



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

THE AUSTRALIAN TAXATION OFFICE'S ADMINISTRATION AND MANAGEMENT OF OBJECTIONS

Introduction

This Inspector-General of Taxation and Taxation Ombudsman (IGTO) investigation will examine the Australian Taxation Office's (ATO) current systems, policies and processes for administering and managing objections pursuant to Part IVC of the *Taxation Administration Act 1953*. The investigation will focus mainly on the timeliness in issuing objection decisions, the independence of objection decision makers and the objection decision making process, as well as the interaction between objections processes and other initiatives in minimising or narrowing disputes.

Objections are a critical feature of Australia's tax dispute resolution landscape as they provide taxpayers with a statutory right to challenge ATO decisions and views. Taxpayers who lodge objections because they are dissatisfied with a decision that the ATO has made about them or their affairs generally expect their objection to be properly considered and to be finalised in a timely manner, impartially and independent of the original decision maker.

For most tax decisions, taxpayers are required to avail themselves of the objection process before they may take their disputes to external forums, such as the Administrative Appeals Tribunal and the Federal Court of Australia.¹ Annually, the ATO resolves over 20,000 objections.²

In a survey conducted as part of the IGTO's most recent investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal, respondents indicated that the dispute resolution channel most often communicated (and well understood by taxpayers and tax practitioners) was the objection process under Part IVC.³

¹ Australian Taxation Office, *Decisions you can object to and time limits* (22 July 2021) <<https://www.ato.gov.au/General/dispute-or-object-to-an-ato-decision/object-to-an-ato-decision/decisions-you-can-object-to-and-time-limits/>>.

² Commissioner of Taxation, *Annual Report 2019-20* (2020) p 185 <https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2019-20/annual_report_2019-20.pdf>.

³ Inspector-General of Taxation and Taxation Ombudsman, *Taxpayer rights – An investigation into the effectiveness of the ATO's communication of taxpayers' rights to complain, review and appeal decisions or actions – survey results* (September 2021) <<https://www.igt.gov.au/wp-content/uploads/2021/08/Review-into-the-ATOs-communication-of-taxpayers-rights-Survey-Results.pdf>>.

Previous IGTO investigations on the issue

The IGTO's last investigation specifically examining the ATO's management of objections was released in August 2009,⁴ although later investigations examining alternative dispute resolution⁵ and tax disputes⁶ have considered related issues. Since these investigations, the ATO has implemented systems, processes and structural changes to its management of objections, including a significant shift of the function from its Client Engagement Group (i.e. the audit group) to its Law Design and Practice Group.

Significantly, the IGTO functions have also changed since those review investigations were conducted, with the addition of the Taxation Ombudsman role. Through this role, the IGTO has been able to gain real-time insights on taxpayer and tax practitioner concerns with the administration of the tax system through tax complaint enquiries and investigations.

Concerns raised with the IGTO

Through the IGTO's tax complaint investigation service and engagements with various stakeholders, concerns have been raised with the IGTO that:

- there are delays in the allocation and finalisation of objection cases which ultimately delays the resolution of the dispute and gives rise to increasing stress and costs;
- the objection process is not simply assessing the merits of the case, but is at times also replicating the functions of the audit team (e.g., essentially conducting a second audit);
- there is a lack of independence (or perceived lack of independence) in the objection process, for example with officers originally involved in the audit providing unchallenged input into the objection process; and
- there appears to be a lack of consistency in the objection cases which are offered alternative resolution options, for example settlement, and those that are not, generating perceptions of arbitrariness and favouritism as well as a missed opportunity to mitigate disputation costs.

Complaint statistics about objections and dispute resolution are provided in Annexure A.

⁴ Inspector-General of Taxation and Taxation Ombudsman, *Review into the underlying causes and the management of objections to Tax Office decisions* (2009).

⁵ Inspector-General of Taxation and Taxation Ombudsman, *Review into the Australian Taxation Office's use of early and alternative dispute resolution* (2012).

⁶ Inspector-General of Taxation and Taxation Ombudsman, *The Management of Tax Disputes* (2015). This investigation was conducted at the request of, and in conjunction with, the House of Representatives Standing Committee on Tax and Revenue's inquiry into *Tax Disputes* (2015)

<https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Inquiry_into_Tax_Disputes/Report>.

TERMS OF REFERENCE

The IGTO's investigation will examine the concerns raised above and seek to identify improvements to objection processes for the benefit of taxpayers and tax practitioners. Specifically, the IGTO will examine whether:

1. the ATO's systems and processes for receiving, allocating, considering and finalising objections are sufficiently robust to minimise undue delay;
2. the policies and processes for managing objections provide for an independent and impartial review of the audit decision;
3. the current processes for managing Objections allows for sufficient engagement, interaction and exchange with taxpayers and their representatives to achieve a common understanding of, and to narrow, the issues in dispute;
4. the Objections process is effective in minimising and resolving disputes, including through early and effective identification of cases that are suitable for alternative dispute resolution and /or settlement; and
5. any other relevant or related matters identified by the IGTO throughout the course of the investigation, or as raised by stakeholders in submissions.

The IGTO welcomes feedback from stakeholders – including professional and industry bodies, tax practitioners and taxpayers – on any concerns they have in relation to the objection process and potential improvements that may be implemented to improve the process for the benefit of all.

INTERIM REPORT

Initial feedback provided to the IGTO from stakeholders has identified that the taxpayer and tax practitioner experience when engaging with the ATO on objections can vary significantly across different taxpayer segments. This is due to, *inter alia*, the nature of issues in dispute, the availability of different dispute resolution mechanisms, and taxpayer resources and the level of representation available to the taxpayer.

