



INDIVIDUAL – STANDARD TERMS OF ENGAGEMENT

This Document sets out our ‘**Terms of engagement**’ and supersedes any previous terms of engagement provided by us.

It is important that you read this Document carefully. If you have any queries or wish to discuss any aspect of the engagement, please do not hesitate to contact us.

Tax practitioners are regulated in accordance with the *Tax Agent Services Act 2009 (TASA)* and the accompanying regulations. The Tax Practitioners Board (TPB) is responsible for the registration and regulation of tax practitioners and for ensuring their compliance with the TASA.

As part of this role, the TPB maintains a register of registered, suspended and deregistered tax practitioners that enables the public to ensure they are engaging the services of a qualified professional. To check that we are registered with the TPB, search the **TPB Register** at www.tpb.gov.au/public-register using either of the following details:

- *Martin & White Accountants & Business Advisors ABN: 28 728 175 425*
- *Tax Agent Number: 2308 0004*

In addition, under the taxation laws, a ‘**safe harbour**’ from administrative penalties imposed by the Australian Taxation Office (**ATO**) applies in certain circumstances for taxpayers who engage registered tax agents.

To obtain the benefits of safe harbour protection, a taxpayer must give their registered tax agent “all relevant taxation information” to enable accurate statements to be provided to the ATO. This requirement may be important in identifying and understanding the purpose and scope of this engagement.

You will find a discussion on the safe harbour protection and information about your rights and obligations under the taxation laws in the ‘**Appendix**’ to this Document. This Document should be retained by you for your records.

Terms of engagement

1. Purpose and scope of our engagement

- 1.1 This letter relates to the taxation services described at 1.2 below and sets out the basis and terms of our engagement.
- 1.2 Our firm, *Martin & White Accountants & Business Advisors (Tax Agent Number 2308 0004)*, has been engaged to prepare and lodge your Individual Income Tax Return.
- 1.3 We have set out at 3.1 below, when documentation should be provided to us to allow for the preparation and lodgment of your income tax return by the due date prescribed by the ATO. Before we lodge your tax return, we will forward the document to You for your approval.

If You are late in providing information to us, we will do our best to meet the time limits, but we will not be responsible for any late lodgment penalties or interest charges that You incur.
- 1.4 In providing this taxation service, we have a duty (under the TASA) to act lawfully in your best interests, and to act honestly and with integrity at all times.

2. Term of the engagement

- 2.1 Our engagement commences once You indicate acceptance of the terms by signing and returning our summarised engagement letter and will continue until it is terminated by either party.
- 2.2 You can terminate this engagement at any time by notifying us in writing. We also reserve the right to do so by providing You with 14 days' written notice.

3. Responsibilities and obligations

- 3.1 All information relevant to the preparation and lodgment of your income tax return must be **collated and forwarded to our office**. Any rectifying work performed by us because of incorrect or late information is outside the scope of this letter and will be charged to You as an additional service.
- 3.2 In engaging us to provide the above taxation services, it is important to understand that:
 - You are responsible for providing all relevant information to us in a timely manner, and for the accuracy and completeness of the information provided;
 - You have obligations under the self-assessment regime to keep full and proper records in order to facilitate the preparation of accurate income tax returns on your behalf;
 - any advice we provide is only an opinion based on our knowledge of your circumstances; and
 - we cannot provide taxation services if we find that information on which those services are to be based includes false or misleading information, or material information is omitted, and You are not prepared to appropriately amend it to provide us with correct and complete information.

We are prohibited by law from making or preparing a statement (or from permitting or directing someone else to make or prepare a statement) to be made to the ATO, the TPB or another Australian government agency that we know or ought reasonably to know is false, incorrect, or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect.

If we subsequently become aware that such a statement was given to the ATO, the TPB or another Australian government agency, we are required to take reasonable steps to correct the statement as soon as possible.

Where we prepared the statement (or permitted or directed someone else to prepare the statement) on your behalf, we must advise you that the statement should be corrected.

Where we prepared the statement and you do not correct the statement or provide consent for us to correct the statement within a reasonable time, we must notify the TPB, the ATO or other Australian government body (whichever is applicable) that the statement is misleading in a material particular or that it omitted some matter or thing without which the statement is misleading in a material respect.

- 3.3 You must have **all source documentation** available to allow us to analyse the income tax implications of any transaction, should we request to see it.

As a matter of course, we will not be looking at, or auditing, these documents. However, You are required to have them available before any claim is made in your income tax return.

Also, in some circumstances, we may request to see source documents if clarification is required or a tax issue is particularly contentious.

