



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

**Death and Taxes –
Investigation into
ATO systems and
processes for
dealing with
Deceased Estates**

December 2019

Introduction

The Institute of Public Accountants (IPA) welcomes the opportunity to offer our **'Death and Taxes – Investigation into ATO systems and processes for dealing with Deceased Estates'** submission. We look forward to working with the Inspector-General of Taxation and Taxation Ombudsman in providing our observations on some of the deficiencies encountered when dealing with the ATO on deceased estates.

The IPA is one of the three professional accounting bodies in Australia, representing over 36,000 accountants, business advisers, academics and students throughout Australia and internationally. The IPA prides itself in not only representing the interests of accountants but also small business and their advisors.

We look forward to discussing in more detail the IPA's submission and its recommendations. Please address any further enquires to Tony Greco, General Manager Technical Policy via tony.greco@publicaccountants.org.au

6 December 2019

Inspector-General of Taxation and Taxation Ombudsman

GPO Box 551
SYDNEY NSW 2001

Via email: estates@igt.gov.au

Dear Inspector-General of Taxation and Taxation Ombudsman (IGTO)

Death and taxes - Investigation into ATO systems and processes for dealing with Deceased Estates

The IPA welcomes the opportunity to provide this submission in relation to the IGTO's investigation into the way the Australian Taxation Office (ATO) deals with its systems and processes regarding deceased estates.

The IGTO rightfully observes that those entrusted with the role of executor with respect to a deceased estate encounter a myriad of tax, legal and financial obligations. From a tax perspective, it is a considerable responsibility as the executor can be personally liable for the deceased's tax liabilities if the estate is not properly administered and tax liabilities of the estate are not properly settled.

We outline below some of the salient issues regarding the ATO's systems and processes that could be improved to assist in the administration of the tax obligations with respect to deceased estates:

Administering deceased estates is complex

For the lay person, the administration of a deceased estate is a complex legal affair. To put the issue into perspective, ABS data shows that approximately 160,000 registered deaths occurred in 2018. Those acting as executors, unless they are professionals, may not necessarily possess the legal nor tax knowledge to properly administer the estate. Such responsibilities are typically accepted at the request of

the deceased, by a family member or loved one, without hesitation or due consideration of those responsibilities.

Given that most will be first time executors, it would be in the best interest to obtain the services of a qualified accountant or legal representative to fulfil their legal and tax obligations.

In administering the deceased's and their estate's tax obligations, there is limited information available on the ATO's website to assist executors and tax agents. There is one main webpage on ato.gov.au that specifically addresses issues relating to deceased estates and completing tax returns.

We observe that there is a tendency for various ATO guidance on deceased estates to be scattered between the ATO's main website and the ATO legal database. To provide a reliable single source of information to executors and tax practitioners, we suggest that the ATO contemplates authoring a single guide on deceased estates and the various tax and administration issues. We would envisage that such a guide be made available on a deceased estates landing page on ato.gov.au.

We believe that such a guide would be no different to the ATO's *rental properties* publication¹, which provides guidance for property owners on the treatment of various income and expenses, including depreciation rates.

A deceased estates guide published annually, with references to key ATO pronouncements, would allow executors and tax agents to properly administer the estate and the deceased's final return. The guide could cover other ancillary tax issues impacting the executor or beneficiary which may not necessarily be covered from the same source (for example, the CGT implication in relation to disposing of the deceased's main residence, treatment of life and remainder interest, or the implications of managing a testamentary trust).

¹ <https://www.ato.gov.au/uploadedFiles/Content/IND/downloads/Rental-properties-2019.pdf>

Notwithstanding the value of such a guide, the role of the tax advisor continues to be of significance in ensuring the deceased and their estate are tax compliant because of its complexity. Executors and beneficiaries may not know that they require assistance and so, apart from ensuring tax obligations are met, the role of the registered tax agent or legal advisor should be promoted by the ATO in ensuring that any tax issues are addressed.

De minimus for executor of a low value estate from applying for a Tax File Number (TFN)

Upon the death of the deceased, a tax return is required to be lodged for the deceased from the start of the income year until their date of death. However, a tax return is required to be lodged for the deceased estate for the remainder of the income year where the estate derived income. This would require that the executor apply for a trust TFN from the ATO.

