



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

IGoT News

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Before you escape for Summer Holidays ... an update from the IGTO



Welcome to the final edition of our newsletter for 2021. I am sure that you, like me, are looking forward to a long overdue rest and recharge over the Christmas and New Year period.

This has been a very busy and challenging year for our office, as it has been for all Australians. Some highlights are included in this newsletter as follows:

- Our report following an investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal which also examines a taxpayers' right to receive reasons;
- A brief history of the taxpayers' charter – an IGTO thought leadership article;
- Interviews by Tax and Super Australia and the results of their Tax Temperature Survey;
- Three (3) new review investigations commence (Objections, General Powers of Administration and Commissioner's Remedial Powers);
- Consultation with the Auditor-General's performance audit on ATO engagement with tax agents; and
- Taxation complaint investigations are fewer but more complex

We continue to work to support taxpayers and tax practitioners who approach our office through our tax complaint investigation service.

Whilst we are working to support the community, we are also mindful to support the wellbeing and health of our team members who are also dealing with challenges associated with the COVID-19 pandemic. We will continue to do so in 2022.

As this is our final newsletter for 2021, I want to take this opportunity to acknowledge the assistance that our office has received throughout the year from all of our stakeholders, Parliamentary committees, our fellow Commonwealth departments and agencies and our international networks. Your support, insights and engagement with our office has helped us in all aspects of our work and we look forward to further engagements in the new year.

I also extend my thanks to officers of the Australian Taxation Office and the Tax Practitioners Board for their professionalism when engaging with us on tax complaint and review investigations. Finally, I wish to acknowledge the hard work and ongoing efforts of the IGTO officers who continue to deliver on our core functions in very difficult circumstances.

On behalf of myself and the IGTO team, I wish everyone a safe, restful and joyful Christmas and New Year and most importantly Happy Holidays! I hope you all have a chance to relax and recuperate with family and friends ... and not just via Zoom.

IGTO report released: Effectiveness of ATO communications of Taxpayers' Rights to Complain, Review and Appeal

We released our report of an *Investigation into the Effectiveness of ATO Communications of Taxpayers' Rights to Complain, Review and Appeal* in October 2021. This investigation examines the effectiveness of the Australian Taxation Office's (ATO) communications to taxpayers and their representatives of their rights to review, complain and appeal decisions made and actions taken by the ATO.

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

In addition to an assurance that taxpayers are being treated fairly, the effective communication of taxpayers' rights also:

- aids voluntary compliance;
- helps to inform next steps and minimises unnecessary disputes;
- helps to reduce red tape costs of compliance; and
- safeguards against inconsistent outcomes.

The IGTO observed that the Taxpayers' Charter does not include an express obligation for ATO officers to inform taxpayers of their rights. The IGTO made 6 recommendations which are set out below. Additionally, in [two separate webinar polls \(conducted during September 2021\)](#), the IGTO asked attendees whether the Taxpayers' Charter would be improved if it included a requirement for the ATO to inform tax practitioners and their clients of a right to lodge a complaint and other rights. In the first poll, 93% (of 275 participants) said Yes, whilst in the second poll 95% (out of 266 participants) said Yes. This supports the IGTO's Recommendation 1 in the report.

Recommendations

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.

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.

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.

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.

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.

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.

The ATO agreed in full with all recommendations except for Recommendation 6(a) where it agreed in principle. The [full report](#), a [summary slide deck](#) and the [ATO's response](#) together with additional relevant materials are available on our [website](#).

IGTO thought leadership: A Brief History of the Taxpayers' Charter

The IGTO has published a thought leadership paper – [A Brief History of the Taxpayers' Charter](#). The paper draws upon previously published IGTO, Auditor-General and Parliamentary Committee reports to present the history and development of the Taxpayers' Charter. It aims to provide stakeholders with the historical context of the Charter to inform future engagements with the ATO on the issue.

In its response to the IGTO's recently-released report – [Investigation into the Effectiveness of ATO Communications of Taxpayers' Rights to Complain, Review and Appeal](#) – the ATO has indicated that it is currently reviewing the Taxpayers' Charter with public consultation due to commence in February 2022. The IGTO hopes that our thought-leadership paper will provide useful context and background to inform the community engagement with the ATO.

Additionally, stakeholders may also be interested to know that in the July 1993 edition of *Taxation in Australia*, the then President of The Tax Institute published a proposed Taxpayer Bill of Rights in his foreword. The full text of the foreword and proposed Taxpayer Bill of Rights is accessible on [The Tax Institute's website](#).

