

As you haven't replied to the 'Audit position paper' we sent you, our position is still the same.

[Option 2: Insert if APP accepted by client]

You have accepted the 'Audit position paper' we sent you without any changes.

[Option 3: Insert if ATO changes its position after client's response to APP]

We have considered your reply to our 'Audit position paper' and have changed our position.

[Option 4: Insert if ATO doesn't change its position after client's response to APP]

We have considered your reply to our 'Audit position paper' but our position is still the same.

[*End of APP options*]

[*Select one of two paragraph options*]

[Option 1 insert if NO reasons for decision document included]

We have included the results of our audit and a summary [or] summaries of our changes with this letter.

[Option 2 - Insert if reasons for decision attachment is included]

We have included a full explanation of the results of our audit, a summary [or] summaries of our changes and a document [or] documents explaining our [Click to select...](#) with this letter.

[*End of options*]

You can request an independent review

Even though we have finished our audit, you can request an independent review of our decision. See the attached fact sheet or our website at ato.gov.au/smallbusinesspilot for more information. [Print off embedded

NEED HELP?

If you have any questions, you can phone us on 13 28 69 between 8.00am and 5.00pm, Monday to Friday. Ask for <<Officer name>> on extension <<Officer extension>>.

It will help if you have this letter with you when you phone us.

If you have been affected by COVID-19, bushfires or other disasters

- > visit ato.gov.au/disasters
- > phone our Emergency Support Infoline on 1800 606 218.

FIND OUT MORE

You can find more information on our website about:

- > independent review ato.gov.au/smallbusinesspilot
- > objections ato.gov.au/objections
- > record keeping ato.gov.au/recordkeeping
- > interest and penalties ato.gov.au/penaltiesandinterest
- > voluntary disclosure ato.gov.au/makeavoluntarydisclosure
- [Insert if outcome is a debt]
- > how to pay ato.gov.au/howtopay

Appendix E – The ATO’s SB audit finalisation letter template

fact sheet to attach with your letter. Once printed, delete the embedded document below]



Independent Review
SB Pilot_Fact Sheet_

If you decide to request an independent review, you must:

- › inform us by an email at independent_review@ato.gov.au by [14 days + 6 business days (if this letter is sent by post) from date of letter.]
<Select or insert date>
- › [If IR process will impact on POR in your case, insert this dot point. Where POR expires during 45 day period insert the POR expiration date less 14 days in date field. If POR expires between 45 to 120 day period insert date 30 days from letter issue date] complete and send the enclosed consent form to us by <Select date> to extend the amendment period.

If we don't receive your **request for an independent review** [or] **request for an independent review and completed consent form** by the above due date<s>, we will issue **Click to select...** based on the information we have.

If you don't wish to request an independent review, please contact <<Officer full name>> straight away on <<Officer phone number>> and we will issue the **notice of assessment** [or] **notice of assessments** [or] **amended assessment** [or] **amended assessments**.

Yours **sincerely** [or] **faithfully**,
<<Deputy Commissioner's Name>>
Deputy Commissioner of Taxation



Australian Government
Australian Taxation Office

Results of the audit

The amount **we will refund you** [or] **you need to pay**, not including any interest charges, is \$<amount>.

[Insert for increasing liability]

We have included a summary of our **changes** [or] **changes and any penalties you need to pay** in Schedule 1 with this letter.

[Insert for decreasing liability]

We will pay this amount directly into your bank account. You may also be entitled to receive interest for the period your refund was delayed. However, if you owe us any money, we will take the amount you owe from your refund. We have included a summary of our changes in Schedule 1 with this letter.

[Insert for all cases as assessment/penalty notices will be issued separately to this letter]

We will send you your updated **Click to select...** soon.

What you need to know

[*Insert penalty option if applicable and crown immunity doesn't apply*]

Penalties

[Option 1 - Insert if penalty remitted in full under Penalty Relief initiative. This is the enterprise endorsed content and must not be changed. Select yellow options and complete blue variables as it applies to your case]
You don't need to pay a shortfall penalty because we have decided not to charge you this time.

As noted earlier [or] **As shown in the Reasons for our decision**, you owe \$<amount> extra tax. This is because [Select sentence if penalty is for failure to take reasonable care] **Click to select...** made a mistake [or] mistakes on your **Click to select...** [Select sentence if penalty is for no reasonably arguable position] **Click to select...** took a tax position that was not reasonably arguable by law.

In this situation, we would normally charge a penalty, which could be up to 25% of the extra tax you need to pay, or in this case up to \$<amount>. However, in this limited circumstance we have not charged the penalty and instead taken the opportunity to **Click to select...** to help you to better understand the error and help to get it right next time. Below are some **steps** [or] **po** [repeat as required] **ints** to assist you:

› <insert step/points>

› <insert step/points>

You might like to keep this information with your tax documents to help you with this issue in the future. It is important that you take more care, as penalties may apply for future mistakes.

[Option 2 - insert if reasonable care taken]

You don't need to pay a shortfall penalty because **Click to select...** took reasonable care when preparing your **Click to select...**

[Option 3 - insert if safe harbour concession applies]

You don't need to pay a shortfall penalty because you gave all the relevant tax information to your tax agent.

[Option 4 - insert if administrative penalty remitted in full or in part]

Under tax law, **a penalty applies** [or] **penalties apply** to your tax shortfall. However, we have looked at your situation and have decided to **cancel** [or] **reduce this penalty** [or] **these penalties**. We explain why in the 'Reasons for our penalty decision' document included with this letter.

[Option 5 - insert if shortfall penalty imposed for recklessness or intentional disregard]

We are charging you a significant penalty after looking at what caused your tax shortfall. We may also review your business again in the future to make sure you give us the correct information to work out your tax. We explain why in the 'Reasons for our penalty decision' document included with this letter.