- 3.4 You must have the necessary documents to comply with the **substantiation requirements** of the *Income Tax Assessment Act 1997*. We will advise You of the requirements relating to your tax return and of the necessity to obtain acceptable receipts as required by the law.

However, we will not be checking that the substantiation requirements have been met. This means we will not be reviewing, for example, your logbook or any calculations or information provided to us, such as a rental property schedule prepared by You or a property manager.

If You require assistance in completing a logbook or preparing any calculations, or You would like us to review such work, please discuss this with us. This will entail work which is outside the scope of this letter and will be charged as additional services.

4. Ownership of documents

- 4.1 The income tax returns that we are engaged to prepare, together with any original documents given to us by You, shall be your property. Any other documents brought into existence by us, including records of the tax agent services provided by or on behalf of our firm during this engagement (e.g., documentation of oral and written advice), general working papers and draft documents will remain our property.

By law, we are required to retain these records for at least five years after the relevant services were provided, even if our engagement is terminated.

- 4.2 If our services are terminated (by either party), You agree that we shall be entitled to retain all documents owned by You (including all your tax refund cheques which come into our possession) until payment in full of all our outstanding fees.

5. Fees, disbursements and trust monies

- 5.1 Our services will be provided to You on a fee-for-service basis inclusive of Goods and Services Tax (GST). In addition to our professional fees, You will be responsible for payment of expenses which we incur on your behalf.

However, the fee for this service does not cover any inquiries made to us, or investigations involving us, conducted by the ATO. Substantial penalties can apply for an incorrectly prepared income tax return.

- 5.2 Unless otherwise stated in writing, any estimates which we provide to You of our anticipated fees, disbursements and charges for any work are only indicative of the amounts You can expect to be charged. Estimates are not quotes or caps and are not binding on us.

Where an estimate is given and the scope of the work changes, or if it becomes apparent that the work involves matters that were not taken into account in the estimate, we will advise You and provide an amended estimate as soon as it is practicable to do so.

- 5.3 Unless otherwise agreed, our invoices will be issued on completion of your Individual Tax Return and are payable within 7 days and prior to the lodgment of your Income Tax Return.

6. Additional services

- 6.1 Our fee applies only to the taxation services provided within the scope of our engagement, being the preparation and lodgment of your tax return each year.

- 6.2 Any additional services or advice that You request are outside the scope of this letter and are not included in this agreed fee. We will separately advise You of the fee for these services, including any direct out-of-pocket expenses.

7. Complaints and dispute resolution

- 7.1 In the event that You may have any complaints or disputes in relation to this engagement, we ask that You please contact your Accountant in the first instance. We will endeavour to resolve any issues respectfully and as quickly as possible.

If they are unable to resolve your complaint within 3 business days, please contact **Nicole White - Partner** by email: nicole@martinandwhite.com.au. We will work with you to help resolve your complaint as quickly as possible.

Your complaint will be investigated by a staff member who is not involved in the subject matter of the dispute where possible. We will provide you with email acknowledgement of receipt of your complaint and our understanding of the circumstances. The email will inform you that we will attempt to resolve your complaint within 14 days and will outline the dispute resolution process. If you are unhappy with the outcome that we propose to you, you can then make a complaint to the Tax Practitioners Board (TPB).

8. Confidentiality

8.1 We have an ethical duty and a legal responsibility to keep information acquired as a result of this engagement confidential. This means that we will not disclose confidential information relating to You without your permission, unless there is a legal duty to do so.

We will also not use any such information for our own personal advantage or for the advantage of a third party.

8.2 From time to time, we may need to disclose information relating to your affairs to certain parties including, for example:

- a professional or regulatory body in response to an inquiry or investigation;
- a professional body of which we are a member, in relation to a quality review program undertaken by that body; or
- relevant parties in order to protect our professional interests in legal proceedings.

You hereby authorise us to do so when we consider it appropriate to further our performance of work for You, or when requested by the relevant party.

9. Use of third-party service providers

9.1 We do not outsource any accounting and taxation services to third party providers. We will notify you if this changes.

9.2 We do use a third party to provide backup services of our data. This data is securely stored at another Penrith location.

9.3 We may from time to time use digital signing software such as Adobe e-Sign or DocuSign.

10. Non-compliance with Laws and Regulations (NOCLAR)

10.1 During the performance of our work under this engagement, we may detect conduct or a transaction that is considered to constitute NOCLAR, which has a material effect on any documents or information that might be required to be provided to a regulatory authority, such as the ATO.