Tax and Super Australia – Tax Temperature Survey

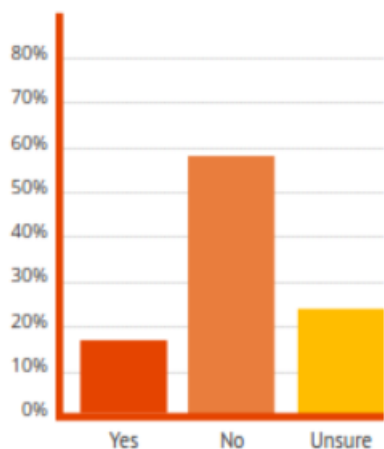
Between 11 to 13 October 2021, Tax and Super Australia conducted a snap survey about the experience of their members when disputing or having ATO decisions reviewed on behalf of their clients and whether their clients were made sufficiently aware of their rights in this respect. The survey results were reported in the November/December edition of its members' magazine *Outlook*. Tax and Super Australia has kindly granted permission for the IGTO to share the results of that survey and the associated charts in this newsletter. [The full November/December edition of Outlook, and other editions, are available to members of Tax and Super Australia.](#)

There were 180 participants to the survey. Key results from the survey are:

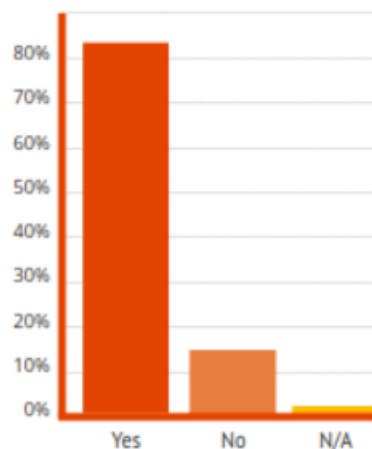
- 82% of respondents had disputed an ATO decision on behalf of their client;
- 58% of respondents said that the ATO, broadly speaking, did not clearly state a taxpayers' full rights and options if they wished to dispute an ATO decision;
- More than 50% indicated that where their client has received an unfavourable decision, the ATO has not clearly outlined their options and right to dispute the decision; and
- 88% of respondents said that without the assistance of a tax professional it would be near impossible or possible with considerable effort for a taxpayer to dispute an ATO decision.

The charts setting out the results of four questions are provided below.

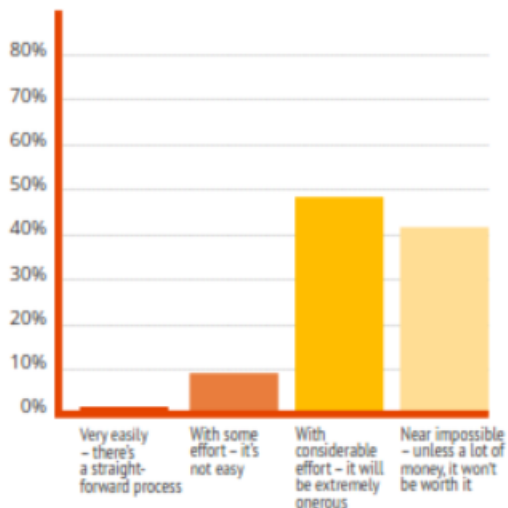
1. Broadly speaking, do you think the ATO clearly states a taxpayer's full rights and options if they want to dispute an ATO decision?



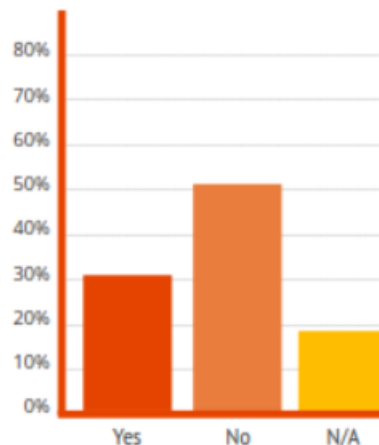
2. Have you ever disputed an ATO decision on behalf of your client?



3. If a client wants to dispute an ATO decision, how easily can they to do this process without the assistance of a tax professional?



4. If you have a client who has received an unfavourable ATO decision, do you believe the ATO clearly outlined their options and right to dispute the decision?



Tax and Revenue Committee inquiry report released

The House of Representatives Standing Committee on Tax and Revenue has released the report of its inquiry into the [2018-19 Commissioner of Taxation Annual Report](#). The IGTO lodged a submission to the inquiry in early 2020, a copy of which is available on the [IGTO website](#).

The Committee has made 19 recommendations, including:

Recommendation 5

The Committee supports the Inspector-General of Taxation and Taxation Ombudsman's Recommendation 1(d) from the Review into Taxpayers' Charter in 2016 and recommends that the Australian Taxation Office categorises complaint cases in line with the principles of the Taxpayers' Charter.

Recommendation 19

The Committee recommends the Inspector General of Taxation be renamed the 'Taxpayer Advocate', and that the role aligns more closely with the powers and structure of the United States Taxpayer Advocate, based on the needs of the Australian tax system.

The Taxpayer Advocate must continue to have the freedom and independence enjoyed by the current Inspector General of Taxation.

Our new review investigations

The IGTO has launched three new review investigations with submissions due to close on 28 February 2022 (General Powers of Administration and Commissioner's Remedial Powers) and 28 March 2022 (Objections).

The ATO's Administration and Management of Objections – will examine the ATO's policies and processes for receiving, managing and finalising objections and whether these are independent, impartial and effective in minimising disputes.