[Option 6 - Insert if s16-30 PAYG failure to withhold penalty imposed]

We have charged you a pay as you go (PAYG) failure to withhold penalty that is equal to the amount you didn't withhold. We have decided to remit **part** of the penalty. This means you don't have to pay all of it. We will send you **a penalty notice within 28 days and have included the reasons for our decision with this letter.** [or] **the penalty in**

full. This means you don't have to pay it. We will charge you a penalty if you don't meet your PAYG withholding obligations in the future.

[*End of penalty section and options*]

[*Insert interest charges paragraph options for Increasing liability*]

Interest charges

[Option 1 - insert if crown immunity doesn't apply but interest charges are fully remitted]

We generally charge interest on any extra tax you owe us to make the process fair for those who pay the correct amount on time. We have looked at your situation and have decided to cancel the interest charge. We have included our reasons why with this letter.

[Option 2 - insert if interest charged-no remission request received]

We generally charge interest on any extra tax you owe us to make the process fair for those who pay the correct amount on time. [Include the following sentence if applicable otherwise delete.] We have looked at your situation and have decided [or] are not going to reduce the interest charge. The amount of interest you need to pay will be included on your account statement.

We explain why in the 'Reasons for our decision' document included with this letter. If you don't agree with our decision, you can ask us to reduce the interest [or] further reduce the interest.

The interest charge is tax deductible. If you claim the interest as a tax deduction and we later reduce or cancel it, you have to include that amount as assessable income in your tax return.

[Option 3 - insert if interest charged-remission request received]

We generally charge interest on any extra tax you owe us to make the process fair for those who pay the correct amount on time. We have looked at your request and have decided [or] are not going to reduce the interest charges. We will include the amount of interest you need to pay on your account statement. We explain why in the 'Reasons for our decision' document we have included with this letter.

[Option 4 - insert if SIC charged on income tax adjustment]

You can object to our decision on your shortfall interest charge, if the amount you have to pay is more than 20% of your income tax shortfall. If it's less than this amount, you can ask for an independent review in the Federal Court.

If you don't agree with our decision on your general interest charge, you can ask us to review it. You can also ask for an independent review in the Federal Court.

The interest charge is tax deductible. If you claim the interest as a tax deduction and we later reduce or cancel it, you have to include that amount as assessable income in your tax return.

[*End of increasing liability options for interest charges*]

[*Insert if audit results in an amount payable *]

[Option 1 - insert for lodgment and payment proposal received and select 1A or 1B option]

Your [Click to select...](#)

[Option 1A – Insert if payment proposal accepted]

We have accepted the payment plan you gave us. We will send you a confirmation letter soon.

[Option 1B – Insert if payment and/or lodgment proposal is under consideration]

We are considering the [Click to select...](#) you gave us. We will contact you soon.

[Option 2 - insert if you haven't discussed payment or received proposal]

Amounts you have to pay

The notice<s> of assessment or amended assessment will show the amount<s> you still have to pay. You need to pay these amounts by the due date in the relevant notice.

[*End of amount payable options*]

Your right to object

If you don't request an independent review and you don't agree with our decision, you can still object to it. You can only do this after you receive your notice<s> of <insert type of notice>. We will include information about how to object in the notice<s>.

Record keeping

Good record keeping helps you monitor the health of your business and shows your financial position to lenders, accountants and other businesses. Generally, you need to keep your business records, including all records looked at as part of this audit, for at least five years. Some records need to be kept for longer.



Schedule 1: Summary of our changes

[Delete rows that don't apply to your case]

Description	Amount
Increased [or] Reduced GST payable	\$ <Amount >
Increased [or] Reduced GST credits	\$ <Amount >
Income tax payable [or] refundable	\$ <Amount >
Pay as you go withholding payable [or] refundable	\$ <Amount >
Tax shortfall penalty (activity statement)	\$ <Amount >
Tax shortfall penalty (income tax)	\$ <Amount >
Pay as you go failure to withhold penalty	\$ <Amount >
<Other penalty type> (activity statement)	\$ <Amount >
<Other penalty type> (income tax)	\$ <Amount >

**If we don't receive your request for an independent review by <Select or insert date> we will make these changes.*



Summary of activity statement changes

<<Entity name>> ABN:<<ABN/CAC>>

[Insert summary of activity statement amendments from ASAPS]

Tax period: <Select date> to <Select date>

#	Issue description	Label	Reported amount	Updated amount	Difference	Tax
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
Tax shortfall						\$<amount>

*If we don't receive your request for an independent review by <Select or insert date> we will make these changes.

[Insert if you revised the annual GST return]
 Note: We have revised your annual <CCYY> GST return.



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Summary of income tax return changes

<<Entity name>> ABN:<<ABN/CAC>>

[Insert summary of income tax returns amendments]

Financial year ended: 30 June <CCYY>

#	Issue description	Label	Reported amount	Updated amount	Difference	Tax
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
<>	<issue description>	<>	\$<amount>	\$<amount>	\$<amount>	\$<amount>
Total income tax payable						\$<amount>

**If we don't receive your request for an independent review by <Select or insert date> we will make these changes.*

[Insert if an adjustment is to be made to an ITR but the return is not yet lodged]

Make sure you include the correct amounts in your income tax return for the year ending 30 June <CCYY>.



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Australian Taxation Office

Reasons for our decision

[Insert this page if preparing a technical report and delete the streamline reporting page]

<<Entity name>> ABN: <<ABN/CAC>>

Issue

[Repeat for each compliance issue]

[Insert details for first compliance issue]

<Free text>

Facts

[Insert facts for first compliance issue]

<Free text>

Decision

[Insert details of ATO position or decision on the first compliance issue]

<Free text>

Reasons for our decision

[Insert details of our reasons for the ATO position or decision on the first compliance issue]

<Free text>

Reasons for our penalty decision

[Insert if crown immunity *doesn't* apply – include the standard shortfall penalty decision – text and summary from ASAPS or manually insert applicable penalty text]

<Insert standard penalty text>

[Insert if crown immunity applies]

In your case, we will not charge you administrative penalties.

