



# Our approach to information gathering

Learn how we approach information gathering as part of our compliance checks.

**Last updated** 1 May 2024

## Legislative references

Our formal notice and access powers are supported by legislation.

## Our principles

Our information-gathering principles help ensure information is gathered in a fair and professional manner.

## Cooperative approach

We prefer to gather your information by simply requesting it from you.

## Our formal notice powers

Understand why you have received a notice, what you can expect from us, what we expect from you, and how to respond.

## **Attending a formal interview**



Find out why we have issued you a notice to attend an interview, what to expect and your rights and obligations.

## **Our formal access powers**



Our access powers allow us to gain access to your premises and documents at all reasonable times for the purposes of laws we administer.

## **Limits to our formal powers**



In some situations, you may be able to claim concessions or protection over documents sought through our formal powers.

## **Gathering offshore information**



We have powers to obtain and exchange information with other tax jurisdictions.

## **Gathering electronic information**



Guidance on providing your information electronically.

## **Resolving information gathering disputes**



How the ATO seeks to identify and resolve information gathering disputes as early as we can

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## **Legislative references**

Our formal notice and access powers are supported by legislation.

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## General references

- [Acts Interpretation Act 1901](#)
- [Administrative Decisions \(Judicial Review\) Act 1977](#)
- [Crimes \(Taxation Offences\) Act 1980](#)
- [Criminal Code Act 1995](#)
- [Freedom of Information Act 1982](#)
- [Income Tax Assessment Act 1936](#) (ITAA 1936)
- [Privacy Act 1988](#) (Privacy Act)
- [Taxation Administration Act 1953](#) (TAA)
- [Taxation Administration Regulations 2017](#)

The following tables list the main legislative provisions supporting our formal notice and access powers. They are found in Schedule 1 to the TAA.

### Taxation law notices

Notice to	Section
Give information	<a href="#">353-10</a> (1)(a)
Attend and give evidence	<a href="#">353-10</a> (1)(b)
Produce documents	<a href="#">353-10</a> (1)(c)
Attend, give evidence and produce documents	<a href="#">353-10</a> (1)(b) and (c)
Give information about rights or interests in property	<a href="#">354-5</a>

## Offshore information gathering notices

Notice relevant to	Section
The assessment of a tax-related liability of yours	<a href="#">353-25</a> , <a href="#">353-30</a>

## Taxation law access visits

Access for the purposes of	Section
A taxation law	<a href="#">353-15</a>

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## Our principles

Our information-gathering principles help ensure information is gathered in a fair and professional manner.

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## About the principles

If we need to access information you hold, we prefer to seek your cooperation in making it available to us. However, the laws we administer give us wide-ranging powers to obtain information, and in some situations, we need to use these powers. We use them fairly, professionally and, as far as possible, in an open manner.

When gathering your information, our notice and access powers must be used for the proper application of the laws that we administer. Our officers will follow these principles when gathering information from you, and when exercising the powers. We use a cooperative approach if possible

We prefer to use a cooperative approach when gathering information. We will generally consult with you before using our formal powers to obtain your information.

## **We use our formal powers if required**

We may use our notice and access powers where a cooperative approach is no longer productive or where your circumstances, history or behaviour warrant the use of our formal powers.

There are also situations where we will adopt a formal approach at the outset.

## **We take your costs into account**

We will consider ways to minimise your compliance costs when deciding what information or documents we require.

## **We respect your rights and treat you fairly**

When requesting your information, we will respect your rights and give you reasonable time to comply.

We will provide you with information about your rights and obligations under the laws we administer and the ATO charter and give you reasonable time to consult with your advisers.

We will respect your right to claim legal professional privilege, and that advice given to you by a professional accounting adviser in some cases should remain in confidence. Also, advice prepared for a corporate board on tax compliance risk should, in all but exceptional circumstances, remain within the confidence of a board of company directors (including properly constituted sub committees) and their advisors.

## **We give you prior notice**

In most cases, we will give you prior notice if we intend to access your premises or documents. In rare circumstances, we take action without giving you prior notice.

## **We advise you before making a third-party enquiry**

We will generally advise you before making a third-party enquiry about your tax affairs. However, in some situations, we may need to approach a third party directly without telling you first.

## **We explain our decisions**

We will explain why we require information unless this may impact on our enquiries or may be in breach of privacy or secrecy provisions. We will also inform you if you're not compelled to comply with a request.

## **We give you a right of review**

You will have access to our decision makers if an information-gathering issue is to be escalated.

Where you believe our officers haven't conducted themselves according to our information-gathering principles and practices, a senior officer will be available to listen to your concerns. Any abuse of our powers is treated as a serious matter and any officer abusing our powers may be subject to counselling or disciplinary proceedings.

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# **Cooperative approach**

We prefer to gather your information by simply requesting it from you.

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## **Overview of our cooperative approach**

Using a cooperative approach helps us to streamline the information-gathering process. By working with you in this way, we can build good working relationships and minimise any cost and disruption. In most cases, we find the needed information can be gathered in this manner without having to use formal powers.

If we can't obtain the information this way, we may use our notice and access powers. In some cases, we may also use these powers at the outset – for example, in cases involving tax avoidance schemes, or where you request us to take a formal approach. Our formal powers fall into 2 broad categories:

- notice powers (including notices to attend an interview), and
- access powers.

## Information gathering explained

Australian tax and superannuation laws require you to keep records as evidence to support your claims. These records include documents that evidence an:

- intention
- election
- choice
- estimate
- determination or calculation.

For these purposes, documents include computer files and other electronic information.

Effective information gathering is important to the quality of our compliance activity outcomes. We plan our information-gathering activities to satisfy evidentiary requirements.

Planning also helps us to:

- manage our compliance activities
- ensures good communication
- promotes the timely completion of those activities.

The situations when a formal approach to information gathering may be used include:

- risk management
  - risk to our revenue collection
  - litigation risk – to establish probative value of evidence
  - high-risk issues
  - international issues and complex structures
  - behavioural issues.
- targeted collection based on hypotheses to

- manage the level and volume of evidence required
- get to the full facts quickly
- be in the same factual position as you.
- to ensure our resources are used efficiently when gathering information.

