

24 October 2022

Ms Katherine Philp and Mr Chris Cook
Australian Taxation Office
26 Narellan Street
CANBERRA ACT 2601



By email: Katherine.Philp@ato.gov.au; Chris.Cook@ato.gov.au

Dear Ms Philp and Mr Cook

ATO Review of the Taxpayers' Charter

1. The Taxation Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide the following comments on the ATO's review of the Taxpayer's Charter (**Charter**).
2. The focus of the review, as stated on the ATO's website,¹ is to make sure the Charter:
 - *meets community expectations about we [sic] engage with taxpayers when we administer the tax, super and registry systems*
 - *accurately reflects what you can expect from us*
 - *helps our staff when interacting with you*
 - *fulfils its purpose of informing you of your rights and obligations when dealing with us.*
3. The Committee addresses these in turn below and makes further comments that may assist the ATO with its review.²

a) Meets community expectations

4. The community expects, and is entitled to expect, balanced dealings between taxpayers and the ATO. The Committee considers that the Charter does not meet this expectation. For example, the Charter sets out extensively taxpayers' obligations but does not set out taxpayers' rights (see also d) below). The Committee recommends that the Charter be updated to include taxpayers' rights, in line with community expectations.
5. The Committee considers that the community expects to be able to enforce the Charter in the event that ATO staff fail to comply with it. Presently, there is no practical way for a taxpayer to enforce the Charter as against the ATO.³ The Committee recommends that the Charter be updated to include enforcement/escalation procedures. A mechanism for escalating a failure to comply with the Charter would be consistent

¹ <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--charter/Taxpayers--Charter-Review/>

² The ATO has also posed six questions as part of this review. We understand from discussions between Mr Byrne (LCA) and Messrs Philp and Cook (ATO) that the questions are intended to help guide the consultation only and the ATO is content to receive more general comments. Accordingly, we have considered the questions, but our comments are not limited by them.

³ On one view, the requirement for an ATO officer to abide by the charter is seen as a lawful direction under the *Public Service Act*, and must therefore be followed. However, while actionable by the ATO as a public service agency, breach of such a direction is not a privately enforceable right that an affected taxpayer could exercise.

with community expectations, and help enhance taxpayer confidence in the ATO's administration of the tax, super and registry systems.

6. The Committee considers that the community expects taxpayers to be able to make complaints and/or escalate issues, in addition to and in parallel with their statutory rights (e.g. under Part IVC of the *Taxation Administration Act 1953*). It considers the Charter to be an appropriate document for the ATO to set out its complaints/escalation procedures, and to make clear that any such procedures are in addition to and in parallel with taxpayers' rights under Part IVC.
7. The Committee considers that the community expects the ATO to take into account taxpayers' individual circumstances as appropriate in its administration of the tax, super and registry systems. The ATO seems to take into account broader challenges as well, e.g. floods, bushfires, and COVID-19. However, the ATO's handling of other relevant factors (e.g. the mental or other health issues of individuals) can vary greatly from case to case. The Charter can be an appropriate document for the ATO to set out how it will handle personal factors such as mental or other health issues in dealing with taxpayers. The Committee considers that doing so would be consistent with the community's expectations and is also likely to assist ATO staff with achieving fairness and consistency (see also c) below).
8. The Committee acknowledges that differentiated approaches may be appropriate in certain circumstances, e.g. large vs small business taxpayers; higher-risk vs lower-risk individual taxpayers. However, it considers that the community expects the ATO to give taxpayers a 'fair go'. For example, if an individual taxpayer has historically defaulted on a payment plan or failed to respond to a request for information in a timely manner, the community would expect the ATO not to hold this factor against the individual perpetually (e.g. as a higher-risk individual taxpayer), but rather to consider all of the relevant circumstances. The Charter can be an appropriate document for the ATO to set out its approach in respect of taxpayers having regard to their compliance history. Again, doing so would be consistent with the community's expectations and is also likely to assist ATO staff with achieving fairness and consistency (see also c) below).

b) Accurately reflects what the community can expect

9. The Committee recommends that the Charter is updated to reflect the issues raised at a) above.

c) Helps ATO staff

10. In line with the above statements, the Committee considers that the Charter can be an appropriate document to set out the ATO's approach to taxpayers, to help ensure that ATO staff treat taxpayers with fairness and consistency: see [7] and [8] above.
11. In order for the Charter to help ATO staff when interacting with taxpayers, it is essential that ATO staff are familiar with the Charter. The Committee considers regular training to be appropriate to ensure that the Charter is front of mind and appropriately applied by staff. It recommends regular compulsory training on the Charter for ATO staff to help achieve this goal.

d) Informing taxpayers of their rights and obligations

12. The Charter does not contain any rights or assurances for taxpayers. The Committee considers this to be a significant deficiency of the Charter. The Committee recommends that the Charter be updated to include taxpayers' rights.

e) Further comments

13. The Committee recommends annual reporting of alleged and confirmed breaches of the Charter. It suggests reporting on specific complaints of non-compliance with the Charter as well as other complaints where the ATO should determine whether there was non-compliance with a Charter expectation. The Committee considers that such transparency measures would enhance community trust and confidence in the ATO's administration of the tax, super and registry systems, in line with a) above. The information would also facilitate an open dialogue about any opportunities to improve those systems.
14. The Committee would be pleased to discuss any aspect of this submission.
15. Please contact the Chair of the Committee, Angela Lee (at angela.lee@vicbar.com.au), or Deputy Chair (Brisbane) of the Committee, Justin Byrne (at justin.byrne@qldbar.asn.au), if you would like to do so.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Argy', with a long, sweeping flourish extending to the right.

Philip Argy
Chairman
Business Law Section