[Insert if PAYG withholding failure to withhold penalty imposed/remitted – include standard failure to withhold penalty decision – text and summary from ASAPS]

<Insert standard penalty text>

[Insert if crown *immunity doesn't* apply]

Reasons for interest charges decision

[Insert standard interest charges text from ASAPS or GIC/SIC calculator]

<Text>



Reasons for our decision

[Insert this page if preparing a report using streamlined reporting and delete the technical report page]

<<Entity name>> ABN: <<ABN/CAC>>

[Repeat for each additional compliance issue]

[Insert first compliance issue as a heading]

Issue

[Provide a description of the issue, material facts, relevant legislation and the findings in a narrative format]

<Free text>

Reasons for our penalty decision

[Insert if crown immunity doesn't apply – include the standard shortfall penalty decision – text and summary from ASAPS or manually insert applicable penalty text]

<standard penalty and text>

[Insert if crown immunity applies]

In your case, we will not charge you administrative penalties.

[Insert if PAYG withholding failure to withhold penalty imposed/remitted – include standard failure to withhold penalty decision – text and summary from ASAPS]

<Insert standard penalty text>

[Insert if crown immunity doesn't apply]

Reasons for interest charges decision

[Insert standard interest charges text from ASAPS or GIC/SIC calculator]

<Text>



Consent form to extend the amendment period – Income Tax

[Only include this form where PoR is due to expire in 120 days or less to extend the amendment period. Insert consent form as it applies to your case ie one or both]

<<Entity name>> ABN: <<ABN/CAC>> Case Id: <<Siebel Case ID>>

[If POR expires during 45 day period insert the POR expiration date less 14 days in date field. If POR expires between 45 to 120 day period insert date 30 days from letter issue date]

If you wish to request an independent review, you must complete this consent form to extend the amendment period and send it to <<Officer name>> by <Select date>. You can do this by:

[Only insert email option if client has requested email. If not requested, you must delete email option.]

› email: <<officer email address>> We’ve included our email address, which you asked for. However, as we explained to you over the phone, we can’t guarantee the security of information sent to us by email.

› mail: Attention: <<Officer name>>
Australian Taxation Office
<<Reply to address>>

[Insert consent form to extend original limited amendment period for 2004/05 and later income years]

Consent to extend amendment period in accordance with subsection 170(7) of the Income Tax Assessment Act 1936 (ITAA 1936)

<Insert taxpayer name>, being a taxpayer whose affairs are subject to an examination for the year ended <insert relevant year> by the Commissioner of Taxation and with such examination not being completed prior to end of the limited amendment period, i.e. <insert date of end of the limited amendment period>, consents under item 2 of the table in subsection 170(7) ITAA 1936 to an extension of the period within which the Commissioner may amend its income tax assessment for the year ended <insert relevant year> under subsection 170(1) ITAA 1936, to <Select date>.

Signature..... Date / /
Signed on behalf of.....
Full name of signatory.....
Capacity of signatory.....

[Insert consent form to further extend limited amendment period for 2004/05 and later income years]

Consent to extend amendment period in accordance with subsection 170(7) and subsection 170(8) of the Income Tax Assessment Act 1936

<Insert taxpayer name>, being a taxpayer whose affairs are subject to an examination for the year ended <insert relevant year> by the Commissioner of Taxation and with such examination not being completed prior to <insert relevant date>, being the date of that period as extended by previous consent signed by <Taxpayer name> under item 2 of the table in subsection 170(7) ITAA 1936, consents under item 2 of the table in subsection 170(7) of the ITAA 1936 to a further extension of the period, in accordance with subsection 170(8) ITAA 1936, within which the Commissioner may amend its income tax assessment for the year ended <insert relevant year> under subsection 170(1) ITAA 1936, to <Select date>.

Signature..... Date / /
Signed on behalf of.....
Full name of signatory.....
Capacity of signatory.....



Australian Government
Australian Taxation Office

Consent form to extend the amendment period – Indirect Tax

[Only include this form where PoR is due to expire in 120 days or less to extend the amendment period. Insert consent form as it applies to your case ie one or both]

<<Entity name>> ABN: <<ABN/CAC>> Case Id: <<Siebel Case ID>>

[If POR expires during 45 day period insert the POR expiration date less 14 days in date field. If POR expires between 45 to 120 day period insert date 30 days from letter issue date]

If you wish to request an independent review, you must complete this consent form to extend the amendment period and send it to <<Officer name>> by <Select date>. You can do this by:

[Only insert email option if client has requested email. If not requested, you must delete email option.]

› email: <<officer email address>> We’ve included our email address, which you asked for. However, as we explained to you over the phone, we can’t guarantee the security of information sent to us by email.

› mail: Attention: <<Officer name>>
 Australian Taxation Office
 <<Reply to address>>

Consent to extend period of review in accordance with subsection 155-35(4) of Schedule 1 of the Taxation Administration Act 1953 (TAA 1953).

[Option 1 - For an examination that relates to a single tax period only use the following paragraph]
 <Insert taxpayer name>, being a taxpayer whose affairs are subject to an examination for the tax period ending <Select or type in date> by the Commissioner of Taxation relating to an indirect tax assessment and with such examination not being completed prior to the end of the period of review, i.e. [insert original period of review end date] <Select or type in date>, consents under subsection 155-35(4) of Schedule 1 of the TAA 1953 to an extension of the period of review to <Select or type in date>.

[Option 2 - For an examination that includes multiple tax periods use the following paragraph]
 <Insert taxpayer name>, being a taxpayer whose affairs are subject to an examination for the tax periods as detailed in the following table by the Commissioner of Taxation relating to an indirect tax assessment and with such examination not being completed prior to the end of the respective periods of review, consents under subsection 155-35(4) of Schedule 1 of the TAA 1953 to an extension of the period of review to <Select or type in date>.

