

# Clients' rights and obligations under the taxation laws

Dear Client,

As a client of this practice, we are obliged under the *Tax Agent Services Act 2009* to advise you of your rights and obligations under the taxation laws in relation to the services we provide to you. These will vary according to the particular taxation services which you require from us from time to time.

We will ensure that you are provided with this advice in a timely and professional manner as issues arise.

Set out below is a brief explanation of some matters of general relevance concerning the operation of Australian federal taxation legislation. If you have any queries, concerns or issues with any of the 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 or BAS is lodged the 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, ATO also has the power to undertake an audit and amend the assessment if they find it to be incorrect.

For Self-Managed Superfunds the ATO can amend an assessment within 4 years after the trustee receives the notice of assessment.

If the ATO amend 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. The Commissioner tends to take a broad view of what constitutes "evasion".***

## Obligation to keep records

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

The tax laws specifically require a taxpayer to keep records that 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. Under the *Tax Agents Services Act 2009*, 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.

## **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.

A Private Binding Ruling is binding on the ATO and can be relied on by you.

## **Lodging a tax return where the tax liability is uncertain**

Taking a taxation position on which the law is uncertain without obtaining such a ruling may result in you lodging a tax return disclosing a tax liability with which the ATO may later disagree.

If the ATO consider that there has been an underpayment of tax it will issue an amended assessment for the tax shortfall, plus penalties plus a combination of Shortfall Interest Charge(**SIC**) and General Interest Charge (**GIC**).

Penalties vary as a percentage of the additional tax assessed, depending on the nature of the disclosure. The rates can vary from 25% to 75%. Where "safe harbour" applies, penalties will not be payable.

SIC and GIC are effectively annual interest amounts charged on the tax shortfall, calculated back to the time the original tax assessment became payable.

## **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 (which ever 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.

## **Payment of disputed tax**

Once tax is assessed, it becomes a debt due and immediately collectable by the ATO. This remains the case even if the assessment is disputed.

If there is a genuine dispute, the ATO will usually not seek collection of the entire amount owing. It is common for the ATO allow 50% of the primary tax to be paid and for the balance to remain outstanding while the matter is disputed before the Administrative Appeals Tribunal or the Court. In other circumstances, the entire amount assessed is allowed to remain outstanding (but attracting GIC) while the review or appeal process is resolved.

## **Onus of proof**

In any dispute with the ATO the onus of proving that an assessment is incorrect lies with the **taxpayer**. If the taxpayer cannot make out its case, the assessment stands. Therefore the argument "the ATO can't prove it" is not a relevant argument in a tax dispute – they don't have to.

## **Your protection 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 a new national 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 safe harbour provisions commence?**

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

### **How does the 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 to be lodged by its due date. The safe harbour from late lodgment penalties can also apply where a Business Activity Statement or Instalment Activity Statement is lodged late.

### **What does the 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.