

## Clients' right & obligations under Australian Taxation Laws

Set out below is a brief explanation of the main areas of the taxation system clients should be aware of. If clients have any concerns or issues with any of matters discussed below please feel free to contact our office on (03) 5176 4800.

### THE SELF ASSESSMENT SYSTEM

The Australian tax system operates as a self-assessment system. This means that when a tax return, FBT return or BAS is lodged the ATO accepts the information in the return at face-value and issues the taxpayer 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 a 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 two years after an individual receives a notice of assessment. If the individual carries on a business and is **not** a Small Business Entity, 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. If the partnership or trust carries on a business and is not a Small Business Entity, the period extends to four years.

**Companies-** The ATO can amend a company assessment within two years after the company receives a notice of assessment where the company **is** a Small business Entity. The same period applies where the company is a partner in a partnership or beneficiary of a trust that is a Small Business Entity.

In any other case, the period is four years.

**Trustees-** The ATO can amend an assessment within two years after the trustee receives the notice of assessment if the trust **is** a Small Business Entity.

If the trustee is a partner in a partnership or a beneficiary of a trust that is not a Small Business Entity, that period extends to four years.

In any other case the period is four years.

Apart from a likely increase in taxes, if the ATO amends an assessment this will potentially involve 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.**

### OBLIGATIONS 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 five 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 five years. There are penalties for taxpayers who fail to do so.

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Type of Entity	ATO Review Term	Documentation Retention Time <sup>1 2</sup>
Individuals	2 years <sup>3</sup>	Five years from when your return is lodged.
Partnership		Five years from when the business record is prepared or the transaction is completed, whichever occurs later.
Small Business Entities (< \$2 million turnover)	2 years	Five years from when the business record is prepared or the transaction is completed, whichever occurs later.
Companies	4 years	The Corporations Act requires company records that record and explain its transaction & financial position to be kept for seven years
Trustees	4 years	Five years from when the business record is prepared or the transaction is completed, whichever occurs later. <sup>4</sup>

<sup>1</sup> Please refer to the ATO factsheet "Review of your assessment and record keeping" for further information.

<sup>2</sup> The documentation retention time can be extended if the following applies:

- If you have claimed a deduction for depreciation the you must keep records for five years from the date of your last claim for depreciation
- If you are in dispute with ATO you must keep records for five years after the dispute being finalized.
- If you hold an asset such as shares, property or managed funds you must keep records to five years after the asset is sold
- If you have carried forward tax losses you must keep records for five years after the losses have been absorbed.
- If you pay wages, worker compensation or payroll tax you may need to keep records of all employees for five years after their employment termination date.

<sup>3</sup> If an individual has substantiation and/or car expenses this period may extent to four years. Furthermore, if an individual carries on a business; is a partner in a partnership or beneficiary of a trust that is NOT a small business entity, the period also extends to four years.

<sup>4</sup> Trustees for Self Managed Superannuation funds must keep accurate and accessible accounting records that explain the transactions and financial position of your SMSF, annual return lodged and other documents the SMSF is required to lodge with ATO for a minimum of five years. Furthermore minutes of trustee meetings & decisions, records of changes of Trustees, Trustee Declarations recognizing obligations & responsibilities for trustees, members written consent for Trustee appointment, copies of Member reports and decisions documented about storage of collectables & personal use assets must be kept for at least ten years.

### 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.

### OBLIGATION TO PROVIDE COMPLETE AND ACCURATE RECORDS

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

Where clients 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 which prevents them from acting for a client where insufficient records or information exists so as to be able determine the amount of the client's income or deductions.

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## RIGHT TO SEEK A PRIVATE BINDING RULING

When preparing a clients return we may identify one or more issues that are not clear under the tax laws. Where we have pointed out such issues, the client has a right to request a Private Binding Ruling from the ATO. Upon providing the ATO with all the relevant facts, they will provide tax payers 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 a client with an assessment that they do not agree with, they have the right to lodge an objection to that assessment. The objection must be lodged with the ATO within either two or four 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 two or four years (whichever is applicable) from the time the original assessment was received.

If the taxpayer remains dissatisfied with the outcome of the objection, they 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 the taxpayers income should include a certain amount or that a deduction claimed in a return is not allowed, it will be up to the taxpayer 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 a registered tax agent we are bound by a statutory Code of Conduct which is administered by a new national Tax Practitioners Board. That Code requires us, amongst other things, to act lawfully in our clients best interests and with honesty and integrity in the performance of our duties. In addition, a client of a registered tax agent has 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 clients to ensure that they have provided us with all of the relevant tax information. This includes any records, or documents we request from clients plus any other information relevant to the preparation of their tax return. The information provided must be compete and accurate. It is equally important that clients 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 lodgment 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 a tax payer is not eligible for the safe harbour, it is still possible to request the ATO remit or reduce the penalty.

The advice provided in this factsheet is general in nature and anyone intending to apply the information to practical circumstance should seek professional advice to independently verify their interpretation and the information applicability to their particular circumstances. While we endeavor to keep the information up to date and correct, we make no representation or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with response to the factsheet. Any reliance placed on such information is strictly at your own risk. In no event will we be liable for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising from loss of data or profits arising of, or in connect with the use of this fact sheet. MLC Taxation Services Pty Ltd ACN 006 003 470. © Copyright 2015 NTAA. This article was originally published as part of the NTAA Tax Schools Day 1 2015 distribution material and has been republished with permission of the NTAA.