[Add rows as required]

Tax Period ending	Lodged Date	Period of review Expiry Date	Extended Period of Review
<Select or type in date>	<Select or type in date>	<Select or type in date>	<Select or type in date>
<Select or type in date>	<Select or type in date>	<Select or type in date>	<Select or type in date>

[End of options]

<Insert taxpayer name> acknowledges that I have [or] It has not previously consented to an extension of the review period for this indirect tax assessment.

Signature..... Date / /

Signed on behalf of.....

Full name of signatory.....

Capacity of signatory.....

Appendix F — The ATO’s private rulings fact sheet

Fact sheet

Private rulings

Income tax
Medicare levy
Franking tax
Petroleum resource rent tax

HOW DOES YOUR PRIVATE RULING PROTECT YOU?

If you ‘rely’ on your ruling, that is, conduct your affairs in a way that is consistent with the facts set out in your ruling, we will apply the law to you in the way outlined in the ruling.

If you have relied on your ruling, even if we find out later that your ruling is incorrect – for example, it does not correctly set out how the law applies, and the correct interpretation is to your disadvantage – you will not have to pay any more tax. Further, you will not have to pay any penalties or interest.

This protection applies for the period specified in the notice.

Where the correct interpretation of the law is to your advantage, we will apply the law to give you the advantage (unless a time limit prevents us from doing so).

WHEN WON’T YOUR PRIVATE RULING PROTECT YOU?

You will not have this protection if:

- the facts or circumstances as set out in the ruling change
- the law on which the ruling is based changes
- you already have a ruling on the same matter and for the same period, and you have not told us about it (then the later ruling is taken not to have been made), or
- another ruling revises or changes this ruling before you begin the arrangement described in the ruling, and before any income year or other period stated in the ruling starts (then this ruling does not apply).

DO YOU HAVE TO FOLLOW YOUR PRIVATE RULING?

If you disagree with this ruling, you can choose not to follow it. You can change your mind at any time (subject to time limits imposed by the law).

However, if you choose not to follow your ruling and your position is later found to be incorrect, you will have to repay any tax shortfall, plus interest on the underpaid amount.

You may also have to pay penalties unless you can show that you have exercised reasonable care in deciding to adopt your position.

DO YOU DISAGREE WITH THE RULING?

If you are not satisfied with this ruling you can ask us to review it. There are two ways of doing this, depending on whether or not you have an assessment for the event or claim period that your ruling covers.

If you:

- don’t have an assessment, you should object to the ruling itself
- have an assessment, you should object to the assessment, not the ruling.

For more information on objections, including how long you have to lodge an objection, go to ato.gov.au and type ‘objection’ in the search box.

Alternatively, phone **13 28 69** between 8.00am and 6.00pm, Monday to Friday, and ask to speak to the contact officer named in your *Notice of private ruling*.

DOES THE RULING AFFECT A TAX ASSESSMENT?

If your ruling affects a tax assessment you have already received, you may need to ask us for an amendment. We do not amend your assessments automatically because you may choose not to follow the ruling.

For information on amendments, go to ato.gov.au and type ‘amendment’ in the search box.

PUBLISHING YOUR RULING ON OUR WEBSITE

To ensure the integrity of our advice, we publish a version of every private ruling on the *ATO Legal database* ato.gov.au/law

Before we publish, we edit each ruling to remove all identifying details. This ensures that your privacy is protected. A copy of the edited version of your ruling is included with your ruling.

Do you want to change the edited version?

If you are concerned that the edited version may still allow you to be identified, contact us within **28 days** of the date of your ruling at either:

▪ editedversionsunit@ato.gov.au

or

▪ Edited Versions Unit
Australian Taxation Office
PO Box 9990
NEWCASTLE NSW 2300

If you do not contact us within 28 days, we will publish the edited version on the *ATO Legal database*.

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this fact sheet as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

Appendix G – The ATO’s previous GIC remission letter



Australian Government
Australian Taxation Office



Reply to: PO Box 327
ALBURY NSW 2640
Our reference: [REDACTED]
Contact officer: Debt Officer
Phone: 13 11 42
Fax: 1300 139 045
Your reference: [REDACTED]
TFN: [REDACTED]

15 April 2020

Your request for remission of GIC is declined For your information and action

Dear Sir/Madam

Thank you for your letter of 15 April 2020 requesting remission of the general interest charge (GIC) accrued to 2 March 2020 on your income tax account.

We have decided that your circumstances do not warrant remission of the GIC.

Reasons for our decision

In making this decision we considered the reasons you gave in your letter. Your reasons were:

- the late lodgement 2007 tax return and resulting tax liability was identified via the newly operational Online Service for Agents
- the missed lodgement was not intentional
- upon discovery immediate steps were taken to rectify the situation with lodgement of the tax return and payment of the relevant debt
- the taxpayer has an excellent lodgement and payment history, and
- we cannot locate any previous notification of the outstanding return, from the ATO, either online or in writing.

Our policy on this issue is PS LA 2011/12 which indicates where the circumstances resulting in late payment are caused by the client they must show that they took all reasonable steps to mitigate the circumstances and also that it would be fair and reasonable to the rest of the tax paying community to grant the remission.

You have not shown, given the return was completed and signed for lodgement, that it is reasonable to claim that the trustee was unaware of the \$143,703.60 liability and as such could have paid the amount. Prior years had all been liabilities so it would have been reasonable for the client to expect a liability for 2007. Client has had a large financial advantage over other tax payers of an additional \$143,703.50 over 12 years. It would not be at all fair or reasonable to allow the client to have those funds at 0 interest.

You can find full details of our remission policy for GIC on our website at www.ato.gov.au by searching for 'GIC fact sheet'.

Reminder

As you still have an amount outstanding, GIC will continue to accrue on a daily compounding basis until the debt is paid in full.

Your review rights

If you are dissatisfied with this decision you may seek a review of the decision by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. Fees will generally apply.

