



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELCS:RHsh1995586

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Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
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Canberra ACT 2601

By email: sarah.swan@lawcouncil.asn.au

Dear Mr Tidball,

Australian Taxation Office consultation with the legal profession

Thank you for the opportunity to contribute to a Law Council response to the Australian Taxation Office's (ATO) consultation with the legal profession. The Law Society's Elder Law, Capacity & Succession Committee contributed to this submission. Our responses to specific questions are below.

1. How can the ATO help executors and agents better understand how to finalise the tax affairs for a deceased person?

We appreciate there is a need to abide by the existing secrecy and privacy provisions relating to disclosing tax information.

We note that s 254 of the *Income Tax Assessment Act 1936* (Cth) provides that an agent of the deceased person is liable for tax liabilities and stands in the shoes of a taxpayer. Under s 265(e), their personal liability is limited by the value of the deceased's assets. These provisions require any person who is appointed as executor or administrator to regularise any outstanding taxation returns and liabilities up to the date of death. A person named as executor, or who is considering applying for a grant of administration, may not necessarily have ready access to the deceased's tax records.

The ATO generally cannot disclose any details of a deceased's tax affairs to an executor, administrator or their tax agent unless a grant of probate or administration has been obtained, and this has particular implications in jurisdictions where probate is not required, for example in the case of small estates.

As noted in the Final Report of the Inspector-General of Taxation, *Death and Taxes*, "a requirement to obtain probate or letters of administration for tax purposes only (that is, where it is otherwise not required) is unnecessary red tape and adds compliance costs from the perspective of a representative and an administrative solution would be welcome."¹

¹ Inspector-General of Taxation, *Death and taxes: an investigation into Australian Taxation Office systems and processes for dealing with deceased estates*, July 2020, p.39.

We support Recommendation 7 of the Inspector-General that the ATO confirm its position on the interaction between state and territory probate and succession laws and tax laws, specifically where no grant of probate or administration has been obtained. This also reinforces the need for the ATO to implement the Inspector General's Recommendation 1, to provide clearer guidance on the information required by the ATO, including the circumstances in which the ATO will require probate or letters of administration before dealing with a representative of the deceased taxpayer.

3. What would be more effective ways for the ATO to provide public advice and guidance on deceased estate tax matters? Traditional channels (improved web content), guides, a booklet?

In addition to web content, guides and booklets, we suggest web-based resources such as:

- webinars that provide guidance on processes and on completing relevant forms; and
- videos providing assistance in English and other community languages.

5. When and how an executor or tax agent should apply for a deceased estate trust tax file number.

The executor or tax agent should be able to obtain a deceased estate tax file number online, and soon after death.

7. What types of complex deceased estates issues require further public advice and guidance from the ATO? (Please list in order of priority)

A dedicated 'deceased estate' section of the ATO with staff specialising in the law and accounting of deceased estates would assist. As discussed above, complex issues can arise, for example in estates with a non-resident deceased, a foreign executor or a foreign beneficiary. The ATO website currently provides relevant information on these issues but it is not easy to locate.

In the first instance please contact Sue Hunt, Principal Policy Lawyer, on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,



Richard Harvey
President