The Exercise of the General Powers of Administration (GPA) – will examine the ATO's approach to exercising powers in certain provisions in various tax acts that grant the Commissioner with a power to generally administer the act. The breadth of decisions which may fall under these powers can be very wide and it is not the IGTO's intention to examine each individually. Rather, the IGTO investigation aims to provide assurance that the ATO's policies and processes for identifying and considering issues suitable for exercise of the GPA at a broad level is robust and effective. We value stakeholder feedback on any particular areas of interest for investigation.

The Exercise of the Commissioner's Remedial Power (CRP) – will examine the statutory discretion afforded to the Commissioner in Division 370 of Schedule 1 to the *Taxation Administration Act 1953*. This power enables the Commissioner to modify the operation of certain provisions, by legislative instrument, to enable the law to be administered to achieve its purpose or object. The IGTO's investigation will seek to examine the processes through which the Commissioner identifies, considers and determines potential matters for the exercise of this discretion.

An additional question arising in relation to the GPA and CRP relates to statutory interpretation. While both the GPA and CRP are intended to assist the Commissioner in administering the tax acts, it is clear on the face of ATO guidance

and other extrinsic materials that the Commissioner should first seek to adopt an interpretation of the law that supports its purpose (i.e., a purposive approach to statutory interpretation). The IGTO's investigations will also consider how these principles are applied by the ATO, and how it assures itself that it has adopted a purposive approach to interpreting the law before reliance on either the GPA or CRP.

The IGTO welcomes submissions from all stakeholders and further details on how to lodge submissions are available [here](#) or via the links above.

Auditor-General's performance audit on ATO engagement with tax agents

The Auditor-General is currently undertaking a performance audit on the *Australian Taxation Office's engagement with Tax Agents* which is due to be tabled in August 2022. The performance audit proposes to examine:

- Did the Australian Taxation Office (ATO) have an effective strategy for engaging with tax agents?
- Did the ATO provide effective services and support for tax agents?

The IGTO has engaged with the audit team to provide them with some initial thoughts and insights from our tax complaint investigation service.

The IGTO encourages interested stakeholders to engage with the ANAO audit team to provide their insights, experience and any suggestions for improvement.

Quarterly Reporting Pack Q1 FY22

The IGTO's *Quarterly Reporting Pack (QRP) for Q1 FY22* has now been published. The QRP presents a range of data and information against certain Key Performance Indicators in our Corporate Plan for FY22. QRPs for prior periods are available on our [website](#).

The Q1 FY22 QRP includes some high level data in relation to our tax complaints investigation service. An overview to the Q1 complaint receipts is set out later in this newsletter and full year results will be included in the FY22 Annual Report, once published.

Tax complaint investigation service – update

We received a total of 369 complaints as at the end of Q1 FY22. This quarter has seen a slight increase in complaint receipts compared to previous quarters (Q3 and Q4 FY 21) due to Tax Time. However, overall there has been a reduction in complaint receipts compared to prior years. As was the case throughout FY21, the reduction in complaints during Q4 FY22 is due to the ongoing impacts of the COVID-19 pandemic:

- The ATO debt recovery actions eased during the COVID-19 pandemic;
- The IGTO’s call centre is currently operating as a call-back centre due to the need for IGTO staff to work from home. This means that members of the public may only leave a voicemail message to request a call back. The IGTO acknowledges that this may also be contributing to the lower number of complaints received;
- IGTO website communications have been updated to clearly explain the process to lodge a formal complaint with the ATO; and
- The IGTO is actively encouraging complainants to resolve their taxation complaints directly with the ATO in the first instance by lodging a formal complaint with ATO Complaints.

As a result of the improved IGTO website messaging regarding complaint investigation processes and the introduction of a triage system, the IGTO reviews and prioritises complaints which demonstrate exceptional circumstances. All other complaints are placed in a queue to be allocated on a ‘first in, first out’ basis. Taxpayers are advised that the current wait time is approximately 6 to 8 weeks.

Further details about our tax complaint investigation service including complaint investigations closed, top 5 issues and agreed business improvements are set out in our [Quarterly Reporting Packs](#).

IGTO office arrangements over Christmas and New Year

The IGTO office will be shut from midday on 24 December 2021 and will re-open on Tuesday 4 January 2022. During this period we will not be available by telephone, email or other channels. Complaints may still be lodged using the webform available on our [website](#) and will be actioned in accordance with the current processes when the office re-opens.

Our upcoming activities

In the new year, we will:

- progress with the three review investigations we recently launched;
- continue with work in relation to an own motion investigation concerning the release of tax debt on grounds of serious hardship;
- restart our tax complaint investigation service; and
- deliver our survey response on Taxpayer Rights in Australia to the International Bureau of Fiscal Documentation's Observatory on the Protection of Taxpayer Rights.

Please stay safe and remember to stay in touch. We value your feedback and we are here to serve the community.

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The Inspector-General of Taxation and Taxation Ombudsman acknowledges the traditional owners and their ongoing cultural connection to Country, throughout Australia. We pay our respects to their Elders past, present and future.