Applications for a review of a written decision must be lodged with the Federal Court within 28 days of the date of this letter. If you do not lodge your review application within the 28 days, you will need to apply to the Court for an extension of time to lodge the review.

Alternatively, if you believe there are further circumstances that should have been considered when making our decision, then please phone us on the number below.

More information

If you have any questions, please phone **13 11 42** between 8:00am and 6:00pm, Monday to Friday.

Protecting your privacy when you phone us

If you phone us we need to know we are talking to the correct person before providing account information. We will ask you for details only you, or your authorised representative, would know. It will also be helpful if you have your tax file number or Australian business number ready when you phone us.

Yours faithfully

Melinda Smith
Deputy Commissioner of Taxation

Appendix H — The ATO’s current GIC remission template

<GPO Box 9990 SYDNEY NSW 2001>



Australian Government
Australian Taxation Office

<FIRST NAME> <SURNAME>
<ORGANISATION>
<ADDRESS LINE 1>
<ADDRESS LINE 2>
<LOCALITY> <STATE> <POSTCODE>
<COUNTRY>

Our Reference: <Siebel Receipt ID>
Phone: <13 11 42>
Client ID: <TFN/ABN>
<Letter Date>

Your request to remit general interest charge is <approved><partially approved><declined>

<Dear <First Name><Position title>><To whom it may concern>,>

We've received your <letter><facsimile><phone call> on <DD Month CCYY> asking us to remit your general interest charge (GIC) accrued to <DD Month CCYY> on your <Tax type> account<S>.

[Select if full remission]

<We've decided to remit your GIC of \$<remission amount> in full.>

If you have already claimed the remitted GIC as a deduction in your income tax return, you will need to include the amount of the remission as income in your return for the financial year in which the remission is granted.>

[Select if partial remission]

<While your circumstances do not warrant a full remission of the GIC, we've granted a partial remission of \$<Remission amount>. Our reasons for this decision are shown in the attached Reasons for our decision document.>

If you have already claimed the remitted GIC as a deduction in your income tax return, you will need to include the amount of the remission as income in your return for the financial year in which the remission is granted.>

[Select if remission refused]

<We've decided that your circumstances do not warrant remission of the GIC. Our reasons for this decision are shown in the attached Reasons for our decision document.>

[Select if a debt remains on the account]

<As you still have an amount outstanding, GIC will continue to accrue on a daily compounding basis until the debt is paid in full.>

[Select if partial remission or remission refused]

<Your review rights>

If you are dissatisfied with this decision you may seek a review of the decision by the Federal Court under the Administrative Decisions (Judicial Review) Act 1977. Fees will generally apply.

Applications for a review of a written decision must be lodged with the Federal Court within 28 days of the date of this letter. If you do not lodge your review application within the 28 days, you will need to apply to the Court for an extension of time to lodge the review.

Alternatively, if you believe there are further circumstances that should have been considered when making our decision, then please phone us on <13 11 42>.>

[include the 'Pay Now' information if there is an amount owing] **PAY NOW**

Your payment reference number (PRN) is:
<XXXXXXXXXXXXXXXXXXXX>

BPAY[®]



Billier code: 75556
Ref: <XXXXXXXXXXXXXXXXXXXX>

Telephone & Internet Banking
– **BPAY[®]**

Contact your bank or financial institution to make this payment from your cheque, savings, debit or credit card account.
More info: <www.bpay.com.au>

CREDIT OR DEBIT CARD

Pay online with your credit or debit card at
<www.governmenteasypay.gov.au/PayATO>
or phone 1300 896 089.
A card payment fee applies.

OTHER PAYMENT OPTIONS

For other payment options, visit
<ato.gov.au/paymentoptions>

NEED HELP?

If you have any questions, you can phone us on <13 11 42> between <8.00am> and <6.00pm>, <Monday to Friday>.

Appendix H – The ATO’s current GIC remission letter template

Yours <sincerely><faithfully>,
<Deputy Commissioner's Name>
Deputy Commissioner of Taxation

[Include for overseas addresses] <if you are calling from overseas you can phone us on <+61 2 6216 1111> between <8.00am> and <6.00pm> (Australian Eastern Standard Time or daylight-saving time), <Monday to Friday> and ask for your call to be transferred to <13 11 42>.>

For information about your rights and obligations visit <ato.gov.au/taxpayerscharter>

[Include if letter runs to second page and there is an amount owing] **HOW TO PAY**

Your payment reference number (PRN) is: <oooooooooooooooooooo>

BPAY®



Billier code: 75556

Ref: <oooooooooooooooooooo>

Telephone & Internet Banking – **BPAY®**

Contact your bank or financial institution to make this payment from your cheque, savings, debit or credit card account.
More info: www.bpay.com.au

CREDIT OR DEBIT CARD

Pay online with your credit or debit card at www.governmenteasypay.gov.au/PayATO

To pay by phone, call the Government EasyPay service on 1300 598 088.

A card payment fee applies.

OTHER PAYMENT OPTIONS

For other payment options, visit ato.gov.au/paymentoptions



<Reasons for our decision

We've made our decision based on the reason<s> you gave in your <letter><facsimile><phone call>. Your reason<s> <was><were>:

<Their reasons>.

<We also considered <Facts>.

Our policy on this issue is <Policy>. We also took into account your previous compliance history and previous interactions with the ATO.

[Select if appropriate]

<Application of policy>.

You can find full details of our remission policy for GIC on our website. Visit <ato.gov.au/GIC>.>

Appendix I — Extract of the ATO search results for ‘objections’

What's New ATO Community Tax Topics A-Z Legal Database **Login**



Home Individuals Business Not-for-profit Super Tax professionals About ATO

Search results

12699 results

objections

All (12699)	Tools & calculators (80)	Rates & codes (558)	Forms & publications (780)	Legal database (8376)
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Application for extension of time to lodge an objection: Objections | Australian Taxation Office

Lists the documents and information we usually need to process an objection to our decision about an application for an extension of time to lodge an objection.