## Our information gathering cycle


In our information gathering cycle we decide what information we need to make evidence-based decisions.

We decide whether to gather the information using a cooperative approach, or alternatively using our formal powers.

If we use a cooperative approach we continually assess if this is satisfactory, and if necessary will change to a formal approach.

After we've gathered the information we determine if it is sufficient, or if more information is needed to support our decisions. If it is sufficient, our information gathering is complete. If not, we return to the client with our request for additional information. This process is shown in figure 1.

### Figure 1 Our information-gathering cycle

 This image shows the information gathering cycle, as described in the previous paragraphs.

For more information about record keeping, see [Record keeping for business](#) and [Records you need to keep](#) for individuals.

For more about penalties imposed for failure to keep or retain records, refer to [PS LA 2005/2 - Penalty for failure to keep or retain records](#).

## Understanding your circumstances

Our information gathering helps us to understand your circumstances and activities.

If you own a business, we seek to develop our understanding of it by obtaining information, including:

- your business operations
- the business structure used and its ownership

- the influences on your business
- the industry it operates in
- the tax aspects of the business.

The information we need about you or your business varies. The level of understanding we require will differ according to the type of compliance activity we carry out and its stage of completion. We require a broad understanding for initial case selection or risk analysis and a greater level of understanding if you're subject to a risk review or audit.

The amount of information we need to complete a compliance activity will vary from case to case, depending on the complexity. To resolve issues and establish our position, we should have the same factual understanding as you or your decision makers.

We plan our timeframes and information-gathering approaches when conducting a risk review or audit to get the facts and obtain relevant supporting evidence. We aim to form our view and advise you of that position as soon as we can.

## **Risk reviews**

We may seek information from you as part of a risk review. We may not be able to request specific information when we start as we may not know the exact tax issues in question.

The information needed for a risk review may cover a wide range of financial records, including a trial balance and supporting working papers. In some cases, we may need access to other records to properly assess the tax risk.

While conducting a risk review, we may ask for detailed information to help us gain a deeper understanding of your activities and determine whether a material tax risk exists. Once specific tax issues have been identified, we can then issue more targeted information requests.

Generally, we gather information to identify a risk or determine if no further action is required.

## **Audits**

Audits are conducted to deal with identified risks. When compared to a risk review, an audit will involve more detailed verification of the facts

to make sustainable decisions at law based on the evidence we have.

Audits are generally more comprehensive than risk reviews and involve an intensive examination. So during an audit, we may require a detailed level of information – for example, written contracts used in business dealings.

When collecting information for an audit, we will generally have more contact with you and spend time at your premises to examine documents, record your processes and discuss issues with key personnel. We need to gather sufficient information to either establish our view and support that position or determine that no further action is required.

## **Private rulings and objections**

We generally use a cooperative approach to seek information in relation to private rulings requests.

We are likely to use our formal powers when seeking information to determine objections. This is often necessary because of the timeframes we work with and the fact that information may often be required as evidence for litigation.

## **Using a cooperative approach**

We are committed to making it cheaper for you to comply with the laws we administer by reducing workloads and the time and effort involved. When deciding on the best approach to gather information, we will consider if it is appropriate to use our notice or access powers, or whether it is possible and practical to obtain the information cooperatively by simply requesting it.

We commonly find that holders of information are willing to respond to our requests for information without a notice being sent. This can often lead to a resolution of matters, even in cases where there is a potential risk of litigation.

By working with you in this way we can build good working relationships, minimise the cost and disruption to each party and achieve an acceptable outcome by streamlining the information collection process.

The following factors may be relevant to our decision to use a cooperative approach:

- who has custody or control of the document, and whether they appear willing to respond to a request or if they are subject to confidentiality obligations (such as a bank)
- if it is likely to reduce compliance costs
- if the time needed to issue a notice, and time allowed to comply with it, is likely to be less than if a cooperative approach were used.

The use of a cooperative approach does not imply that a less professional or less organised approach will be taken by us.

We expect you to exercise the same level of diligence and endeavour in meeting our requests for information as you would if we used our notice or access powers. Administrative penalties for false or misleading statements also apply to information given to us voluntarily.

## **Mutual expectations**

You can expect us to act in a professional, courteous and respectful manner and demonstrate integrity, fairness and impartiality in the conduct of our compliance activity.

When we use a cooperative approach, we will generally advise you that the information isn't being requested under our notice or access powers and we are relying on your cooperation to provide the information or documents.

Responding to our requests in a narrow way is likely to delay and frustrate the completion of our compliance activity. If we believe you're behaving in this manner, we will usually discuss our concerns with you to establish the reasons for it. We may use our formal powers if this conduct persists.

## **What you can expect from us**

We will generally:

- explain why we are requesting the information
- give you an opportunity to discuss the scope, appropriateness and relevance of the information request
- monitor our information requests to ensure they are answered on time
- take action if our requests are not complied with fully

- plan our information-gathering approach to meet our requirements and minimise disruption to you or your business to the extent possible
- have ongoing and constructive conversations with you so that our information requests are clear, unambiguous and relate to the issues that concern us
- work with you to identify alternative documents where you have difficulties in providing the documents we have asked for
- ask you for the information first and only approach third parties if we need to
- manage the process according to agreed timeframes, protocols, contact and escalation points
- ensure we have sufficient evidence to make an informed decision
- give you reasons for our key decisions
- engage technical experts and information-gathering specialists at the earliest opportunity when needed
- provide you with adequate time to respond to our information requests
- advise you when we expect to reply to your response.

## **What we expect from you**

We expect you to cooperate with us by:

- giving us complete information within agreed timeframes to ensure the efficient and timely progress of our compliance activities
- engaging in constructive conversations with us
- providing access to your key decision makers and senior personnel, if required
- working with us to ensure that our compliance activity proceeds in an efficient and timely manner
- helping us in developing plans, milestones and timeframes
- advising us as early as possible of any delays in providing information, and by taking all reasonable steps to address these.

