Individuals – Rights and Obligations of the Parties under the Taxation Laws

Dear Client,

As a client or prospective client of this practice, we are required to advise you of your rights and obligations under the taxation laws in relation to the tax or BAS agent services we provide to you.

It is also important that you understand our obligations as a tax or BAS agent, including to you, under the taxation laws (including the *Tax Agent Services Act 2009* (**TASA**) and the Code of Professional Conduct contained within that Act) and your obligations to us.

Your rights and obligations under the taxation laws

Set out below is information on the main areas of the taxation system as it applies to taxpayers generally. Not all these matters will apply to your tax affairs. If you have any concerns or issues with any of the matters discussed below, please feel free to contact us.

Operation of the self-assessment system

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

Importantly, as a taxpayer, you have an obligation to comply with the taxation laws. If you do not meet your obligations under the taxation laws, the ATO may impose administrative penalties (fines), apply interest charges, seek criminal prosecutions (in some cases) or initiate debt recovery.

Commissioner's ability to amend an assessment

While the ATO accepts the information lodged in your return at face value, it can amend the assessment if the ATO finds it to be incorrect.

For most individuals not carrying on a business, the ATO can amend an assessment within **two years** after the individual receives their notice of assessment.

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 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.

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 truthful, 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 TASA, 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, 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

Employees who are paid cash in hand may be at risk of (amongst other things) being underpaid, or of their employers not withholding the correct amount of tax from their pay and remitting this to the ATO. This is particularly the case if their employer is operating in the cash economy (essentially, outside the income tax system).

Furthermore, if the ATO considers a taxpayer has not declared all of their wages in their tax return, and they have inadequate documentation to demonstrate their earnings, the ATO may assess the taxpayer for additional income tax (plus penalties and interest). If this occurs, it is the responsibility of the taxpayer to demonstrate that the assessment is excessive (i.e., the taxpayer did not earn that much income) and identify their correct tax position.

Therefore, employees who are paid in cash are urged to have a robust and reliable system for recording their earnings. Please contact us if you need assistance with this.

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, generally within two years from the time the original assessment was received.

Where the ATO issues an amended assessment, the period for objecting is generally the greater of 60 days from the time the amended assessment is received and two years 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 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 (whether initiated by the taxpayer or by the ATO), 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.

Safe harbour protection

As the client of a registered tax agent, under the taxation laws, you have a statutory 'safe harbour' exemption from penalties imposed by the ATO 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 truthful, 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.

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

Your tax practitioner's obligations

The TASA, including the Code of Professional Conduct (**Code**) contained within the TASA, provide statutory protections for taxpayers who engage registered tax practitioners. The Code is a set of statutory ethical and professional standards that registered tax practitioners must comply with.

The TASA, including the Code and associated regulations and determinations are administered by the Tax Practitioners Board ('TPB').

We are required to provide you with general information about the obligations that tax practitioners have to their clients under the taxation laws, including the TASA and the Code. The following information has been adapted from the TPB's factsheet, *Information for Clients* for these purposes.

Your tax practitioner's obligations require them to:

- act lawfully in your best interests and with honesty and integrity in the performance of our duties;
- uphold and promote the ethical standards of the profession;
- manage any conflicts of interest;
- take reasonable care to ascertain your state of affairs and apply tax laws correctly;
- keep your information confidential unless there is a legal duty to disclose;
- provide services competently;
- not knowingly obstruct the administration of the tax laws;
- advise you of your rights and obligations under the taxation laws (refer above);
- account to you for money or other property on trust;
- not make false or misleading statements to the TPB or the ATO, and in some cases, withdraw our engagement with you and notify the TPB or ATO of certain matters;
- address any false or misleading statements we are responsible for;
- engage with clients to address other false or misleading statements, exploring options to correct;
- keep proper records (including records of tax agent services provided);
- keep you informed of certain matters so you can make informed decisions.

If your registered tax practitioner fails to meet their obligations:

- their registration can be suspended or terminated, meaning they cannot practice;
- they could receive a caution or orders from the TPB – for example, undertaking education or working under the supervision of another registered tax practitioner;
- have fines imposed on them by the Federal Court;
- your tax and superannuation matters may not be accurate;
- you may be subject to enquiries or audits;
- any tax shortfalls may attract penalties and interest;
- you may have litigation options to review decisions and recover debts;
- in the case of fraud or criminality, penalties may lead to prosecutions.