General / Dispute-or-object-to-an-ATO-decision / In-detail / Information-for-your-objection / Penalties-interest-and-extensions-of-time

20-Feb-2017

How to object to a decision | Australian Taxation Office

An objection must be lodged in writing (on our form or in a letter) within the time limit.

General / dispute-or-object-to-an-ato-decision / object-to-an-ato-decision

New or updated 02-Jul-2021

Object to an ATO decision | Australian Taxation Office

You're entitled to object to most decisions we make about your income tax affairs, including tax assessments, and your other tax and super obligations and entitlements. If you object to a decision we've made, it will be considered by a person who was not involved in the original decision.

general / dispute-or-object-to-an-ato-decision

28-Mar-2018

Medicare Levy exemption objections | Australian Taxation Office

Lists the documents and information we usually need to process an objection about Medicare Levy exemption.

General / Dispute-or-object-to-an-ATO-decision / In-detail / Information-for-your-objection / Medicare-levy

26-Sep-2017

Super guarantee objections - supporting information | Australian Taxation Office

Lists the documents and information we usually need to process an objection to our decision about super guarantee (SG).

General / Dispute-or-object-to-an-ATO-decision / In-detail / Information-for-your-objection

New or updated 19-May-2021



Appendix I – Extract of the ATO search results for ‘objections’

How we deal with your objection | Australian Taxation Office

When we receive an objection, we review the facts and evidence you provide and come to a decision.

[General](#) / [Dispute-or-object-to-an-ATO-decision](#) / [Object-to-an-ATO-decision](#)

10-Oct-2017

Cost of managing tax affairs objections | Australian Taxation Office

Lists the documents and information we usually need to process an objection to our decision about cost of managing tax affairs deduction.

[General](#) / [Dispute-or-object-to-an-ATO-decision](#) / [In-detail](#) / [Information-for-your-objection](#)
/ [Deductions](#)

26-Sep-2017

Objections and amendments | Australian Taxation Office

Contact us as soon as possible if you want to object to a decision or amend a return.

[business](#) / [large-business](#)

26-Feb-2015

Compensation payments received objections | Australian Taxation Office

Lists the documents and information we usually need to process an objection to our decision about compensation payments received.

[General](#) / [Dispute-or-object-to-an-ATO-decision](#) / [In-detail](#) / [Information-for-your-objection](#)
/ [Income](#)

04-Jul-2017

Domestic travel deductions objections | Australian Taxation Office

Lists the documents and information we usually need to process an objection to our decision about domestic travel (travel within Australia) deductions.

[General](#) / [Dispute-or-object-to-an-ATO-decision](#) / [In-detail](#) / [Information-for-your-objection](#)
/ [Deductions](#)

26-Sep-2017

Searches related to objections

- > [objections form](#)
- > [objections forms](#)
- > [AASIS Objections](#)
- > [super objections](#)
- > [objections number](#)
- > [lodge objections](#)
- > [objections EOT](#)
- > [jobkeeper objections](#)

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Getting it right

[Your rights and obligations](#)

Appendix J — Extract of the ATO search results for ‘review rights’

What's New ATO Community Tax Topics A-Z Legal Database Login

Australian Government
Australian Taxation Office

Home Individuals Business Not-for-profit Super Tax professionals About ATO

Search results

12716 results

review rights

All (12716) Tools & calculators (80) Rates & codes (559) Forms & publications (780) Legal database (8378)

Review your family trust elections to get your tax right | Australian Taxation Office

Regularly review family trust and interposed entity elections to ensure you don't have to pay family trust distribution tax.

Business / Business-bulletins-newsroom / General

02-Mar-2021

When we have not given you a private ruling - your review rights | Australian Taxation Office

If the Commissioner declines to make a private ruling, we must give you reasons for the decision.

General / ATO-advice-and-guidance / ATO-advice-products-(rulings) / Private-rulings

15-Sep-2017

ESS - Indeterminate rights | Australian Taxation Office

Outlines the definition and tax treatment of indeterminate rights.

General / Employee-share-schemes / In-detail / Indeterminate-rights

27-Apr-2017

Acquiring rights or options | Australian Taxation Office

The market value of the rights or options at the time the company or trust issues them to you may be treated as non-assessable, non-exempt income.

General / Capital-gains-tax / Shares,-units-and-similar-investments / Rights-and-options-to-acquire-shares-or-units

17-Jul-2017

Exercising rights or options | Australian Taxation Office

When you exercise rights or options to acquire shares or units you will need to work out their cost base.

General / Capital-gains-tax / Shares,-units-and-similar-investments / Rights-and-options-to-acquire-shares-or-units

17-Jul-2017

Indeterminate rights | Australian Taxation Office

Your entitlement to shares may be confirmed at a later time.

General / Employee-share-schemes / Employees

21-Dec-2015

Feedback

Ask Alex for help

Appendix J – Extract of the ATO search results for ‘review rights’

Indeterminate rights | Australian Taxation Office

Your employee's entitlement to shares may be confirmed at a later time.

[General](#) / [Employee share schemes](#) / [Employers](#)

21-Dec-2015

The right services | Australian Taxation Office

We help you get things right before lodgment by providing services based on your circumstances and the level of certainty needed. Engaging with each other early helps build transparency and prevents mistakes.

[Business](#) / [Privately-owned-and-wealthy-groups](#) / [What-you-should-know](#)

05-Feb-2019

Get your LCT right | Australian Taxation Office

We have identified some common errors and compliance issues with luxury car tax (LCT) obligations and claims. Use our tips to help get your LCT right and avoid certain traps.

[Business](#) / [Luxury-car-tax](#)

11-Feb-2021

Getting the margin scheme right | Australian Taxation Office

If your clients are buying or selling property and thinking of using the margin scheme, they must be eligible before the sale goes through. Find out how to avoid common errors and what to do if your clients make a mistake.

