

Client's rights and obligations under the taxation laws

As a client of this firm, we are required 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 that you should be aware of.

Please contact us if you have any concerns or issues with any of the matters discussed below.

The self-assessment system

Australian's tax system operates on a self-assessment basis. This means that when your tax return 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.

However, 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 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 the ATO finds it to be incorrect.

The following time limits generally apply for amending an assessment:

- For most **individuals**, the ATO can amend an assessment within two years after the individual receives their 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 four years.
- If the **individual 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.

Note that there are **no** time limits on the ATO amending an assessment where it believes there has been fraud or evasion.

If the ATO amends an assessment, apart from any increased tax liability, this will potentially also involve the imposition of penalties and interest. If you discover an error in the information declared in the return, reduced penalties will generally apply where a voluntary disclosure is made.

Obligation to keep records

The taxation laws specifically require taxpayers to keep records that properly explain the transactions they have entered.

Individuals claiming deductions for work-related expenses are subject to the substantiation rules in the taxation 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 logbook 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 five years.

Obligation to provide complete and accurate records

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

If you do not provide us with complete and accurate records, we may be unable to prepare and lodge your return. Tax agents are subject to a Code of Professional Conduct contained in the *Tax Agent Services Act 2009*, which prevents them from acting for a client where insufficient records or information exist for them 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 is excessive and cannot be substantiated, we reserve the right not to include such a claim in your income tax return.

Records for clients operating in the cash economy

Given the ATO's focus on dealings in the cash economy, there are certain recording imperatives for clients who operate in that sector. It is important to be aware that the ATO has a range of tools to identify individuals who may not be correctly meeting their tax obligations.

For example, the ATO has a 'benchmarking' program for a wide range of cash businesses which assists both in determining whether those businesses are paying the correct amount of tax, and whether their employees are declaring any wages paid to them in cash.

The ATO also uses sophisticated data-matching processes to collect information from several sources (e.g., financial institutions, share registries, Centrelink, etc.) and compare them against income and expenses reported by individuals.

Where the ATO is dissatisfied with a taxpayer's records or recording systems, the ATO will often assess income tax on what it considers to be an appropriate amount (plus penalties and interest). This then puts the taxpayer to the task of disproving that assessment. Where this occurs, the taxpayer is at a serious disadvantage and can be put to a great deal of cost and effort in disputing the assessment.

Individuals who are engaged in the cash economy are therefore urged to have a robust and reliable system for recording and reporting all cash transactions and ensuring 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 taxation 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, the ATO will provide you with a ruling setting out its view on the proper tax treatment of the issue requested to be ruled upon.

Objecting against an assessment

If the ATO issues you with an assessment that you do not agree with, you have the right to lodge an objection against that assessment. The objection must be lodged with the ATO within either two or four years. The period which applies is determined as discussed above under the heading '*The 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
- two or four 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 ATO asserts that your income should include a certain amount or that a deduction claimed in a tax return is not allowed, it will be up to you to establish that the ATO's view is incorrect.

In particular, where the ATO has assessed income tax on what it considers to be an appropriate amount (that is, where the ATO has reasonably estimated your taxable income), it is not enough to simply prove that the ATO's amount is incorrect. The onus is on you to establish an alternative figure that is supported by evidence.

Your statutory protections

The *Tax Agent Services Act 2009* (**TASA**) and complementary provisions in the *Taxation Administration Act 1953* (**TAA 1953**) provide statutory protections for taxpayers who engage registered tax agents.

In particular, as your tax agent, we are bound by a statutory Code of Professional Conduct which is set out in the TASA and 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 a client of a registered tax agent, the TAA 1953 provides you with a statutory 'safe harbour' exemption from certain penalties that may be imposed by the ATO.

Broadly, the safe harbour protection can only apply to penalties imposed by the ATO for:

- failure to lodge a document (e.g., an income tax return) within a prescribed time; and/or
- making a false or misleading statement that results in a shortfall amount (e.g., an error),

where the failure to lodge or the shortfall amount arises from recklessness or intentional disregard of the taxation laws by your registered tax agent.

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

To ensure that you are able to benefit from the safe harbour (should the need arise), it is a requirement that you provide us with all relevant taxation 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 also important that you provide us with this information by the time it is requested so as to allow the return to be lodged by its due date.

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