

Client's Rights & Obligations under the taxation laws

As a client of this practice, we are obliged to advise you of your rights and obligations under the taxation laws in relation to the services we provide to you. Set out below is a brief explanation of the main areas of the taxation system you should be aware of. If you have any concerns or issues with any of matters discussed below please feel free to contact us.

The self-assessment system

The Australian tax system operates as a self-assessment system. This means that when your tax return, Fringe Benefits Tax (FBT) return or Business Activity Statement (BAS) is lodged, the Australian Taxation Office (ATO) accepts the information in the return at face-value and issues you with an assessment notice based on that information. It is important to understand that this does not mean the assessment is final as the ATO can conduct a review or audit of the information provided in the return at a later time, subject to the time limits discussed in the topic below.

The Commissioner's ability to amend an assessment

As explained above, the ATO accepts the information lodged in your return at face value. However, the ATO also has the power to amend the assessment if they find it to be incorrect. The following rules generally apply:

Individuals

- For most individuals, the ATO can amend an assessment within 2 years after you receive your notice of assessment. If the individual carries on a business and is **neither** a Small Business Entity (SBE) (broadly, a business with an aggregated turnover of less than \$10 million) nor a Medium Business Entity (MBE) (broadly, a business with an aggregated turnover between \$10 million and less than \$50 million), that period extends to 4 years.
- If the individual is a partner in a partnership or a beneficiary of a trust, the period is 2 years. However, if the partnership carries on business and is **neither** a SBE nor an MBE, the period extends to 4 years. If the trust is **neither** an SBE nor an MBE, the period extends to four years.

Companies

- The ATO can amend a company assessment within 2 years after the company receives a notice of assessment is deemed to have been made where the company **is** either an SBE or MBE.
- If the company is a partner in a partnership or a beneficiary of the trust, the period is two years. However, if the partnership carries on business and is **neither** an SBE nor an MBE, the period extends to four years. If the trust is **neither** an SBE nor an MBE, the period extends to four years.
- In any other case, the period is 4 years.

Trustees

- The ATO can amend an assessment within 2 years after the trustee receives the notice of assessment if the trust **is** either an SBE or an MBE.
- If the trustee is a partner in a partnership or a beneficiary of a trust, the period is two years. However, if the partnership carries on business and is **neither** an SBE nor an MBE, the period extends to four years. If the trust is **neither** an SBE nor an MBE, the period extends to four years.
- In any other case, the period is 4 years.

If the ATO amends an assessment this will potentially involve, apart from increased taxes, penalties and interest. If you discover an error in the information declared in the return, lower penalties generally apply for making a voluntary disclosure.

Note: There are no time limits on the ATO amending an assessment where they believe there has been fraud or evasion.

Obligation to keep records

The tax laws specifically require taxpayers to keep records that properly explain the transaction they have entered into.

Individuals

Individuals claiming deductions for work-related expenses are subject to the substantiation rules in the tax laws. This requires taxpayers to keep receipts, invoices etc, of the expenses they incur. Where the expenses relate to a taxpayer travelling interstate or overseas, a travel diary may also need to be kept. Where the expense relates to a motor vehicle, a record of the journeys taken such as a log book may need to be kept.

A failure to keep the appropriate records can lead to the ATO denying a particular deduction which may involve the imposition of penalties and interest. Substantiation records must be retained for 5 years.

Businesses

The tax laws specifically require a taxpayer that carries on business to keep records that record and explain all the transactions they have entered into. This includes all the documents that explain how the income and expenditure of the taxpayer was determined.

Where the tax laws allow or require a taxpayer to make a choice, election, estimate or calculation, documents containing particulars of these matters must be kept.

All these records must be retained for a period of 5 years. There are penalties for taxpayers who fail to do so.

Obligation to provide complete and accurate records

In order for our practice to be able to lodge returns on your behalf, it is your responsibility to provide us with complete and accurate records. Further, in order to lodge your return on time we will require you to provide us the relevant information as and when requested.

Where you are unable to provide us with complete and accurate records, we may be unable to prepare and lodge your return. Tax agents are subject to a Professional Code of Conduct contained in the *Tax Agent Services Act 2009*, which prevents them from acting for a client where insufficient records or information exists so as to be able to determine the amount of the client's income or deductions.