[Tax-professionals](#) / [Newsroom](#) / [Activity-statements](#)

16-Nov-2020

Searches related to review rights

- > [rights of review](#)
- > [complaint review rights](#)
- > [review rights for garnishee](#)
- > [review](#)
- > [CGT rights](#)
- > [contractual rights](#)
- > [appeal rights](#)
- > [objection rights](#)

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[Help for taxpayers](#)
[Aboriginal and Torres Strait](#)

[Getting it right](#)
[Your rights and obligations](#)

Appendix K — Extract of the ATO Search Results for ‘how to lodge an objection’

What's New ATO Community Tax Topics A-Z Legal Database Login

Australian Government
Australian Taxation Office

Home Individuals Business Not-for-profit Super Tax professionals About ATO

Search results

12760 results

how to lodge an objection

All (12760) Tools & calculators (80) Rates & codes (559) Forms & publications (780) Legal database (8376)

How to lodge | Australian Taxation Office

Information for individuals and businesses preparing tax returns and business activity statements and reports, including GST, FBT, SMSF and TPAR.

General / Gen
22-Aug-2019

How to object to a decision | Australian Taxation Office

An objection must be lodged in writing (on our form or in a letter) within the time limit.

General / dispute-or-object-to-an-ato-decision / object-to-an-ato-decision
New or updated 02-Jul-2021

Application for extension of time to lodge an objection: Objections | Australian Taxation Office

Lists the documents and information we usually need to process an objection to our decision about an application for an extension of time to lodge an objection.

General / Dispute-or-object-to-an-ATO-decision / In-detail / Information-for-your-objection / Penalties, interest, and extensions of time
20-Feb-2017

How we deal with your objection | Australian Taxation Office

When we receive an objection, we review the facts and evidence you provide and come to a decision.

General / Dispute-or-object-to-an-ATO-decision / Object-to-an-ATO-decision
10-Oct-2017

How to lodge your BAS | Australian Taxation Office

There are several options for lodging your business activity statements (BAS). Your BAS helps you to report and pay your GST, PAYG instalments, PAYG withholding tax and other taxes.

business / business-activity-statements (bas)
New or updated 09-Apr-2021

Feedback

Ask Alex for help

Appendix K – Extract of the ATO search results for ‘how to lodge an objection’

How to lodge your FBT return | Australian Taxation Office

Employers with an FBT liability must lodge an FBT return each year. FBT return lodgment and payment dates may differ for 2021.

[General](#) / [Fringe-benefits-tax \(FBT\)](#) / [Reporting, lodging and paying FBT](#)

New or updated 12-May-2021

How often you lodge and pay | Australian Taxation Office

PAYG instalments are generally paid quarterly, although you may have the option to pay two instalments a year or an annual instalment, or be required to pay monthly.

[general](#) / [payg instalments](#)

17-Nov-2020

How to lodge your tax return | Australian Taxation Office

You can lodge online using myTax, through a registered tax agent or complete a paper tax return. Your tax return covers the income year from 1 July to 30 June.

[Individuals](#) / [Your tax return](#)

New or updated 24-May-2021

How to lodge your payment summary annual report | Australian Taxation Office

Information about how to lodge your pay as you go (PAYG) withholding annual reports online.

[Business](#) / [PAYG withholding](#) / [Annual reporting](#)

New or updated 07-Apr-2021

How to lodge your ESS annual report electronically | Australian Taxation Office

Information to help you lodge your employee share scheme (ESS) annual report electronically.

[general](#) / [employee share schemes](#) / [in detail](#) / [employer reporting requirements](#)

25-Mar-2021

Searches related to how to lodge an objection

- > [lodge an objection](#)
- > [lodge an objection individual](#)
- > [how to lodge objection](#)
- > [how to make an objection](#)
- > [lodge an objection.](#)
- > [how to submit an objection](#)
- > [lodge an objection to amend](#)
- > [how to place an objection](#)

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Appendix L – Our investigation process

Our investigation process is generally set out in the IGTO-ATO Review Operational Guidelines, which are available on our website.²⁰² However, each investigation is different, and processes may need to be augmented to suit the particular review investigation. We have set out below a brief timeline of key milestones in the conduct of this investigation.

30 June 2020	IGTO published terms of reference and invites submissions.
12 August 2020	IGTO invited taxpayers and tax professionals to participate in a voluntary and independent survey (conducted by Orima Research Pty Ltd on behalf of the IGTO).
30 September 2020	Survey officially closed. The survey results were collated by Orima Research Pty Ltd and provided to the IGTO for analysis.
30 September 2020	Submissions officially closed.
5 November 2020	Formal review investigation opening meeting between the IGTO and the ATO, attended by the IGTO herself and the ATO's Deputy Commissioner, together with other IGTO and ATO executives and investigation team members.
Between 5 January and September 2021	Regular meetings between the IGTO and ATO investigation team members to discuss progress of the review investigation, information requested, timeframes for provision of information, preliminary observations and related matters.
3 August 2021	A formal, Preliminary Draft Report provided to the ATO for its consideration and comments, in accordance with a statutory requirement to provide an opportunity for the Commissioner to make any comments on expressed or implied criticisms.
1 September 2021	Formal response to the Preliminary Draft Report received from the ATO's Second Commissioner.
20 September 2021	Final Draft Report provided to the ATO for official response to recommendations.
12 October 2021	ATO formal response received.
14 October 2021	IGTO Final Report published.

²⁰² IGTO, IGTO-ATO Review Operational Guidelines (Web Page, May 2019) <<https://www.igt.gov.au/about-us/our-guidelines-and-protocols/>>.