We also expect you to give assurances that:

- your information searches have been carried out carefully and completely
- you have provided full details about what information you have, or when that information will be available
- the information we have requested will be given to us by the due date, or progressively, according to an arrangement with us
- your information will be given to us in user-friendly formats that allows us to fully analyse it
- you will advise us if you encounter difficulties in meeting our timeframes as soon as possible and provide us with your plan of action to manage any delays.

## **Our discussions with you**

We aim to have open and honest discussions with you to keep your compliance activity progressing according to plan. We will generally discuss with you the information we need and the risks identified, together with any information-gathering concerns we have.

This cooperative approach allows both parties to raise issues in a timely manner. Ongoing and open discussions about our information requirements help us to:

- better understand your circumstances
- keep the process as simple as possible and avoid unnecessary escalation.

During these discussions, we will explain your rights and obligations and our approach to information gathering, including escalation processes. In addition, we may discuss:

- our risk hypothesis and how it determines the information being sought
- the nature of your information systems and record keeping
- who has custody or control of the records and where they are kept
- the circumstances that would cause us to use a formal approach.

We may also reach a common understanding about:

- the level of cooperation we expect and the circumstances where we believe this cooperation isn't being met
- protocols for the supply of information
- timeframes for information gathering and the consequences of not meeting them
- how documents covered by legal professional privilege, the accountants' concession or corporate board advice concession will be handled
- arrangements to interview staff.

Where key personnel are available for interview and are willing to provide full and frank responses to our questions, we will generally not issue a formal notice requiring them to attend and give evidence.

We may also ask for details of:

- what information is available, including information held in an electronic format
- key personnel with knowledge of the risks we have identified
- authorised company contacts, including the contact person for information requests
- how you prefer to give the information.

## **Accountable conversations**

Any information you provide must be accurate and complete.

We will generally make a record of our conversations (including meetings and interviews) and may:

- provide you with a written summary of the interview containing key issues if you ask for one
- request you to sign and date a record of the interview
- record the interview with your consent, in which case you will be given a copy of the recording – although you're not obliged to sign the summary or record.

These conversations ensure that our processes are accurate and complete and reduce the need for more formal processes.

You're accountable for information you give us that is false or misleading. Administrative penalties may apply if you make false or misleading statements in the course of any interview with our officers.

We operate under corporate guidelines, processes and principles. Our key corporate documents include:

- [ATO charter – what you need to know](#)
- [Our commitments to service](#)
- [Our strategic direction](#)

## **Managing our information needs**

Planning how we gather information is important for the timely and efficient completion of our compliance activities.

When gathering information, we will generally:

- use a risk hypothesis to frame our requests
- plan our evidentiary requirements around the facts and evidence we require
- revise our information requirements if our risk hypothesis changes
- use various methods to obtain, classify, store and analyse the evidence
- establish whether the information we need is already publicly available
- consider the nature of your business, your record keeping and who is likely to be in control or have custody of the records.

When managing our information needs, we will generally discuss and seek your agreement on the process we use. To help reduce delays, we will usually confirm any agreed processes in writing.

## **Internal and external expertise**

The diversity of industries and the types of entities used in business bring a wide range of tax issues to our attention. These issues range from simple to complex and cover many areas of tax law.

Although our officers generally have a sound understanding of the laws relevant to information gathering for their case work, they are able to get help from advisers for more complex cases.


The provision of general legal advice on issues relating to access and information gathering resides with our General Counsel. Other advisers include officers in our various technical areas and networks. When required, our officers will seek early engagement with an adviser to help in identifying the information required and how to gather it effectively.

To help ensure our formal powers are used lawfully and appropriately, our officers may engage these advisers at any time and may consult with them before they start to gather information. Our officers will generally consult a General Counsel adviser before using our formal powers in cases of access without notice, complex challenges to legal professional privilege claims and the limited number of cases where we may need to look at a document that may be privileged.

At times, we may also seek expert advice from external subject or industry specialists. In addition, we would consider engaging external counsel as early as possible in situations where:

- the matter is clearly significant or complex
- there is uncertainty relating to our view of the law
- there have been difficulties obtaining information in the past
- we are having problems gathering information in an ongoing matter.

**Figure 2** Our collective capability

 **This image shows that compliance teams, General Counsel, external experts and technical experts work together to gather and share information and to engage clients early to resolve issues collectively.**

### **Moving to a formal approach**

During the course of information gathering, we may decide to move to a formal approach, for example, where:

- the information we have been given isn't complete and accurate
- escalation to our senior officers has not resolved an issue
- there has been a lack of cooperation
- you have requested a formal approach

- we require information from third parties and the information is subject to confidentiality arrangements.

In some cases, we may decide to use our formal powers at the outset. In most cases, we will discuss our intention to do this, and the reasons, with you. This discussion is intended to clearly explain why the use of formal powers is considered necessary and give you the opportunity to raise any issues of concern.

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## Our formal notice powers

Understand why you have received a notice, what you can expect from us, what we expect from you, and how to respond.

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### Overview of our formal notice powers

The information we need to administer the Australian tax and superannuation systems generally resides with taxpayers, their advisers or other parties involved in their business and tax affairs. Where the information we need isn't given to us cooperatively, we have formal information-gathering powers available to us, including our notice powers. Our notice powers require you to provide information, attend and give evidence or produce documents.

You have rights and obligations when we issue a notice to you. It is important to understand the reasons why you have received the notice, how you should respond to it and what you can expect from us.

A formal notice may require you to do any of the following:

- give information – to answer our questions in writing, based on your knowledge and understanding

- attend and give evidence – to attend an interview and answer questions, based on your knowledge and understanding, you may be required to give the evidence on oath or affirmation
- produce documents – to send documents to us.

The circumstances in which we issue a notice are varied and range from simple verification procedures to situations where there is evidence of serious tax avoidance. You may receive a notice in relation to your tax affairs, or as a third party who may be able to help us with our enquiries.

The decision to use our notice powers is reviewable by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. You're entitled under section 13 of the Act to request a 'statement of reasons' for a decision to issue the notice. Our decision not to grant an extension of time to comply with a notice is also reviewable.

