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ATO Corporate
ATO

Email: taxpayerscharter@ato.gov.au

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Dear Chris,

Review of the Taxpayers' Charter

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 170,000 members in over 100 countries and regions. We make this submission on behalf of our members and in the broader public interest.

This latest [review](#) by the ATO of its Taxpayers' Charter (the Charter) provides an opportunity to reconsider the form and content of the Charter and address the Inspector General of Taxation's (IGTO) recent recommendations in her report, [A brief history of the Taxpayers' Charter](#).

The Charter is an important framework for ATO staff to guide their interactions and decision making when engaging with taxpayers and their advisers. It should also be an accessible and clear statement from the ATO to taxpayers about their rights.

In its current form, the Charter is a very detailed document that stands in contrast to comparable jurisdictions such as the United Kingdom, United States, Canada and New Zealand. We suggest that the ATO updates the Charter to be more contemporary and in line with other administrations with a focus on taxpayers' rights.

We recommend that:

- the Charter is confined to articulating taxpayers' rights
- material extraneous to taxpayers' rights is published elsewhere and referenced in the Charter
- the right to be "[treated] honestly unless you act otherwise" is removed as it is incongruent with the intent of the Charter and not contemplated by comparable tax administrations
- the ATO ensures that ATO staff embody the Charter in all of their actions and behaviours
- the ATO's administration of the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA) be more consistent with and in the spirit of the Charter.

Responses to the consultation questions are included in Attachment One. A comparison of the Charter against those of comparable jurisdictions is included in Attachment Two.

If you have any queries, contact Elinor Kasapidis, Senior Manager Tax Policy on +61 466 675 194 or elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager
Policy and Advocacy

1. How well does the Charter meet your expectations about how we should interact with taxpayers when administering the tax, super and registry systems?

A charter is defined as “a formal document describing the rights, aims, or principles of an organisation or group of people”¹. The Charter reflects this in the section titled, Your rights. The balance of the document is used to describe taxpayers’ obligations and provide further details of the ATO’s approach to its administration of the Charter. The full document² is 65 pages.

This format stands in contrast to comparable jurisdictions identified by the IGTO, namely the United Kingdom³, United States⁴, Canada⁵ and New Zealand⁶. Their charters or bills of rights are predominantly focused on taxpayers’ rights and the obligations of the revenue authorities to taxpayers. They are also short – between one and five pages. There is little or no mention of obligations placed on taxpayers or the inclusion of detailed descriptions of administrative practice.

The overseas approach reflects contemporary expectations of citizens and taxpayers in relation to government charters. Our preference is that the Charter is similarly updated. It should focus on affirming taxpayers’ rights and a brief description of how the ATO will behave in accordance with those rights. Taxpayers’ obligations are already well understood and more appropriately published elsewhere. Details of administrative practice can be similarly relocated.

When comparing the rights contained in the current Charter with other jurisdictions (see Attachment Two), the common themes are:

- Fair treatment
- Quality service
- Privacy and confidentiality
- Rights to representation and review.

We believe that the Charter should focus on these aspects. Consideration should also be given to:

- the express inclusion of rights recommended by the IGTO and others, such as the right to be informed⁷ and that the ATO will have regard to the resources of the taxpayer⁸
- whether specific rights should be created in relation to the ATO’s increasing data analytics and information sharing capabilities.

2. Does the Taxpayers’ Charter provide enough clear information about:

- **your rights and obligations when interacting with us**
- **what we should do to support your rights and treat you fairly and reasonably**
- **your right to request a review of your situation or to make a complaint?**

The Charter arguably contains too much information as it seeks to cover the breadth of administrative law and tax administration in a single document. Even for knowledgeable readers, the Charter is challenging to digest and repetitive. We believe that for most taxpayers, the document is inaccessible due to its level of detail and breadth of content.

¹ Collins Dictionary, “Charter”, 2022

² ATO, **Taxpayers’ Charter**, 2548-11.2018, Australia

³ Her Majesty’s Revenue and Customs, **The HMRC Charter**, United Kingdom

⁴ Internal Revenue Service, **Your rights as a Taxpayer - The Taxpayer Bill of Rights**, Publication 1 (Rev. 9-2017) Catalog Number 64731W, Department of the Treasury, United States

⁵ Canada Revenue Agency, **Taxpayer Bill of Rights Guide: Understanding your rights as a taxpayer**, RC17(E) Rev. 22, Canada

⁶ Inland Revenue, **How we will work with you**, IR 614, March 2009, New Zealand

⁷ “The IGTO recommends... 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.”. IGTO, op. cit.

⁸ Ibid., Annexure C – The Taxation Institute of Australia – draft 1993 Taxpayers’ Bill of Rights

It is our view that the inclusion of taxpayers' obligations in the Charter undermines its intent. The section reinforces the perception that the ATO controls the rules of engagement and can give the impression that there are exceptions and conditions attached to a taxpayer's rights. We recommend that this section be removed from the Charter and published elsewhere if necessary.