Appendix M – Glossary and defined terms

Abbreviation	Defined term
AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975 (Cth)</i>
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977 (Cth)</i>
APS	Australian Public Service
ASBFEO	Australian Small Business and Family Enterprise Ombudsman
ATO	Australian Taxation Office
BCF	Cashflow Boost
CEI	ATO Chief Executive Instructions
Client Experience – Individuals	Individual clients who have no: <ul style="list-style-type: none"> • business or personal services income; or • links to an active micro entity, excluding a link type of "member of an SMSF" if they receive passive income, it is from investments or distributions only.
Client Experience – Privately Owned and Wealthy Groups	The ATO views privately owned and wealthy groups as: <ul style="list-style-type: none"> • companies and their associated subsidiaries (often referred to as economic groups) with an annual turnover greater than \$10 million, that are not public groups or foreign owned; or • resident individuals who, together with their business associates, control net wealth over \$5 million.
Client Experience – Public and Multinational Businesses	Includes Australian public companies, listed and unlisted; widely held Australian partnerships, superannuation funds and managed investment trusts; and majority foreign owned entities.
Client Experience – Small Business	A business with less than \$10 million aggregated turnover in the previous financial year. Prior to 2016-17, the threshold was \$2 million. This group may include individual taxpayers by reason of their association with another entity – for example, director of a company, or a partner in a partnership.
Commissioner	Commissioner of Taxation
Complaint	A complaint is defined AS/NZS 10002:2014 Guidelines for complaint management in organizations <p><i>Expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</i></p> <p><i>Disputes - Unresolved complaints escalated internally or externally, or both.</i></p>

Appendix M – Glossary and defined terms

Feedback - Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly to or about the organization, its products, services, staff or its handling of a complaint. Organizations may choose to manage such feedback as a complaint.

DPN	Director Penalty Notice
ECC	Excess Concessional Contribution Charge
ENCC	Excess Non-concessional Contributions Charge
entity	<p>an entity is defined in section 960-100 of the <i>Income Tax Assessment Act 1997</i> (Cth) that is:</p> <ul style="list-style-type: none"> an individual a body corporate a body politic a partnership any other unincorporated association or body of persons a trust a superannuation fund
ERSB	ATO Early Release of Superannuation Benefits
FE	Fraud or Evasion
Federal Court	Federal Court of Australia
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i> (Cth)
FY17	Financial Year ended 30 June 2017
FY18	Financial Year ended 30 June 2018
FY19	Financial Year ended 30 June 2019
FY20	Financial Year ended 30 June 2020
GIC	General Interest Charge
GST	Goods and Services Tax
HMRC	Her Majesty's Revenue and Customs
I&I	ATO Individuals and Intermediaries business area
IGT Act	<i>Inspector-General of Taxation Act 2003</i> (Cth)
IGTO	<p>Inspector-General of Taxation and Taxation Ombudsman.</p> <p>The acronym "IGTO" is used throughout the submission to denote both the "Inspector-General of Taxation", as named in the enabling legislation, and "Inspector-General of Taxation and Taxation Ombudsman" as recently adopted due to recent calls for greater understanding and awareness of our complaints services function.</p>
IRS	Internal Revenue Service
ITR	Income Tax Return
JK	JobKeeper payment

Appendix M – Glossary and defined terms

MLO	Model Litigant Obligations, as outlined in Appendix B of the <i>Legal Services Directions 2017</i> (section 55ZF of the <i>Judiciary Act 1903</i> (Cth)).
Natural Justice	The principles of natural justice include a fair hearing rule – a rule against bias (<i>nemo iudex in causa sua</i> , or “no man a judge in his own cause”), and the right to a fair hearing (<i>audi alteram partem</i> , or “hear the other side”).
OECD	Organisation for Economic Co-operation and Development
Officer	ATO Officer
Part IVC Rights	These are available when a person who is dissatisfied with an assessment, determination, notice or decision, or with a failure to make a private ruling, may object against it or seek a review in the manner set out in Part IVC of TA Act: <ul style="list-style-type: none"> • An objection may be lodged directly with the Commissioner (refer Division 3 of Part IVC of the TA Act) • An application for a review of the objection decision (reviewable objection decision) may be lodged with the AAT
PGI	ATO Public Groups and Internationals business area
Procedural Fairness	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.
PS LA 2008/6	Law Administration Practice Statement PS LA 2008/6: <i>Fraud or evasion</i>
PS LA 2013/1	Law Administration Practice Statement PS LA 2013/1: <i>Statements of reasons pursuant to section 13 of the Administrative Decision (Judicial Review) Act 1977</i>
PW	ATO Private Groups and High Wealth Individuals business area
QC	Quick Code smart search term
RDR	ATO Review and Dispute Resolution business area
SB	ATO Small Business business area
SCTR	House of Representatives Standing Committee on Tax and Revenue
SEO	ATO Superannuation Employer Obligations business area
SIC	Shortfall Interest Charge
TA Act	<i>Taxation Administration Act 1953</i> (Cth)
Tax Official	The term ‘tax official’ is defined in section 4 of the IGT Act 2003 to mean: <ul style="list-style-type: none"> (d) an ATO official; or (e) a Board member of the Tax Practitioners Board; or (f) an APS employee assisting the Tax Practitioners Board as described in section 60-80 of the <i>Tax Agent Services Act 2009</i>; or (g) a person engaged on behalf of the Commonwealth by another tax official (other than an ATO official) to provide services related to the administration of taxation laws; or (h) a person who: <ul style="list-style-type: none"> (i) is a member of a body established for the sole purpose of assisting the Tax Practitioners Board in the administration of an aspect of taxation laws; and

Appendix M – Glossary and defined terms

-
- (ii) receives, or is entitled to receive, remuneration (but not merely allowances) from the Commonwealth in respect of his or her membership of the body.

For the purpose of this submission, the term ‘tax official’ is also used to refer to a ‘taxation officer’ to whom subdivision 355-B of Schedule 1 to the TA Act 1953 applies.

Taxpayers’ Charter

The *Taxpayers’ Charter* outlines taxpayer rights and obligations. It also explains what taxpayers can expect from the ATO in administering the tax and superannuation systems.

USA

United States of America