Details of the number and types of notices we issued are available in our Annual report.

The grounds for review of a decision to use our notice powers are set out in [section 5](#) of the *Administrative Decisions (Judicial Review) Act 1977*.

## Reasons for issuing a notice

In most situations, we will only issue a notice after attempting to obtain the information by using a cooperative approach. In some cases, we may need to use our notice powers in the first instance.

We may decide to issue a notice when:

- we need to ensure the efficient use of our resources
- you have requested us to issue a notice to you
- your compliance behaviour warrants the issue of a notice
- there are privacy, contractual or confidentiality obligations, such as when a third party or another government agency possesses information relevant to our enquiries
- we are seeking oral evidence on oath or affirmation
- we have been unable to acquire the information using our access powers

- you have ignored a request or given an unsatisfactory response, such as an ambiguous reply
- we have genuine concerns that documents could be lost or destroyed.

Before issuing a notice, we will consider the importance and relevance of the information or evidence we are seeking. We try to ensure that:

- our notice isn't made for information that is already recorded on our systems
- information you have already given isn't sought in the notice – this does not include information we consider to be vague or incomplete, or where it appears you're making false or misleading statements
- the cost and disruption of the notice to both parties is minimised.

In cases where the information or evidence is held by you as well as a third party, we will generally seek to obtain the information from you first.

To ensure that community confidence in the tax system is maintained, we take firm action against those we suspect are involved in tax avoidance. In these circumstances we may:

- conduct our compliance activities without informing you
- issue our notice to third parties about your affairs without informing you or asking you directly.

### **Example: Issuing a notice due to previous conduct**

One year ago, we conducted a risk review on John. Although John and his tax agent had discussions with us during the risk review, they didn't give us the information or documents we requested.

This year John receives a notice of intention to audit letter from us. He is likely to receive a notice to give information during the current audit because of his history in failing to cooperate with us the previous year.

## Cycle of a notice

Figure 4 shows the cycle of a notice. If we decide to issue a notice, it is prepared, authorised and issued. If the information is received by the due date we analyse it and may issue an assessment.

If we haven't received the information by the due date we will either:

- give an extension of time
- refer the matter for prosecution.

**Figure 4** Cycle of a notice

 **This image shows the cycle of a notice, as described in the previous paragraphs.**

## Enquiries about current or future tax affairs

In addition to past income years, our notices can require information about current or future years, or both. For example, our enquiries may involve gathering information and documents about the disposal of an asset before the relevant income tax return has been lodged.

This approach allows us to gather information earlier. It is also important for our understanding and knowledge of your tax affairs and the market and economic conditions in which your business operates. It allows us to detect risks early, respond to emerging problems as they arise and help ensure your compliance for the years under review.

This type of enquiry may take many different forms, including but not limited to:

- an enquiry, review or audit of your tax affairs before the associated reporting or lodgment requirements fall due
- gathering intelligence
- monitoring revenue collections
- enquiries from data analysis
- examining your tax planning for proposed legislation
- an audit into aggressive tax planning practices.

## Scope of our powers

Our notice powers are wide and flexible, but they are not unlimited. We endeavour to exercise our powers:

- in good faith
- in strict compliance with the law under which the notice has been issued
- for the proper purposes of that law.

Our notices will state:

- the name and address of the entity required to comply with the notice
- the law under which the notice is issued
- what the notice requires (to identify with sufficient clarity the documents sought or the information required)
- the reason we require the information
- the time and place to comply.

Our notice powers may be limited in certain ways including:

- legal professional privilege
- the accountants' concession
- where we seek access to advice for a corporate board on tax compliance risk.

We provide a detailed explanation of the limits to our notice powers under [Limits to our formal powers](#).

If you believe that our notice (or part of it) is vague or open to debate, you're still required to respond to it. You should contact the case officer named in the notice to clarify what is required. If a notice contains obvious ambiguities, we may decide to withdraw it and issue a new notice to you. We list the notice provisions of some of the laws we administer under [Legislative references](#).

## **Notices and prosecution**

Our policy isn't to use our notice powers to gather evidence for the purposes of prosecution. However, information obtained under the powers may be used as evidence in a prosecution – for example, if you make a false or misleading statement to us.

Generally, if you are under investigation for a criminal offence you must still comply with a notice and can't claim privilege against self-incrimination in these circumstances.

## **Third-party duty of confidentiality**

Our notice powers are not restricted by claims of confidentiality. In particular, a notice operates to override any contractual obligation of the recipient to preserve confidentiality.

For example, a notice for the production of documents contained in a safe deposit box will override a bank's duty of confidentiality. In addition, we can issue a notice to require information kept in Australia about offshore bank accounts.

## **Self-incrimination and spousal privilege**

You can't rely on the privilege against self-incrimination to not comply with a notice. Also, you can't refuse to answer questions about your spouse.

If you're under investigation by another government agency, but haven't been charged with an offence, we are likely to continue our investigation. If you're charged with an offence, we may defer our investigation until the matter is resolved.

If you're involved in criminal proceedings that relate to tax offences (for example, you have been charged with a tax-related offence), we may defer our investigations until the criminal matter has been resolved.

## **Notices issued during litigation**

In some cases, a notice in relation to a matter that is subject to court proceedings may be in contempt of court. Our ability to issue a notice in these circumstances is usually unaffected when:

- the litigation is before the Administrative Review Tribunal
- the issues under dispute in the litigation won't be the subject of our notice powers
- we are not a party to the court proceedings.

If you receive a notice from us that relates to your current legal proceedings, you should contact us immediately to make sure we are aware of your litigation.

If you believe that our notice may be in contempt of court, you should advise our contact officer of your reasons in writing and request that the notice be withdrawn. We will consider your request and provide you with a response in writing. You will need to provide us with the following information to enable us to make a decision:

- the parties to the proceedings
- the issue in dispute
- the court or tribunal involved.