The application for a TFN, which requires verification, creates additional red tape for the executor and may only be used once for the lodgment of the estate tax return for the year. In our view, it may be of benefit that a de minimus be introduced by the ATO from the need to apply for a TFN for those executors who are administering low value estates (or estates with simple affairs). In turn, this would expedite the finalisation of deceased estate tax returns. In such cases we question the need for a new TFN.

The person responsible for administering a deceased estate is the 'executor', or administrator, of the will. In some cases, there isn't a will and therefore an executor. The ATO cannot automatically pass on information to a spouse, immediate family member or trusted adviser, as it must adhere to strict taxpayer confidentiality provisions. A letter from the court may need to be obtained if an unmaned love one wants to access the information needed to attend to the deceased persons tax affairs which be time consuming and expensive.

Simplification of trust tax return for deceased estates

Those preparing tax returns for a deceased estate are required to complete a trust tax return; putting in a code that the return is a deceased estate return. The instructions to the trust tax return are lengthy and contains information applicable to all trust types; requiring executors and tax agents completing the return to search for the relevant information (such as the tax rates which are applicable to the estate and additional information about deceased estates in *Appendix 8* of the instructions²).

To simplify the tax return process for deceased estates, it may be of benefit for the ATO to consider the feasibility of having a separate tailored deceased estates tax return in lieu of the trust tax return. This would be similar to superannuation funds which have a 'fund tax return' and a 'self-managed superannuation fund return'. Each return, to some extent, are tailored for the relevant superannuation fund. We consider that having a separate deceased estate return would improve accessibility and will go some way to reducing complexity.

Specifically, the objective of having a separate tax return for deceased estates is to reduce the length of the return and to remove unnecessary labels that may be contained in the trust tax return. In turn, this would also reduce the length of the tax return instructions and allow for key information to be more accessible. It would also be worthwhile considering whether it would be appropriate for such returns to also take into account testamentary trusts, which have their own unique issues.

Access to deceased estates information by tax agents

Tax agents play a significant role in assisting executors manage the tax affairs of the deceased and their estate. In order for tax agents to satisfactorily complete the trust tax return on behalf of the executor and the deceased's final return, it is critical that all relevant information be made available to the agent.

² <https://www.ato.gov.au/printfriendly.aspx?url=/Forms/Trust-tax-return-instructions-2019/>

More recently, the tax agent online portal underwent an update such that those on the new agent portal (referred to as the 'online services for agents') can no longer access the information of a deceased individual. The legacy portal had the capability to provide tax agents access to the deceased's information notwithstanding that it is technically in breach of the tax administration law (s355-25(2) of the *Taxation Administration Act 1953*).

The inability for tax agents to have access to their client's information under the new portal has been a cause of concern. This would inevitably lead to delays in lodgment of tax returns for both that individual and their deceased estate. This is also frustrating for the executor and family of the deceased.

Following consultation with the ATO, from December 2019, tax agents who are an executor or legal personal representative for a deceased estate are allowed to add the deceased as a client on the portal, provided that they submit a declaration that they are authorised to access the client's information.

For all other legal personal representatives, these entities are required request that information from the ATO. Once received from the ATO by the executor, then such information can then be forward to the tax agent. This approach is an interim measure as the ATO proposes to use the Commissioner's remedial powers to modify the tax administration laws to allow a deceased person's information to be provided to a registered tax agent or BAS agent or legal practitioner appointed by an executor or administrator, rather than to the executor or administrator directly. The legislative instrument is expected to be tabled before Parliament in early 2020.

While the interim measures are not ideal for those tax agents who require information immediately to complete the tax affairs for their client, they nonetheless provide a working solution until the Commissioner's remedial powers to modify the law is enacted. The ATO should ensure that it is adequately resourced and that its personnel are properly trained to provide the necessary support during this period of transition to facilitate timely lodgment of returns.

We trust that you will find our submission of value. Please feel free to contact us directly should you require further clarification on any of the issues raised or other questions related to our submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Greco', with a stylized flourish.

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