Given the broad spectrum of experiences, the IGTO proposes to develop and issue an interim report to provide a summary analysis of the recent trends in Objections including (but not limited to):

- the causes for taxpayers or their advisers lodging an objection (for example, whether as a result of adverse ATO audit decisions or taxpayers self-initiating objections to amend earlier returns);
- which taxpayer segments are lodging objections and how this has changed over time;
- common areas that are the subject of Objections;
- the outcomes of Objections;
- the rate of objections proceeding to further dispute.

The purpose of the interim report is to inform stakeholders, practitioners and the community at large about the scope and breadth of Objections to promote public debate and discussion, and assist the IGTO to focus areas for further inquiry in relation to the Terms of Reference.

HOW TO LODGE A SUBMISSION

The closing date for submissions is **28 March 2022**. Submissions may be lodged by telephone (02 8239 2111) or be sent by:

Post to: Inspector-General of Taxation and Taxation Ombudsman
 GPO Box 551
 Sydney NSW 2001

Fax: (02) 8088 7815

Email to: objections@igt.gov.au

Confidentiality

Submissions provided to the IGTO are maintained in strict confidence (unless you specify otherwise). This means that the identity of the taxpayer, the identity of the adviser and any information contained in such submissions will not be made available to any other person, including the ATO. Section 37 of the *Inspector-General of Taxation Act 2003* safeguards the confidentiality and secrecy of such information provided to the IGTO – for example, the IGTO cannot disclose the information as a result of a Freedom of Information (FOI) request, or as a result of a court order generally. Furthermore, if such information is the subject of client legal privilege (also referred to as a legal professional privilege), disclosing that information to the IGTO will not result in a waiver of that privilege.

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

ANNEXURE A - COMPLAINT STATISTICS RELATING TO OBJECTIONS AND ATO DISPUTE RESOLUTION

Over the last five full financial years (FY17 to FY21), the IGTO has received 453 complaints about objections and dispute resolution. Of these, 260 cases (57.4% proceeded to formal investigations) while the remainder are ongoing or were managed by the IGTO without investigation (e.g., the IGTO provided further information to address the taxpayer's enquiry). Approximately 77% (347 complaints) related to the objection process.

In the current financial year (FY22, as at 20 October 2021), 11 complaints have been received about objections and disputes (6 are currently being investigated while 5 are under assessment or have been finalised without investigation), with approximately half relating to the objection process.

Table 1: Complaints received by the IGTO about ATO Dispute Resolution – FY17 to FY22 YTD

Financial Year	Sub-category of complaints relating to ATO Dispute Resolution					
	Objection Process	Mediation and ADR	Internal Review	Settlements	Other	Grand Total
FY17	6				2	8
FY18	92	5	8	4	16	125
FY19	96	8	3	6	15	128
FY20	104	6	2	2	11	123
FY21	49	5	3	2	10	69
FY22 YTD*	6				5	11
Total	353	59	24	16	14	464

* As at 20 October 2021

Since the 2017-18 financial year, the IGTO has provided further insight into our complaint investigation statistics by segmenting complaint investigation cases into those where the ATO has no record of a complaint and so the IGTO provided the ATO with an opportunity to address the complaint in the first instance (Category 3.1) and those where the matter had been escalated as a dispute⁷ to the IGTO because the taxpayer remained dissatisfied with the ATO's complaint resolution (Categories 3.2 and above).⁸ The Table below sets out the total number of Category 3.1 investigations and Category 3.2 and above investigations (i.e., disputes) managed by the IGTO in FY19, FY20 and FY21. Over the past three full financial years, 4.98% of complaint investigations (category 3.1+) related to ATO Dispute Resolution and 5.57% of disputes investigated (category 3.2+) related to ATO Dispute Resolution.

Table 2: Complaint investigations (3.1) and disputes investigated (>3.2) about ATO Dispute Resolution FY19 to FY21

Financial Year	Sub-category of complaints relating to ATO Dispute Resolution											
	Objection Process		Mediation and ADR		Internal Review		Settlements		Other		Grand Total	
	3.1	3.2+	3.1	3.2+	3.1	3.2+	3.1	3.2+	3.1	3.2+	3.1	3.2+
FY19	23	30	1	4	0	2	0	3	3	3	27	42
FY20	46	18	2	3	1	1	0	0	2	4	51	26
FY21	6	15	1	3	0	2	0	2	0	1	7	23
Total	75	63	4	10	1	5	0	5	5	8	85	91

⁷ The Australia and New Zealand Standard 10002:2014 *Guidelines for Complaint Management in Organisations* defines 'disputes' as 'unresolved complaints escalated internally or externally, or both'.

⁸ Inspector-General of Taxation and Taxation Ombudsman, Corporate Plan 2021-22 (2021) p 48

<<https://igtostaging.wpengine.com/wp-content/uploads/2021/08/IGTO-Corporate-Plan-2021-22.pdf>>.

Table 3: Complaint investigations about ATO Dispute Resolution as a subset of total complaint investigations – FY19 to FY21

Financial Year	Sub-category of complaints investigations relating to ATO Dispute Resolution		Total complaint investigations about ATO Dispute Resolution	Sub-category of all complaint investigations relating to the ATO		Total complaint investigations
	3.1	3.2+		3.1	3.2+	
FY19	27	42	69	822	580	1,402
FY20	51	26	77	903	506	1,409
FY21	7	23	30	169	548	717
Total	85	91	176	1,894	1,634	3,528