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 need to understand. If you have any concerns or issues with any of the matters discussed below, please feel free to contact us via phone or email.

Operation of 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.

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 an 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), then that period extends to four years.
- If an individual is a partner in a partnership or a beneficiary of a trust, the amendment period is generally two years. However, if a partnership or trust carries on a business and is **neither** an SBE nor an MBE, then the amendment 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 amendment period is two years. However, if the partnership carries on a business and is **neither** an SBE nor an MBE, that period extends to four years. If the trust is **neither** an SBE nor an MBE, the amendment period also extends to four years.
- In most other cases, the amendment 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 amendment period is two years. However, if the partnership carries on a business and is **neither** an SBE nor an MBE, that period extends to four years. If the trust is **neither** an SBE nor an MBE, the amendment period also extends to four years.

- In most other cases, the amendment period is four years.

If the ATO amends an assessment, this will potentially involve increased taxes, penalties and an interest charge. 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. These require 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.

Businesses

The tax laws specifically require a taxpayer that carries on a business to keep documents that record and explain all the transactions they have entered into. These include 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

For our practice to be able to lodge returns on your behalf, it is your responsibility to provide us with complete and accurate records. Furthermore, in order to lodge your return on time, we will require you to provide us with 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 us from acting for a client where insufficient records or information exist that allow us to determine the amount of a 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 it 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.

Records for clients operating in the cash economy

Due to the ATO's concerns with dealings in the cash economy, there are particular recording requirements 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 the ATO is dissatisfied with a taxpayer's records or recording systems, it may assess income tax and/or GST on what it considers to be an appropriate 'benchmark' amount (plus penalties and interest). Once this occurs, it is the responsibility of a taxpayer to demonstrate that the assessment is excessive and identify the correct tax position. One of the major problems with this outcome is that the onus of proving that the ATO's assessment is excessive (i.e., the taxpayer did not earn that much income) is the responsibility of the taxpayer.

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. The ATO will provide you with a ruling setting out its view on the proper tax treatment of the issue requested in the Private Binding Ruling.

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 *'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 newly introduced Administrative Review Tribunal or 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 Review 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 the correct treatment.

Your protection under the Tax Agent Services Act

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 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 a statutory 'safe harbour' exemption from penalties in certain circumstances.

To ensure you are eligible to benefit from the safe harbour, 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 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.

A taxpayer who is eligible for the safe harbour protection will not be subject to any penalties for errors identified in their tax return, although the underlying tax and interest charges will still apply.