If we detect any NOCLAR, we may have a professional requirement to make a disclosure to a regulatory authority. We will follow a formal process which will include advising You of our concerns and, if necessary, seeking legal advice.

10.2 If we do seek legal advice in relation to any NOCLAR, we reserve the right to ask You to pay or reimburse us for our reasonable costs.

10.3 If we are required to make such a disclosure, You agree to forever release us from any claim for costs or losses You incur in responding to or dealing with anything arising from our disclosure.

11. Losses from unauthorised cyber activity

11.1 We will take all reasonable precautions to ensure that any electronic data that contains your private information is securely stored and that any email transmissions are protected and are not able to be intercepted by third parties.

However, we cannot be held liable for any loss that You might incur as a consequence of any third-party intervention that accesses, procures or copies any data that contains your private information from any medium or device we use to store or transmit such information.

11.2 In the event that, despite our firm having taken reasonable precautions to securely store your private information, You suffer any losses arising from unauthorised cyber activity, You agree to forever release us from any claim for your losses.

12. Limitation of liability

12.1 Our firm's liability may be limited by a scheme approved under Professional Standards legislation and applicable regulations of the Professional Body.

13. Other matters that may be relevant to your decision

13.1 Registered tax practitioners must advise prospective and current clients of any matters that may significantly influence the decision to engage or continue to engage them to provide tax agent services.

Please be advised that we have no relevant matters to report.

Appendix – Client’s rights and obligations under the taxation laws

As a client of this firm, 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 that you should be aware of.

Please contact us if you have any concerns or issues with any of the matters discussed below.

The self-assessment system

Australian’s tax system operates on a self-assessment basis. This means that when your tax return is lodged, the Australian Taxation Office (**ATO**) accepts the information 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:

- 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.

Note that there are **no** time limits on the ATO amending an assessment where it believes there has been fraud or evasion.

If the ATO amends an assessment, apart from any increased tax liability, this will potentially also involve the imposition of penalties and interest. If you discover an error in the information declared in the return, reduced penalties will generally apply where a voluntary disclosure is made.

Obligation to keep records

The taxation laws specifically require taxpayers to keep records that properly explain the transactions they have entered.

Individuals claiming deductions for work-related expenses are subject to the substantiation rules in the taxation 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 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

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

If you do not 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 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 return.

Records for clients operating in the cash economy

Given the ATO's focus on dealings in the cash economy, there are certain recording imperatives for clients who operate in that sector. It is important to be aware that the ATO has a range of tools to identify individuals who may not be correctly meeting their tax obligations.

For example, the ATO has a 'benchmarking' program for a wide range of cash businesses which assists both in determining whether those businesses are paying the correct amount of tax, and whether their employees are declaring any wages paid to them in cash.

The ATO also uses sophisticated data-matching processes to collect information from several sources (e.g., financial institutions, share registries, Centrelink, etc.) and compare them against income and expenses reported by individuals.

Where the ATO is dissatisfied with a taxpayer's records or recording systems, the ATO will often assess income tax on what it considers to be an appropriate amount (plus penalties and interest). This then puts the taxpayer to the task of disproving that assessment. 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.

Individuals who are engaged 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 taxation 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 ATO asserts that your income should include a certain amount or that a deduction claimed in a tax return is not allowed, it will be up to you to establish that the ATO's view is incorrect.

In particular, where the ATO has assessed income tax on what it considers to be an appropriate amount (that is, where the ATO has reasonably estimated your taxable income), it is not enough to simply prove that the ATO's amount is incorrect. The onus is on you to establish an alternative figure that is supported by evidence.

Your statutory protections

The *Tax Agent Services Act 2009 (TASA)* and complementary provisions in the *Taxation Administration Act 1953 (TAA 1953)* 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 set out in the TASA and 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 a client of a registered tax agent, the TAA 1953 provides you with a statutory 'safe harbour' exemption from certain penalties that may be imposed by the ATO.

Broadly, the safe harbour protection can only apply to penalties imposed by the ATO for:

- failure to lodge a document (e.g., an income tax return) within a prescribed time; and/or
- making a false or misleading statement that results in a shortfall amount (e.g., an error),

where the failure to lodge or the shortfall amount arises from recklessness or intentional disregard of the taxation laws by your registered tax agent.

Whilst the safe harbour can apply to exempt a penalty imposed for an error made in a tax return, it is important to note that any income tax and interest will still be payable.

To ensure that you are able to benefit from the safe harbour (should the need arise), it is a requirement that you provide us with all relevant taxation 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 also 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.

Please note that even if you are not eligible for the safe harbour, it is still possible to request the ATO to remit or reduce the penalty.