Similarly, the right to be treated honestly "unless you act otherwise" can be interpreted as being aggressive in tone and suggests that taxpayers are inherently dishonest. Such a principle is not included by comparable jurisdictions which have instead focused on the right to fair treatment and the proper and consistent application of the law. The value to taxpayers of this particular right is unclear and we recommend its removal from the Charter,

3. Considering recent difficulties such as COVID-19 and natural disasters, is there any additional content that needs to be included in the Taxpayers' Charter? If yes, what, and why?

No feedback has been received on deficiencies in the Charter in relation to COVID-19 and natural disasters. In our work with the ATO on stimulus measures and COVID-19 responses at the time, the ATO's general approaches were consistent with the Charter.

In our view, the Charter is sufficiently flexible to address significant events and the ATO's [disaster response plan](#) is consistent with the Charter.

4. Is there anything in the Charter that you think is out of date or unnecessary?

This Review provides the opportunity to create a visible and accessible Charter that is better understood by taxpayers. More than one-third of respondents to our poll on LinkedIn voted to "give [the Charter] a makeover" while another third asked, "what the heck is it?".⁹ One respondent posted:

The Charter could be valuable for ensuring ATO staff know what is expected of them. It is not that useful for the taxpayer, who is unlikely to know that it exists. The essentials document is reasonable – the rest is far too much detail.

The Charter should seek to effectively communicate with a contemporary taxpayer, meaning significant volumes of text, technical language and information that is irrelevant to the reader should be kept to an absolute minimum. The Charter should not be a governance document produced by the ATO to cover all of its administrative operations, but rather a living document that is respected by ATO officers and gives taxpayers the confidence to assert their rights.

In our view, the Charter should be confined to its primary purpose. That is, the articulation of taxpayers' rights. The additional material is already published elsewhere on the ATO website (e.g., [privacy](#), [penalties](#), [correcting errors](#) and [information gathering](#)) and can instead be referenced, rather than reproduced, in the Charter. This also allows information to be consolidated as content appears to be repeated across multiple sections in the current Charter.

The content and tone of the current Charter should also be reconsidered as it can read, at times, as equivocal (e.g., "treating you as being honest unless you act otherwise"), insensitive (e.g., "If we have made a mistake, we want to fix it at the least cost **to both of us**" (*emphasis added*)) or threatening (e.g., "In many cases you can be prosecuted"). Terminology such as "accepting" taxpayers' right to representation suggests that the ATO has a choice when a taxpayer's appointment of a representative is not at the discretion of the Commissioner.

We are also involved in the development of the Tax Practitioners Charter¹⁰ with the Tax Practitioners Board and are suggesting a similarly contemporary approach to its design.

5. Do you think we are behaving as required by the Charter?

The ATO is a large organisation with many programs in its portfolio, a complex tax system to administer and more than 20,000 staff. We recognise the significant effort made by the ATO to ensure that its systems, processes and

⁹ CPA Australia LinkedIn poll, run between 10-12 October 2022.

The ATO is reviewing the Taxpayers' Charter to make sure it meets community expectations. What would you like us to tell the ATO? Responses from 243 voters: It's helpful keep it as is: 16%; It's unhelpful – bin it: 9%; Give it a makeover: 36%; What the heck is it?: 38%.

¹⁰ As per recommendation 3.3 of the Final Report of the [Review of the Tax Practitioners Board](#).

guidance are consistent with the Charter and that complaints, review and dispute resolution processes are properly governed to assure taxpayers that their rights are respected.

The ATO's 2020-21 performance results against the Charter show a score of 69/100 for fair and reasonable treatment and 66/100 for professional service and assistance¹¹. Perceptions of fairness of process and final decisions sit below 60 percent¹². As a professional association, we often receive examples of poor experiences that are inconsistent with the Charter and perceptions of unfair treatment that are not escalated. Examples have been provided to us across all client experience segments as well as service delivery.

This suggests that further investment is needed to ensure ATO officers fully understand and act in accordance with the Charter, particularly taxpayers' rights. In addition to e-learning modules, the Charter should be discussed when developing strategies, preparing for audits, designing capability plans and determining staff performance ratings. Directors and managers should ensure that staff are complying with the Charter, including being up-front about information held about taxpayers, being fair and professional in their interactions and ensuring that taxpayers and their advisers fully understand the process and their rights throughout any engagement.

Taxpayers and their advisers should always feel confident to raise issues and to know the best pathways for resolution. When mistakes are made, the ATO should remedy any damage caused and properly acknowledge the impact on the taxpayer.

The Department of Finance [Report from the review of CDDA in relation to the ATO and small business](#) highlighted specific issues with the CDDA. While the ATO committed to responding to the recommendations, the most recent statistics suggest that no substantive changes have occurred, given that the total amount paid in 2020-21 was only \$213,223 with a median payment of \$958¹³.

We also note the IGTO's findings in the [Investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal](#) which are relevant to this Review.

6. If you have used the Charter for guidance when dealing with us, what sections of the Charter and in what role did you use it (for example, as a taxpayer, a tax practitioner or a taxpayer representative)?