When dealing with more complex cases, we may engage advisers and withdraw the notice until the contempt of court issue is resolved. Until that decision is made, we will usually inform you about how your matter is progressing and work with our advisers to resolve the issue as quickly as we can.

If we consider that the notice could be in contempt of court, we will withdraw the notice.

## **Types of notices**

A notice may require you to:

- give information
- attend an interview and give evidence
- produce documents

### **Notices to give information**

A notice requiring you to give information can be sent to you for many reasons – for example, we may need details of a particular transaction to determine its tax consequences.

This type of notice may also be used to determine whether any relevant documents we need are in existence. A notice to give information allows us to make wide-ranging enquiries – provided those enquiries are for the purposes of the relevant law.

We generally issue a notice to give information (rather than a notice to produce documents) if:

- the information we need isn't contained in a document – for example, a transaction without a written record

- a description of a document, rather than its contents, will be sufficient.

A notice to give information can be used to make general enquiries about a category of persons. For example, a lawyer may be asked to give us a list of names of clients who have entered into a particular transaction. If we require bulk data from you, we will seek to minimise your time and cost in obtaining the information and responding to our notice as much as possible.

In certain cases where a notice is sent to you, but your response is given by another person (for example, your legal or accounting representative) you must provide us with your confirmation and acknowledgment of that response.

Our notices issued under this power will identify the information we need you to give us – for example, the notice might specify that we require a list of:

- the documents held in a safe deposit box at a specified bank branch in your name falling within a certain range of dates
- all the transactions relating to accounts in your name at the bank branch for a specified period.

We may get information from you by way of a notice, even though we may not know in advance whether the information actually exists or whether you can give it to us. In these cases, our notice may provide a general description of the information needed – for example, details of an offshore bank account held, including account name, account number and client number.

We generally require you to give the information to us in writing but will also work with you if there is a suitable alternative means of providing it. Our preference is to obtain information electronically for notices requiring large volumes of information. We usually give you an opportunity to correct any assumptions you believe we have incorrectly made in the course of our information-gathering activities.

We may also issue a notice to another party to locate your whereabouts unless this use of our notice powers could result in contempt of court.

## **Notices to attend an interview and give evidence**

We can use our notice powers to require you to attend and give evidence. We may issue these notices in situations that include when:

- it is preferable to obtain information or evidence verbally to seek immediate explanations
- there are no relevant documents or other relevant information available
- you no longer have custody of the documents we require.

A notice to attend and give evidence will usually identify the person whose income or assessment is under consideration. In certain cases, naming a person may not be sufficient to identify them. When writing to third parties we may also need to provide further details about the named persons to distinguish them from others of the same or similar name.

When issuing a notice to attend and give evidence, we will include the names of our officers who are authorised to take evidence at the interview. If our lawyers will be present at the interview, their names won't be stated on the notice but will be included in the attached covering letter.

We explain how we conduct formal interviews, including oaths and affirmations, under [Attending a formal interview](#).

## **Notices to produce documents**

We may issue a notice requiring you to produce documents in your custody or under your control if, for example:

- a notice requiring you to give information has revealed other documents that we require
- a company with a presence in Australia has custody or control of documents that are located overseas.

## **Identification of documents**

Our notices will identify the documents we require with sufficient clarity in the given circumstances.

## **Retention of documents**

We only retain your original documents for as long as is reasonably necessary – for example, a reasonable period of time to make copies.

We grant any reasonable request by the owner of the documents to have access to them while they are in our custody and may also provide copies of documents if appropriate in the circumstances.

## **Custody or control of documents**

A notice to produce documents requires the recipient to produce documents in their custody or under their control.

- Custody refers to situations where you, as the recipient of a notice, have direct physical possession of a document.
- Control refers to situations where you may lack physical possession of a document but have the right or power to require another person to produce it to you.

### **Example: Documents within control but not custody**

Steven and Justin, who run a property developing partnership, each receive a notice from us requiring particular documents in connection with their assessments. Although Steven and Justin own the documents, they are physically held at their bank.

Steven and Justin are required to produce the documents as set out in the notice. Although Steven and Justin don't have physical custody of the documents, they have legal control given they have the ability to obtain them from the bank.

A bank with physical custody of the contents of safe deposit boxes may also be contractually bound to not use its keys to those boxes – in this situation, the bank is required to produce the contents of the box to us as required by our notice.

### **Example: Documents within custody but not control**

XYZ Bank Ltd receives a notice from us requiring the production of documents held by it on behalf of its clients, Tracy and Karen, who use a safe deposit box to hold documents and other items.

XYZ Bank Ltd is required to produce the documents in the safe deposit box according to our notice.

In this case, XYZ Bank Ltd has physical custody of the documents even though it doesn't have control of those

documents.

In some cases, a person who had legal ownership of the documents we require may be unable to produce them to us because they have been lost, destroyed or are withheld by a third party. In this situation, we may either:

- allow alternative documents to be provided
- approach the third party for the documents.

### **Example: Documents not within custody or control**

A company has received a notice to produce particular company records. These records are held by the company's accountants under an equitable lien following a dispute over unpaid fees. The accountants have refused to give the documents to the company.

The company won't have to produce the documents because they are not within its custody or control. To obtain the records, a notice could instead be served on the accountants.

We may use a notice to require the production of documents held outside Australia. For example, the owner with custody or control of the documents may be in Australia and the records we need are held by an overseas bank on their behalf. We explain our approach to issuing notices for international information gathering under [Gathering offshore information](#).

## **Consolidated groups**

If you use a consolidated group for tax purposes, we may vary our approach when issuing notices to entities within the consolidated group. This is likely to be the case where records are held by several group entities. Although a head company is responsible for keeping records, it must also ensure its subsidiaries keep all records necessary to satisfy the group's record-keeping responsibilities. In these cases, we may need to ask about the location of the records and who is in control of them before we issue a notice.

When seeking the production of documents, we would normally issue the notice to the entity with custody of those documents. If we seek

information (not documents) we consider which entity is best placed to give us that information – for example, if our enquiry relates to consolidated income tax return details, the information would generally be sought from the head company. If it relates to the rationale behind a particular transaction, the notice is likely to be sent to the entity (or an officer of that entity) that was a party to the transaction.

