Clients' rights and obligations under the taxation laws

Dear Client,

As a client of this practice, 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 you should be aware of. If you have any concerns or issues with any of the matters discussed below, please feel free to contact us.

The self-assessment system

Australia's tax system operates on a self-assessment basis. This means that when your income tax return, Fringe Benefits Tax (FBT) return or Business Activity Statement (BAS) is lodged, the Australian Taxation Office (ATO) accepts the information provided 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:

Individuals

- 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.

Companies

- The ATO can amend a company assessment within two years after a notice of assessment is deemed to have been made where the company **is** either an SBE or an MBE.
- If the company 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 most other cases, 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** 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 most other cases, the period is four 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 that there are no time limits on the ATO amending an assessment where it believes there has been fraud or evasion.

Obligation to keep records

The tax laws specifically require taxpayers to keep records that properly explain the transactions 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.

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 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 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 is 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 assessment. There may be further costs in doing so, and we will advise you accordingly.

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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 small businesses.

In circumstances where it is dissatisfied with a taxpayer's records or recording systems, the ATO may 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 and establishing what the amount should be. 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.

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 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 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, 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 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 and what the correct amount is.

Your statutory protections

The *Tax Agent Services Act 2009 (*TASA) and complementary 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 Professional Conduct (the Code) which is administered by the Tax Practitioners Board. The 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, under the taxation laws, as the client of a registered tax agent, a statutory "safe harbour" exemption from administrative penalties imposed by the ATO applies in certain circumstances.

In order to ensure you are able to benefit from the safe harbour should the need arise, it is a requirement that you provide us with all 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, Instalment Activity Statement, or Fringe Benefits Tax return 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 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 to remit or reduce the penalty.