Feedback from our members indicates that the Charter is not a document that is commonly used although there is general awareness of it. For practitioners, the content of the Charter is intuitively and instinctively understood, and they can fairly easily identify when the ATO operates contrary to the Charter. Because it's not a legally binding document, the applicability of the Charter to practitioners' advice and decision making is limited. Practitioners will tend to look to the law and prescribed processes when dealing with the ATO rather than looking to the Charter to engage on issues.

At a practical level, our members, specifically smaller practitioners, do not face issues with the Charter but rather hold a lack of confidence in the escalation and complaints process. They are also less likely to be familiar with the review and dispute resolution process.

Our preference is that practitioners or taxpayers do not have to use the Charter or point to its sections to demonstrate poor treatment by the ATO. It shouldn't be incumbent on the taxpayer or their adviser to have to assert their rights.

We believe that ATO staff should seek to ensure that the rights articulated in the Charter are properly enlivened through their actions and behaviours in the first instance, so that dependence on secondary processes such as complaints and review to maintain taxpayers' rights is minimised.

¹¹ ATO, Appendix 2: Taxpayers' Charter – our performance, [Commissioner of Taxation Annual Report 2020-21](#), p.183

¹² Ibid., Activities, p. 201

¹³ Ibid., Appendix 7: Compensation statistics, p.198

Comparison of the Charter with comparable jurisdictions' charters or bills of rights

Charter (ATO)	Inland Revenue (NZ)	CRA (Canada)	HMRC (UK)	IRS (US)
Treating you fairly and reasonably	<ul style="list-style-type: none"> We will apply the law consistently so everyone receives their entitlements and pays the right amount. We will take your particular circumstances into account as far as the law allows. 	<ul style="list-style-type: none"> You have the right to receive entitlements and to pay no more and no less than what is required by law You have the right to be treated professionally, courteously, and fairly You have the right to have the costs of compliance taken into account when administering tax legislation You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances 	<ul style="list-style-type: none"> Treating you fairly Being aware of your personal situation Being responsive 	<ul style="list-style-type: none"> The Right to Pay No More than the Correct Amount of Tax The Right to a Fair and Just Tax System The Right to Be Informed
Treating you as being honest unless you act otherwise				
Offering you professional service and assistance	<ul style="list-style-type: none"> We will be easy to deal with, prompt, courteous and professional. We will follow through on what we say we will do We will be responsive to individual, cultural and special needs We will be well-trained and competent We will keep looking for better ways to provide you with advice and information. We will provide you with reliable and correct advice and information about your entitlements and obligations. We will assist you to get in touch with the right people for your needs 	<ul style="list-style-type: none"> You have the right to service in both official languages You have the right to have the law applied consistently You have the right to complete, accurate, clear, and timely information 	<ul style="list-style-type: none"> Getting things right Making things easy 	<ul style="list-style-type: none"> The Right to Quality Service The Right to Finality
Respecting your right to make a complaint		<ul style="list-style-type: none"> You have the right to lodge a service complaint and to be provided with an explanation of our findings You have the right to lodge a service complaint and request a formal review without fear of reprisal 		

Charter (ATO)	Inland Revenue (NZ)	CRA (Canada)	HMRC (UK)	IRS (US)
Accepting you can be represented by a person of your choice and get advice		<ul style="list-style-type: none"> You have the right to be represented by a person of your choice 	<ul style="list-style-type: none"> Recognising that someone can represent you 	<ul style="list-style-type: none"> The Right to Retain Representation
Respecting your privacy		<ul style="list-style-type: none"> You have the right to privacy and confidentiality 		<ul style="list-style-type: none"> The Right to Privacy
Keeping the information we hold about you confidential	<ul style="list-style-type: none"> We will treat all information about you as private and confidential, and keep it secure. We will only use or disclose it in accordance with the law. 		<ul style="list-style-type: none"> Keeping your data secure 	<ul style="list-style-type: none"> The Right to Confidentiality
Giving you access to information we hold about you				
Helping you to get things right				
Explaining the decisions we make about you				
Respecting your right to a review	<ul style="list-style-type: none"> We will make it easy for you to question the information, advice and service we give you. We will inform you about options available if you disagree with us, and we will work with you to reach an outcome quickly and simply. 	<ul style="list-style-type: none"> You have the right to a formal review and a subsequent appeal You have the right, unless otherwise provided by law, not to pay income tax amounts in dispute before you have had an impartial review 	<ul style="list-style-type: none"> The Right to Challenge the IRS's Position and Be Heard The Right to Appeal an IRS Decision in an Independent Forum 	
Making it easier for you to comply				
Being accountable	<ul style="list-style-type: none"> We will value your feedback and use it to improve our services. The person you are dealing with will give you their name 	<ul style="list-style-type: none"> You have the right to expect us to be accountable You have the right to expect us to warn you about questionable tax schemes in a timely manner You have the right to expect us to publish our service standards and report annually 		