### **Example: Notice to subsidiary**

Headco is the head company of a consolidated group consisting of Subco, Ausco and Vicco. During informal discussions with our officers, Headco advised that each subsidiary has custody of the records relating to transactions they undertake. Headco has entered into arrangements with the subsidiaries which brings the records under the control of Headco.

Subco receives a notice requiring production of documents relating to a transaction it undertook after the group was formed. In this case, we would usually issue our notice to Subco (which currently has custody of the records) although we also have an option of issuing the notice to Headco (which has control of the records).

## **Complying with a notice**

If you receive a notice, you're required to comply with it. This may involve giving information, attending and giving evidence and/or producing documents.

We generally explain why we require the information and give you an opportunity to discuss the notice with us. A face-to-face meeting may not always be required – for example, if the information stated in the notice is unlikely to require explanation, such as details in support of a motor vehicle expense claim. In more routine cases, our practice is to provide a contact point where you can seek advice or discuss the notice.

We are committed to working with you to identify the most efficient way for you to respond to our information-gathering requests. To minimise your compliance costs, we consider whether there are alternative sources of the information that may satisfy our enquiries.

However, there are times when we require specific documents, so we can't always accept alternatives.

## **Sending a notice**

There are a number of ways we can send a notice to you. You can also request how you would like the notice sent if we are already in discussions.

Generally we use the most recent address notified on our systems. In some situations, we will send your notice to another address we have on record – for example, where no preferred address for service has been given, or we're not satisfied that the preferred address is likely to be effective.

## **Time and place to comply**

Our notices to give information or produce documents will advise how to comply, including the date and place. Our notices to attend and give evidence will also advise the time of your interview.

As a general rule, the place to attend and give evidence will be one of our sites. Where possible, we will arrange for that site to be the closest to your location – except where an alternative place convenient to all parties has been agreed to.

If the information or documents we require is held by a third party, we will normally consult them about the most convenient way for them to comply with our notice. Particular arrangements may be needed where they store the information electronically or there are other issues impacting on how the information is kept. We explain our approach to gathering electronic information under [Gathering electronic information](#).

## **Period of time to comply**

We generally give you 28 days to comply with a notice. Shorter or longer periods of time may apply in some cases.

When determining how much time to give you, we generally consider:

- the nature and extent of the information we need
- the amount of documentation required
- any previous requests made (even if they were not identical)

- the urgency of obtaining the information
- any previous correspondence or contact.

We also take matters into account that may affect your ability to comply, such as:

- your locality and the mode of service
- the availability of the information or documents
- the processes necessary to retrieve and produce the information or documents
- your cost of complying with the notice
- other concurrent obligations you may have, such as the preparation of annual accounts
- the resources available to you to obtain or prepare the information
- any other information requests made by us or other regulatory bodies.

A longer period may be given if we seek more extensive details – for example, information on transactions which took place over several years. Alternatively, a shorter period may be warranted – for example, when:

- you have agreed to comply within a shorter time
- our compliance activities relate to the current year
- more immediate compliance is required
- you have a history of non-compliance.

We will give you sufficient time to seek advice on claiming legal professional privilege, the accountants' concession or the corporate board advice concession.

## **Extension of time to comply**

It isn't our normal practice to vary the notice arrangements after a notice has been issued. In some circumstances, we may decide to grant an extension of time to comply with the notice. Although the law allows us to amend the time for compliance with a notice, we will usually withdraw the initial notice and issue you with a further notice with a later date to comply.

If you have difficulty responding to a notice in the time allowed, you're able to request an extension of time in writing for our consideration. The earlier you make your request the better. To allow us to make an informed decision, the request must include:

- a statement that you're not able to comply with the notice on or before the date specified
- the reasons why you can't comply on time
- an alternative date on which you will comply.

If we decide that additional time won't be granted after considering your request, we will inform you of that decision in writing. If you still consider the timeframe isn't long enough, the decision can be escalated to a senior officer. You can also contest our decision through the courts. It is important to remember that non-compliance with a notice may result in prosecution.

### **Example: Longer period to comply**

AXC Pty Ltd (AXC) is the head company of a large group which is under audit for the years 30 June 2013 to 30 June 2016. Peter, the Tax Manager and authorised contact person, receives a phone call from Allison, our officer conducting the audit. Allison requires information and documentation in relation to AXC and its associated companies. Based on AXC's past compliance behaviour, Allison has advised Peter that the information will be obtained using a notice.

Peter and Allison arrange a mutually appropriate time to meet and discuss the information and documents required. Due to the amount of information and documentation required, Peter and Allison agree that the notice will be broken up into 3 separate notices using a month-by-month staggered timeframe to allow time for Peter to provide the response.

Due to the nature of the notices it would be unreasonable for Peter to comply within the usual 28 days. However, it is reasonable for Peter to provide the response on a month-by-month basis. Allison can start her review of the information and documentation without holding up the audit.

This arrangement helps progress the audit in a timely manner.

## Not complying

To protect the integrity of the tax system, there are consequences if you:

- fail to comply with a notice
- fail to complete the requirements of the notice in full
- give us false statements under the notice.

You may be liable to prosecution if you:

- refuse or fail to provide information, or to produce records or documents
- refuse or fail to meet with us or answer questions
- make a false or misleading statement.

The destruction of documents or failing to comply with a notice in full (for example, by not answering all questions) may constitute an offence. Whether we decide to refer a matter for prosecution will depend on our prosecution policy and the Commonwealth prosecution guidelines.

If you're unable to comply with a notice, or you consider the notice is invalid, you should contact us in writing to explain your situation and why you can't comply.

### **Example: Not complying with a notice**

Michelle had received a number of informal requests and formal notices to attend an interview since July 2016. She either didn't respond or called to say that she couldn't attend and didn't provide a contact number.

Michelle was convicted of an offence under section 8C of the Taxation Administration Act 1953 (TAA) for failure to comply with requirements under tax law. The notice subject of the prosecution had a compliance date in October 2016, but it was not until July 2017 that she attended and gave evidence. The court found that she had shown a total disregard of the requirement to attend and had wasted a significant amount of our time.