We also reserve the right to question any claims for deductions or credits that in our reasonable judgment might be considered as being excessive, and we may ask for more substantiation or records to prove that such a claim is allowable under the law. If we believe that a claim excessive and cannot be substantiated we reserve the right not to include such a claim in your income tax returns or BAS, but you will have the right to lodge an objection after receiving your notice of objection. There may be further costs in doing so, and we will advise you accordingly.

Records for clients operating in the cash economy

Because of the ATO's concerns with dealings in the cash economy, there are particular recording imperatives for clients who operate in that sector. In particular, the ATO has a program of "benchmarking" standardised revenue returns for a wide range of cash businesses.

In circumstances where it is dissatisfied with a taxpayer's records or recording systems, the ATO will often assess income tax and/or GST on what it considers to be an appropriate "benchmark" amount (plus penalties and interest) and then put the taxpayer to the task of disproving that assessment.

Where that occurs, the taxpayer is at a serious disadvantage and can be put to a great deal of cost and effort in disputing the assessment.

Taxpayers who operate in the cash economy are therefore urged to have a robust and reliable system for recording and reporting all cash transactions and to ensure that the recorded figures are accurate.

If you need assistance in setting up or reviewing your recording and reporting systems, we will be happy to do so and will advise you of our rates for doing so on request.

Right to seek a Private Binding Ruling

When preparing your return we may identify one or more issues that are not clear under the tax laws. Where we have pointed out such issues to you, you have a right to request a Private Binding Ruling from the ATO. Upon providing the ATO with all the relevant facts, they will provide you with a ruling setting out their view on the proper tax treatment of the issue requested to be ruled upon.

Objecting to an assessment

If the ATO issues you with an assessment that you do not agree with, you have the right to lodge an objection to that assessment. The objection must be lodged with the ATO within either 2 or 4 years. As to which period applies, this is determined in the same way as the discussion above under the heading '*Commissioner's ability to amend an assessment*'.

Where the ATO issues an amended assessment, the period for objecting is the greater of:

- 60 days from the time the amended assessment is received; or
- 2 or 4 years (whichever is applicable) from the time the original assessment was received.

If you remain dissatisfied with the outcome of the objection, you have the right to have the matter reviewed by the Administrative Appeals Tribunal or to appeal the matter to the Federal Court.

Onus of proof falls on the taxpayer

It is important to be aware that in any disputed assessment before the court or the Administrative Appeals Tribunal, the onus of proof is placed on the *taxpayer*. In other words, if the Commissioner asserts that your income should include a certain amount or that a deduction claimed in a return is not allowed, it will be up to you to establish that the Commissioner's view is incorrect.

Your protections under TASA

The *Tax Agent Services Act 2009* (TASA) and complimentary amendments to the applicable taxation administration legislation provide statutory protections for taxpayers who engage registered tax agents.

In particular, as your tax agent, we are bound by a statutory Code of Conduct which is administered by the Tax Practitioners Board. That Code requires us, amongst other things, to act lawfully in your best interests and with honesty and integrity in the performance of our duties.

In addition, as the client of a registered tax agent, you have statutory "safe harbour" exemptions from penalties in certain circumstances.

When did the new safe harbour provisions commence?

The 'safe harbour' can only apply for returns lodged on or after 1 March 2010.

How does the new safe harbour work?

In order to benefit from the 'safe harbour' should the need arise, it is a requirement for you to ensure that you provide us with all of the relevant tax information. This includes any records, or documents we request from you plus any other information relevant to the preparation of your tax return. The information provided must be complete and accurate.

It is equally important that you provide us with this information by the time it is requested so as to allow the return by its due date. The safe harbour from late lodgement penalties can also apply

where a Business Activity Statement, Instalment Activity Statement, or Fringe Benefits Tax return is lodged late.

What does the new safe harbour apply to?

Whilst the safe harbour can apply to exempt the penalty for an error made in a tax return, it is important to note that the tax and interest will be still be payable.

What if the safe harbour does not apply?

Even if you are not eligible for the safe harbour, it is still possible to request the ATO remit or reduce the penalty.

While all reasonable care has been taken in the preparation of the publication, we do not accept any responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however, caused, or sustained by any person that relies on it.

Note: This information is of a general nature only and is not intended to be relied upon, nor to be a substitute for, specific professional advice. Also as changes in legislation may occur quickly we recommend that our formal advice be sought before acting in any of the above areas.