



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

International Comparisons – Taxpayer Rights

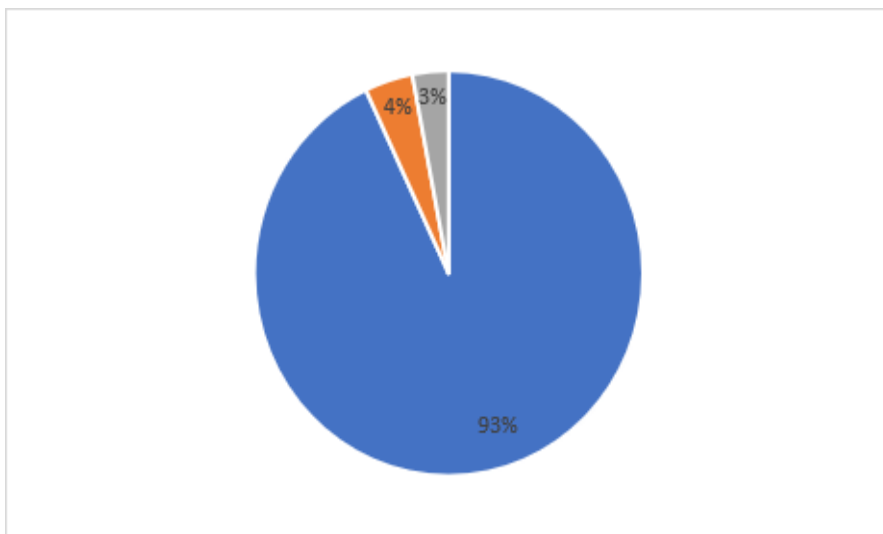
By Karen Payne - Inspector-General of Taxation and Taxation Ombudsman

At the National Tax Institute conference held in Sydney on 19 – 21 October 2022 I made several references to material published by the IBFD during some polling questions I posed to the audience. I wanted to share the polling results and some further information on the observations I made during my address with the broader Tax Community.

Polling Questions

Question 1: Is independent assurance and investigation of taxation complaints and disputes important to uphold the integrity of the tax system?

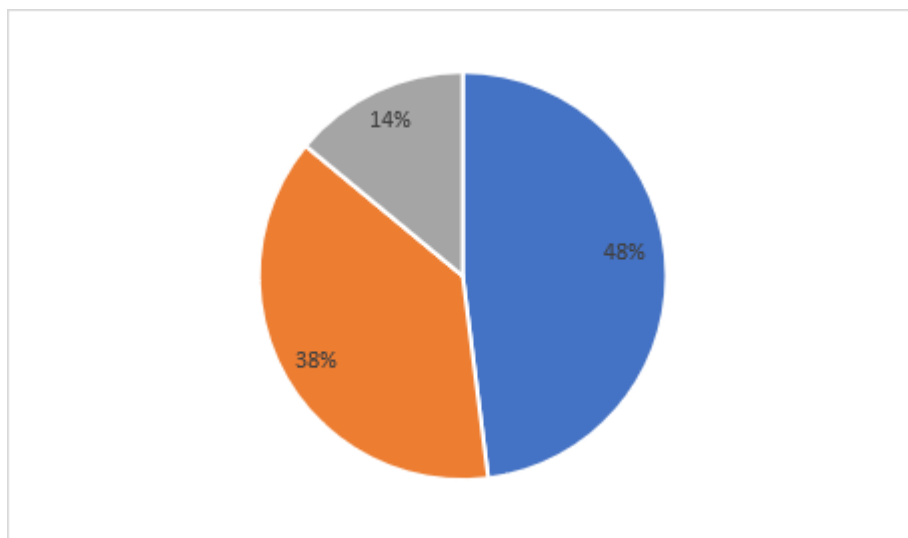
Yes	106	93%
No	5	4%
Don't Know	3	3%
Total responses	114	100%



The result is perhaps not surprising but nonetheless good to confirm – especially with Tax experts and practitioners.

Question 2: Are you aware of or have you used the services of the Taxation Ombudsman?

Yes	61	48%
Yes – I'm aware but I'm not sure what they do	49	38%
No – I didn't know Australia had a Tax Ombudsman	18	14%
Total responses	128	100%



I note that the low community awareness of the Taxation Ombudsman function has been a concern for some time – see below.