As an alternative to prosecution for making a false or misleading statement, we may apply an administrative penalty under Part 4-25 of Schedule 1 to the TAA.

## **Costs of compliance**

Costs associated with managing your tax affairs are your responsibility. You may incur compliance costs when responding to our notices. These costs are usually the responsibility of the recipient of the notice, even if the notice isn't an enquiry into their tax affairs. For example, we may issue a notice to a third party to produce documents.

If we issue a notice requiring someone other than the taxpayer or their representative to attend and give evidence, that person may be able to apply for payment according to a prescribed scale of expenses.

We will take your circumstances into account and try to limit the costs you incur – for example, if we issue you a notice to attend an interview, where possible we will conduct the interview at an ATO office close to you.

## **Government agencies and corporations**

### **Government agencies**

Special rules apply in cases when we use our notice powers to obtain information from other government agencies. This is because:

- there are differences between the laws these agencies administer and those administered by us
- the doctrine of public interest immunity may apply
- other reasons exist, including agreements not to disclose information to third parties.

Before we send a notice to obtain information from another government agency, we will usually find out if the information can be obtained from another source.

### **Corporations**

Notices requiring documents or information from a company will generally be addressed to that company.

However, notices to attend and give evidence are only issued to natural persons. Our notices to attend and give evidence for company-related tax affairs will generally be addressed to a person who is involved with the affairs of the company, such as a company officer. We may issue notices to any director, secretary, other officer, attorney or agent of the company if we believe that person has the information.

When issuing notices to a corporation, if the company officer does not know about the information required we may ask who is likely to have the information or knowledge of it.

## **Collecting unpaid tax**

We are required to recover unpaid tax that has fallen due. To do this, we may need to gather a broad range of information, including details of:

- your bank account and loan application details
- financial arrangements and transactions (including overseas transactions)
- business structures and their ownership and management
- assets held and disposed of
- monies owed to you.

Our approach to collecting a debt is generally guided by your past engagement with us. We also take your individual circumstances into account. If possible, we gather this information in cooperation with you or your representatives.

In some cases, we will use our notice powers to compel you, or a third party, to give the information to us – for example, where our cooperative approach has not worked, or third parties are subject to confidentiality arrangements.

We will usually notify you before making third-party enquiries about your debt. In some circumstances, we won't notify you, particularly when our collection activities could be compromised – for example, if we ask a financial institution about your account details so we can garnishee monies.

## **Tracing action**

It is important for us to contact you to discuss collecting your debts, and where necessary start action to recover the outstanding amounts. If we are unable to locate you, we may begin a tracing action to find your new address. We are authorised to make relevant enquiries with the public at large in the administration of the tax laws to locate the address. The level of disclosure about your personal information is kept to a minimum when asking about you.

We may request information from various sources, including:

- your neighbours, employers, business associates, friends, accountants and solicitors
- trade organisations
- industry associations
- telecommunication service providers
- Australia Post
- Australian Securities & Investments Commission
- financial institutions
- super funds
- other government agencies
- local councils
- Land Titles Office
- State and Federal police and Corrective Services.

When making our enquiries, we will consider if we need to use our formal powers or whether we can gather the information using a cooperative approach. Given that the Privacy Act may apply to our third-party enquiries, we will usually only conduct these enquiries by issuing a formal notice.

## **Court proceedings**

Once we have started legal proceedings to recover a debt, we generally won't use our formal powers to get information for those proceedings.

However, in certain high-risk cases, we may use our formal powers where litigation has started. For example:

- information may be required to apply for a freezing order where summary judgment proceedings are in progress – that information would not be used to obtain judgment in the proceedings on foot, but rather to identify property against which a judgment in our favour may be satisfied
- a formal notice may be issued for tracing action when court proceedings have started, particularly where we seek information upon which to get an order for substituted service.

For more about the enforcement measures we use for the collection and recovery of tax related liabilities and other amounts, refer to [PS LA 2011/18](#) - *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts*.

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## Attending a formal interview

Find out why we have issued you a notice to attend an interview, what to expect and your rights and obligations.

**Last updated** 29 October 2024

### Overview of a formal interview

We usually conduct interviews without using our formal powers, but we sometimes need to formalise the process – we do this by issuing a notice to attend and give evidence. When using our notice powers, we plan our activities to minimise your costs and we engage with you in a professional and timely manner.

Situations in which we issue a notice to attend a formal interview include when we:

- consider an interview is the best way to resolve a complex issue
- believe you may be involved in tax avoidance

- believe you may have information about a taxpayer who is involved in tax avoidance
- require an explanation about the nature of a transaction
- need to ask wide-ranging questions
- plan to show you documentation to assist in your recollection of events
- need to establish, clarify or check facts
- may require evidence from you on oath or affirmation
- require information about another person or entity's tax affairs.

A formal interview will ensure that the information third parties give us won't breach their obligations under the Privacy Act.

For more information about respecting your privacy, see [Our commitment to you](#) in the [ATO charter](#).

## Who may attend an interview

In addition to our officers named in the notice, a number of people may attend the interview, including:

- assistants to help with the administrative aspects of the interview
- interpreters
- stenographers and note takers
- legal representatives to assist our officers.

If we engage external representatives to attend your interview:

- we will notify you of their attendance in the covering letter attached to your notice to attend
- they will be subject to the same secrecy requirements as our officers.

## Our lawyers

In some cases, we may engage a lawyer to assist at a formal interview, for example, where:

- complex matters of fact are involved

- there are complex claims for legal professional privilege, the accountants' concession or the corporate board advice concession
- you have advised us that you're to be accompanied at the interview by a lawyer
- we need to assess your credibility
- a legal challenge to the notice is likely to be raised at the interview.

## **Interpreters**

If you have difficulty understanding and speaking English, we recommend that you contact us prior to your interview to arrange for an interpreter to be present.

We can provide an interpreter for you or you can bring your own. In either case, the interpreter must make an oath or affirmation to swear or affirm that they will make a true and honest interpretation of the questions asked and answers given.

