

18 June 2024

Mr Lloyd Williams  
Director | Individual client experience  
Australian Taxation Office

By email only: [Lloyd.Williams@ato.gov.au](mailto:Lloyd.Williams@ato.gov.au)

Dear Lloyd

## **ATO Administration of deceased estates**

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Thank you for the opportunity for STEP to provide feedback on your discussion paper of 21 May.

STEP is a global professional body, comprising lawyers, accountants, trustees and other specialist practitioners. STEP Australia, comprised of State branches, represents professionals from across Australia whose objective is to advance the interests of families by bringing a multidisciplinary approach.

### **Focusing questions**

*Is the ATO's approach to the disclosure of protected information/data in relation to a deceased person (as outlined above) reasonable and appropriate? What improvements would you suggest, noting that the ATO is not responsible for policy setting or legislative change?*

We understand that the ATO must ensure that information it holds in respect of deceased taxpayers is appropriately protected. The grant of probate to an executor is effectively an endorsement by the Court of the authority of the executor to act and gives the ATO comfort to disclose relevant information.

However, particularly in small estates, it may be the case that probate is not required and will not be obtained. Bearing in mind that executors who do not obtain a grant are not made personally liable for the deceased's outstanding tax liabilities (section 260-145 of the TAA 1953) the ATO should not make it too onerous for them to lodge outstanding returns on behalf of the deceased if they are minded to do so. That is, even though they are not required to lodge returns, many executors prefer to ensure that the deceased's tax affairs are addressed.

We agree that these matters should be done over the phone with Call Centre staff. It would be useful if there was a dedicated area that could process a written request from a legal practitioner stating that they are acting for the LPR, they have a will which they believe to be the last will of the deceased (and any other safeguard they might want to add such as the period for TFM claim has passed and there have been no claims made).

*Is the ATO's deceased estates web content useful and appropriate in explaining how protected information may be released? How can the web content be improved? Note that our website has recently been updated so this content may have a different look and feel to when you last used it.*

It would be helpful for those executors who are not seeking probate if the ATO were to explain in more detail (perhaps with a couple of examples) the circumstances in which it will release information to them.

One of our members has raised a matter where the only estate asset is a tax refund of approximately \$8,000 (all other assets passed by survivorship to the deceased's spouse). The ATO has advised our member that a return can only be lodged and a refund obtained if probate has been obtained. Given the relatively low risk to the ATO and the costs of obtaining probate, we would hope that this is the type of matter that the ATO could process without the need for a grant.

Perhaps the website content should also make clear that they are not required to attend to the deceased's outstanding tax obligations.

*What could the ATO improve to make it easier for you and your clients around the notification of death and notification of LPR processes?*

Please find below information that was lodged by one of our members with the IGTO as part of a formal complaint detailing current issues and recommended solutions to the notification of death process. Please note at this stage the recommendations from this complaint have not been implemented by the ATO.

The interaction of the LPR and authorised tax agent with the ATO would be improved by implementation of the following:

- LPR needs to be able to notify the ATO of the appointment of a tax agent on the Notification of a deceased person form (NDP). This would involve the inclusion of the following question on the NDP form:

If the applicant uses, or intends to use the services of a registered agent, what is their registered agent number?

(As per the ABR online Estate TFN application form)

- LPR needs to be able to notify the ATO of an authorised contact on the NDP. This would involve the inclusion of contact detail information on the NDP form: name, position held, telephone numbers, email address and preferred language.

(As per the ABR online Estate TFN application form)

- All communication to the LPR must be visible under the deceased's 'Communication History' on Online Services for Agents (OSFA).
- Ability for an authorised tax agent to deal with the deceased taxpayer's affairs via OSFA e.g., providing the NDP and supporting documents, following up on the processing of the NDP or requesting the deceased's TFN. This would involve the ATO adding additional topics or subject selections to the 'Practice Mail' system.

- Proper training of ATO Officers so that they are not making erroneous statements in relation to the tax affairs of a deceased taxpayer. The ultimate solution in this regard would be a dedicated deceased estate team within the ATO.

The ultimate solution to reduce the tax compliance burden and associated costs to the estate of notifying the ATO of the death of a taxpayer would be for the ATO to implement recommendations 2(a) and 3(a) from the July 2020 Report - Death and Taxes: An investigation into Australian Taxation Office systems and processes for dealing with deceased estates.

Yours sincerely

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Chair of STEP Australia