Although this result is not great - remembering that this is expected to be a reasonably sophisticated tax audience comprising lawyers and accountants with specialist tax expertise - it reaffirms the continuing need to identify opportunities for my office to raise community awareness of our functions and the assistance that we can offer taxpayers and tax practitioners alike.

Taxpayer Rights - IBFD

Each year, the International Bureau of Fiscal Documentation's (IBFD) Observatory on the Protection of Taxpayers' Rights (OPTR) publishes a *Yearbook on Taxpayers' Rights* (IBFD Yearbook). The IBFD Yearbook consolidates and analyses survey responses from a range of participating jurisdictions.

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) is one of the Australian reporters, together with Dr John Bevacqua from Monash University. In finalising the survey, we engage with the ATO to confirm the accuracy of responses and other information submitted in the survey.

The judicial, academic and tax ombudsman members of each country group of experts are considered neutral whereas the taxpayer, tax practitioner and tax administration members are considered not neutral. Accordingly, Australia has all neutral reporters.

The IGTO is about to commence the 2022 survey. It is timely therefore to reflect on some of the results for 2021 and prior years and in particular, Part 12 - Institutional Framework for Protecting Taxpayers' rights. In 2021 there were 56 reports covering 48 countries (some countries have multiple responses).

Australia's responses to Part 12 are shown in grey shading in the summary table below.

Part 12 - Institutional Framework for Protecting Taxpayer rights								
		Yes #	Yes %	No #	No %	N/A #	N/A %	Total
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	26	54%	22	46%	0	0	48
79	If yes, are its provisions legally effective?	15	31%	11	23%	22	46%	48
80	Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country?	28	58%	20	42%	0	0	48
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	19	40%	8	17%	21	44%	48
82	If yes to a (tax) ombudsman, is this person independent from the tax authority?	22	46%	6	13%	20	42%	48

In Australia, both the Taxpayers Charter and Taxation Ombudsman have foundations which date back to at least 1993 when a report was tabled by the Joint Committee of Public Accounts in the Parliament of Australia¹.

The Taxpayers' Charter – IBFD Question 78 - 79

Australia has had a Taxpayers' Charter in place since July 1997 - for over 25 years. The IGTO has published a brief history of the Taxpayers' Charter in Australia on our website which can be found here: <https://www.igt.gov.au/wp-content/uploads/2022/01/A-brief-history-of-the-taxpayers-charter.pdf>

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.

The Taxation Ombudsman – IBFD Questions 80 - 82

Question 80 - Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country? – requires some further explanation.

¹ Joint Committee of Public Accounts, *Report No. 326 An Assessment of Tax, A Report on an Inquiry into the Australian Taxation Office* (1993).

There are at least 3 different models for a tax ombudsman, taxpayers' advocate or equivalent position as follows:

1. A separate independent agency and function – for example the Taxation Ombudsman in Australia or the Taxpayers' Ombudsperson in Canada
2. A separate function or jurisdiction within a national or Commonwealth ombudsman – for example the Chief Ombudsman in New Zealand
3. A separate function or jurisdiction within the Tax Authority – for example the National Taxpayer Advocate and the Taxpayer Advocate Service in the United States of America

The IBFD Observatory on the Protection of Taxpayers' Rights notes that, in its view, "Best practice is the establishment of a separate office within the tax authority but independent from the normal operations of that authority" - see IBFD Yearbook, 2021, p 207

In Australia, the Taxation Ombudsman functions as Model 1 above, although between 1995 and May 2015 it operated as Model 2. There are advantages and disadvantages with each model which cannot be fully assessed without understanding the legal framework and powers of access, funding and resourcing arrangements associated with each of the models.

However, the independence of the appointed Tax Ombudsman and agency function is fundamentally important to protect the integrity of the services provided and delivered. Only 22 of the 48 country reports or 46% answered yes to the independence question (Question 82) of the IBFD survey but this represented 22 out of 28 countries (79%) that have a (tax) ombudsman/taxpayers' advocate or equivalent position in their country (Question 80 above).

This included Australia, New Zealand, the United States of America and the United Kingdom. Canada did not participate in the 2021 Survey but responded Yes to this same question in 2020, when it did participate.

Accordingly, it is critical to identify independence regardless of the legal framework and powers of access, funding and resourcing arrangements associated with each of the models. This is revealed in the sentiment observed in responses to Polling Question 1 shown above – 93% consider that independent assurance and investigation of taxation complaints and disputes is important to uphold the integrity of the tax system.