

Submission to the Australian Taxation Office Taxpayers' Charter review October 2022

The ATO Review

On 26 September 2022 the ATO invited submissions to its review of the Taxpayers' Charter.

The invitation explains:

The Charter aims to help people understand their rights and obligations, what they can expect from their interactions ATO, and what to do if they are not satisfied.

(See Appendix A for the Charter)

SEA Response

Overview and recommendation

The Taxpayers' Charter is an ATO 'feel good' statement of well-meaning intent as to how the ATO will or does treat taxpayers. It does not do anything to create a legislative obligation upon the ATO to treat taxpayers with any measure of fairness.

If the ATO were genuine and serious about ensuring that taxpayers were treated fairly and required to be treated fairly, the ATO would encourage and support a legislated Taxpayers' Charter. Such legislation would impose sanctions against the ATO and ATO officers for breaches of the Charter. We recommend that the ATO support such legislation.

The Charter has no legal standing

The Charter does not impose upon the ATO or officers within the ATO any legal sanctions for breaches of the Charter. The Charter is exclusively an ATO internal document that can be changed at any time by the ATO and is only enforceable if the ATO itself chooses to enforce it. Enforcement, if it occurs, and sanctions against ATO officers for breaches, are conducted in secrecy, within the opaque processes of the Public Service.

On a straightforward reading of the 'Taxpayers' Charter – essentials' (Appendix A) there is nothing in the wording of the Charter itself that triggers the need for compliance by the ATO if the Charter is breached by the ATO.

In SEA's experience many ATO officers comply with the spirit and intent of the Charter. However, there are far too many instances where ATO officers blatantly ignore the Charter. Taxpayers are powerless when breaches occur. The only avenue of appeal is to the ATO itself—that is, to the very institution that has committed breaches.

Taxpayers' legal rights to fair treatment are not secured within the Charter. Rather, such 'rights' are scattered through complex different legislative Acts that require expensive and specialised legal advice to comprehend let alone apply.

For example, the ATO:

- has administrative powers that are contained in the *Tax Administration Act 1953*;
- is subject to the *Public Service Act*, the *Fair Work Act* and associated industrial relations instruments in matters relating to employee behaviour;
- draws on the powers of the Federal Police;
- applies bankruptcy and insolvency laws;
- is subject to constitutional law and powers, and also draws on common law;
- has powers under precedential tribunal and court rulings; and
- has considerable discretionary power to write its own administrative rules and to change those rules.

This collection of laws and rulings (see Appendix B) is convoluted, complex, subject to wide interpretation and generally written in a legalistic style. The upshot is that few people outside the ATO know or understand the rules and what the ATO lawfully can and cannot do in administrative terms. One observation that does seem clear, however, is that Australian taxpayers do not have 'rights' in any form equivalent to, or near those of, American taxpayers.

The reference to US taxpayer rights is important. In 1998 the US initiated major legislative reform to the administration of the Internal Revenue Service (IRS). At the heart of this reform are taxpayer rights. The US Taxpayer Bill of Rights (Appendix C) is legislated and is backed by a comprehensive legislative Taxpayer Code that puts the principles of the Bill of Rights into practical effect. Compliance with the Bill of Rights and the Code is a legal requirement on the IRS and IRS officers. Legal sanctions are in place against both the IRS and IRS officers for breaches. Compliance is overseen by a Taxpayer Advocate.

The US model provides genuine, legal and practical rights to US taxpayers that should be replicated in Australia. The Australian Taxpayers' Charter was introduced in 1997, we believe in response to the US reforms (being mooted in 1996), as a public relations exercise to appear to be doing something about taxpayers' rights. The Australian Charter is however only that—a public relations exercise..

Attached:

Appendix A: Taxpayers' Charter - essentials

Appendix B: Taxpayer (alleged) Rights in Australia

Appendix C: US. Taxpayer Bill of Rights

Appendix A

Taxpayers' Charter – essentials

<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter--essentials/>

The Taxpayers' Charter outlines your rights and explains what you can expect in all your dealings with us.

Your rights – what you can expect from us	
Fair and reasonable	We will treat you with courtesy and respect and take your personal circumstances into account where relevant.
Honest	We treat you as being honest and give you an opportunity to explain any discrepancies.
Professional service and assistance	We will: <ul style="list-style-type: none">• provide advice that meets your needs• explain our responses to your enquiries and requests• get back to you when we say we will and at a time that suits you• make sure you are dealing with someone who can help.
Your right to question	We will outline your options if you want a decision or action reviewed including, legal review rights and the formal complaint process. We will: <ul style="list-style-type: none">• try to resolve problems quickly and fairly• keep you informed of progress.
Representation	You can get help with your affairs and someone to deal with us on your behalf, but you must tell us who it's going to be. You are still responsible for ensuring the information given to us is accurate.
Privacy	We will respect your privacy and keep your personal information confidential.
Confidentiality	We take security and confidentiality of your information seriously. We ensure your data and online transactions are secure and safe.
Information access	We will: <ul style="list-style-type: none">• update your personal information when you ask us to• give you access to information about you, if lawful• give you access to information that helps us make decisions.
Help	We aim to help you understand your rights and obligations. Contact us, or a professional adviser, if you are unsure.
Decisions	When making decisions about you we will: <ul style="list-style-type: none">• inform you of your rights or obligations• keep you informed of our progress.
Easy for you to comply	We will: <ul style="list-style-type: none">• make your obligations and how to meet them easy to understand

