



Australian Government

Inspector-General of Taxation

Review into the Australian Taxation Office's use of Garnishee Notices

Terms of reference

16 May 2018

BACKGROUND

The Organisation for Economic Co-operation and Development has observed that:

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.¹

Accordingly, perceptions of fairness are particularly important in a self-assessment tax system which is dependent on voluntary compliance.

The ABC Four Corners program,² which aired on 9 April 2018, included allegations by current and former Australian Taxation Office (ATO) staff about inappropriate use of ATO powers to issue garnishee notices and extracting payment particularly from small business taxpayers. Such allegations require independent investigation to allay or address concerns of inequity, lack of confidence in the tax system, and corresponding adverse impacts on voluntary compliance.

Garnishee notices are the most common form of firmer actions used by the ATO to recover tax debt. Such written notices may be issued by the ATO to third parties, who are required to pay money, owed to the taxpayer, to the ATO to satisfy the taxpayer's tax debt. Such third parties may include employers, banks, trade debtors and certain agents.³ Garnishee notices may require either a one-off payment or standard recurring payments for certain periods of time.⁴

The Inspector-General of Taxation (IGT) conducted a broad review⁵ into the ATO's debt collection approaches in 2015 (Debt Review). In total, 19 recommendations were made some of which related specifically to garnishee notices. Since the Debt Review, the IGT, as the Taxation Ombudsman, has continued to receive complaints about ATO's debt recovery actions. In fact, they have consistently formed over 20 per cent of all complaints made to the IGT with the use of garnishee notices being amongst the top three topics of such complaints.

The IGT will undertake a review to examine the allegations made by current and former ATO staff in the Four Corners program as well as to explore the themes arising from related complaints made to his office in recent years. In particular the IGT will investigate allegations that the ATO:

- gave directions to staff to issue standard garnishee notices in every case as a 'cash grab' towards the end of the 2016–17 financial year; and
- set targets for staff and assessed their performance based on the level of debt collected.

¹ Organisation for Economic Co-operation and Development (OECD), *Principles of Good Tax Administration* (Practice Note GAP001, 2001), p 3.

² Four Corners, *Mongrel bunch of bastards* (9 April 2018) <<http://www.abc.net.au>>.

³ *Taxation Administration 1953 sch 1 ss 260-5, 260-45(2), 260-75(2), 260-105(2)*.

⁴ ATO, 'Significant Debt Management: Guidelines for Effective Case Management' (Internal ATO document, November 2014) pp 14-15.

⁵ IGT, *Debt Collection* (2015).

The review will draw on IGT complaints data, consider the ATO's implementation of specific recommendations made in his Debt Review and independently assess the relevant ATO systems including interviewing current and former ATO staff in the debt recovery units across multiple locations. It will also seek to understand and assess the nature of any impact upon affected taxpayers particularly small businesses.

TERMS OF REFERENCE

The IGT will investigate allegations that have been made in the Four Corners program regarding the ATO's use of garnishee notices as well as relevant themes emerging from complaints made to his office. This review will particularly focus on the ATO's:

1. *strategies to manage tax debts by way of garnishee notices;*
2. *policies and procedures for issuing garnishee notices, including how the ATO considers circumstances of taxpayers such as vulnerable small businesses and individuals;*
3. *mechanisms to ensure staff adherence to its garnishee notice policies and procedures;*
4. *Key Performance Indicators (KPI) with respect to both tax debt collection and staff performance;*
5. *specific communications to staff regarding the use of garnishee notices and associated KPIs at each location of its debt recovery units; and*
6. *other relevant concerns or potential improvements identified during the course of the review.*

Importantly, employment issues regarding current and former ATO staff are not within the IGT's legislative purview and will not form part of this review.

SUBMISSIONS

We invite you to lodge a submission to this review setting out your, or your clients', experiences with the ATO's use of garnishee notices including any impact it has had on you or your client. Your views on any potential improvements are also welcomed.

The closing date for submissions is 22 June 2018. Submissions can be sent by:

Email to: garnishee@igt.gov.au

Post to: Inspector-General of Taxation
GPO Box 551
SYDNEY NSW 2001

Fax: (02) 8239 2100

CONFIDENTIALITY

Submissions provided to the IGT are maintained in strict confidence (unless you specify otherwise). This means that the identity of the taxpayer and advisers as well as any information contained in 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 IGT – for example, the IGT 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 legal professional privilege), disclosing that information to the IGT will **not** result in a waiver of that privilege.