	<ul style="list-style-type: none"> • develop products and services that fit with everyday use • design products and services with the community.
Accountability	We will inform you of any rights or obligations and keep you informed of our progress to resolve issues.
Your obligations – what we expect of you	
Be truthful	<p>We expect you to:</p> <ul style="list-style-type: none"> • give us correct information and act within the law • give us all the relevant facts and circumstances • answer questions accurately, completely and honestly.
Keep records	<p>We expect you to:</p> <ul style="list-style-type: none"> • keep good records in English as required by law • keep records for five years.
Take reasonable care	<p>We expect you to:</p> <ul style="list-style-type: none"> • meet your obligations • be responsible for correct information, even if someone is representing you.
Lodge by the due date	<p>We expect you to:</p> <ul style="list-style-type: none"> • lodge all information on time • contact us before the due date if you cannot lodge on time.
Pay by the due date	<p>We expect you to:</p> <ul style="list-style-type: none"> • pay due amounts on time • contact us before the due date if you cannot pay on time.
Be cooperative	We expect you to treat us with the same courtesy, consideration and respect we are expected to give you.

Appendix B

TAXPAYER (ALLEGED) RIGHTS IN AUSTRALIA

Below is from the Inspector-General of Taxation
[Review into the Taxpayers' Charter and Taxpayer Protections \(2016\)](#)

"No better example of the powers of the ATO and the inferior standing of taxpayers is provided than by the requirement under the Act that taxpayers should satisfy the burden of proving their cases."

The Charter was transitioned into a 'business as usual' model whereby the ATO aspired to a model of 'living the Charter' rather than specifically promoting it as something separate from its ordinary activities.

Table 1: Existing taxpayer rights and protections in Australia

Taxpayer right	Source
Challenge (most) assessments, determinations, notices and decisions	Part IVC of the <i>Taxation Administration Act 1953</i> (TAA 1953)
Challenge the issue or failure to issue a private ruling	Part IVC of the TAA 1953
Challenge an assessment for an administrative penalty	Section 298-30, Sch 1 to the TAA 1953
Apply to remit a penalty; challenge a refusal to remit a penalty	Section 298-20, Sch 1 to the TAA 1953
Protection from interest charges if non-binding advice is relied on in good faith	Section 9 of the TAA 1953
Appeal an AAT or Federal Court decision	Part IVC of the TAA 1953
Request a referral on a question of law to the full bench of the Federal Court	Section 44 of the <i>Administrative Appeals Tribunal Act 1975</i>
Request an amendment of their income tax return	Section 170 of the <i>Income Tax Assessment Act 1936</i>
Obtain an assessment if no assessment is issued 6 months after a return is submitted	Section 155-30, Sch 1 to the TAA 1953
Request an assessment of an indirect tax	Section 105-20, Sch 1 to the TAA 1953
Request a variation or revocation of a departure prohibition order (DPO)	Section 14T of the TAA 1953
Request a departure authorisation certificate where a DPO has been issued	Section 14U of the TAA 1953
Challenge the issue of a DPO	Section 14V of the TAA 1953
Challenge a garnishee notice	ADJR Act 1977 or <i>Judiciary Act 1903</i> (Judiciary Act)

Apply for a stay of execution on the grounds of serious hardship in respect to a debt owing under an assessment	Sections 14ZZM and 14ZZR of the TAA 1953
Review a demand for a security deposit	ADJR Act 1977 or Judiciary Act or the Constitution
Obtain reasons for a decision	<i>Administrative Decisions (Judicial Review) Act 1977</i>
Obtain a refund for excess tax withheld	Schedule 1 to the TAA 1953
Obtain a tax receipt for an income year	Section 70-5, Sch 1 to the TAA 1953
Object to an excess concessional contribution determination	Section 97-10, Sch 1 to the TAA 1953
Finality of assessment (Commissioner may not amend an assessment after the period for review has elapsed)	Section 155-40 to 155-60, Sch 1 to the TAA 1953
Obtain interest on overpayments and prepayments	<i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i>
Access government-held documents	<i>Freedom of Information Act 1982</i>
Complain to the Information Commissioner or IGT for a breach of the privacy principles	<i>Privacy Act 1988</i>
Lodge a complaint to the IGT (other than on assessments)	<i>Inspector-General of Taxation Act 2003</i>
Apply for compensation under the CDDA Scheme	Section 61 of the Constitution and the <i>Public Governance, Performance and Accountability Act 2013</i>
Claim legal professional privilege when responding to requests for information and documents under sections 353-10 and 353-15, Sch 1 to the TAA 1953	Common law
Comply with a notice issued under sections 353-10 and 353-15, Sch 1 to the TAA 1953 only to the extent they are able to do so	Common law
Obtain procedurally fair treatment from the ATO	Common law
Claim damages for pure economic loss due to wrongful ATO conduct	Common law

Appendix C

US: TAXPAYER BILL OF RIGHTS

The Right to be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. **Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. [Emphasis added.]**