## **Your representatives**

Although you do not have a legal right to be accompanied by another person at a formal interview, we usually allow you to bring one or more persons of your choice to assist or advise you at the interview. Your representative may be a professional adviser, interpreter, friend, spouse or other family member.

We may decide to exclude your choice of representative from the interview in limited circumstances. For example, if your representative participated in the transactions of interest (other than as an adviser) and their attendance at your interview could prejudice our investigation. In these circumstances, they may be subject to a separate interview in relation to the transactions.

We usually advise you if we are excluding certain people from your interview at the time the notice is sent. If we advise you at the interview, we will consider adjourning it and giving you an opportunity to obtain advice or appoint alternative representation.

You may be required to continue the interview without your choice of representative being present. If so, it is an offence under tax law to refuse or fail to answer a question or produce a book, paper, record or other document to the extent that you are capable of doing so. You may be prosecuted if you refuse to continue with the interview.

### **Example: excluding a representative**

Murray has received a notice from us to be interviewed about his participation in a tax minimisation scheme. Murray attends the interview with his accountant Sam.

As Sam is the promoter of the tax minimisation scheme, our officer decides that he should not be present for the part of the interview which deals with the scheme.

The interview can be adjourned to enable Murray to appoint an alternative representative, or it can continue without Sam.

## **What you can expect at the interview**

We will explain your rights and obligations before the interview starts. These include your right to claim legal professional privilege, the accountants' concession and the corporate board advice concession.

We expect you to advise any person attending with you that they will be asked to identify themselves. We also expect that you will answer our questions and produce documents as required, based on your knowledge and understanding.

You can expect that we will:

- comply with the [ATO charter](#)
- advise you in advance if we will use lawyers in the conduct of the interview
- treat you fairly and openly, and conduct the interview in a professional manner
- ensure that our officers conducting the interview have the authority to do so
- explain the interview procedure at the beginning of the interview
- allow you to be accompanied by one or more persons of your choice in most circumstances
- offer you a copy of the transcript or recording of the interview (in some circumstances this may not be available immediately after the interview).

If you are a third party being interviewed about someone else's tax affairs, we cannot offer you records from the interview containing another person's protected information. This means a full transcript or recording may not be available for you to keep.

For more information about the way we conduct ourselves when dealing with you, see [ATO charter](#).

## **Before starting the interview**

Before starting an interview, we will explain:

- the interview procedure
- how the oath or affirmation will be given if the evidence is required to be sworn or affirmed
- that we will record the interview
- that it is important to speak slowly and clearly
- that the role of your professional adviser does not extend beyond advising you of your legal rights and obligations
- that you must personally answer all the questions, and your representative can't answer on your behalf.

If you haven't brought the notice requiring your attendance at the interview, we will allow you to examine a photocopied version of the original notice.

We may ask you to confirm that this is a copy of the original notice addressed to you before the interview can proceed.

## **Recording the interview**

We usually electronically record formal interviews, and generally use an audio recording device to make the recording. In limited circumstances, we make a video recording of the interview. If the interview is recorded, all persons present at the interview will be asked to identify themselves for the purpose of the recording. In most cases, copies of the recording will be available to you at the conclusion of the interview. If a transcript is subsequently prepared, we will provide you with a copy.

Although your consent isn't required for a recording, at the start of the interview we will inform you that the interview will be recorded. Refusal

or failure to answer a question to the extent you're capable of is an offence.

### **Example: recording an interview**

Ivan has refused to answer questions about his tax affairs during an audit at his business premises.

We issue Ivan a notice requiring him to attend and give evidence. At the interview, Ivan refuses to answer questions if they are recorded.

Ivan's refusal to answer questions for this reason would not be a defence to prosecution action under section 8D of the TAA.

## **Oath or affirmation**

You may be required to give us information or evidence on oath or affirmation under our notice powers.

If so, we will allow you to:

- choose a form of oath
- make an affirmation if you object to taking an oath on the grounds of having no religious belief or if swearing an oath is contrary to your religious belief.

If you don't comply with this requirement, we will generally:

- ask you to state the reason for your refusal
- advise you that it is an offence to refuse to take an oath or make an affirmation.

We may continue the interview allowing you to give unsworn evidence or discontinue the interview and consider referring the matter for prosecution. Whether or not we continue the interview will depend on the circumstances. If we decide to continue the interview, we will explain your obligation to answer questions.

For more about the offences relating to the refusal or failure to answer a question at interview, refer to:

- [sections 8K](#) and 8N of the TAA

- [sections 136.1, 137.1](#) and [137.2](#) of the *Criminal Code Act 1995*.

## Challenging the notice at the interview

If you challenge the validity of the notice at the interview, unless the notice is obviously invalid, we will:

- record the challenge
- seek advice before proceeding with the interview if we believe the notice to be valid.

You may be liable to prosecution for not complying with the requirements of the notice if you fail to continue with the interview.

If the notice appears to be invalid, we may decide to end the interview at that point and issue a new notice. Alternatively, we may ask whether you're willing to continue with the interview on an informal basis.

We will request your permission to record the interview if we proceed on an informal basis and won't administer an oath or affirmation in these circumstances.

## During the interview

Our interviews help us identify, clarify and resolve issues. During an interview, we will generally explain that:

- it is an offence to make a false or misleading statement (and you may be prosecuted for doing so)
- if you only have a belief about an answer to a question, rather than knowing the answer, you should say so as part of the answer
- if you do not know or remember the answer to a question, you should say so
- refusal to answer a question is an offence under section 8D(1)(a) of the TAA, and the privilege against self-incrimination isn't a defence for failing to answer.

The statutory obligation to answer questions overrides any common law right against self-incrimination.

## Claiming legal professional privilege and administrative concessions

During an interview, you may be able to claim legal professional privilege, the accountants' concession or the corporate board advice concession.

If you make a claim, we may consider adjourning the interview for a brief period to consider your claim.

We provide a detailed explanation of the limits to our notice powers under [Limits to our formal powers](#).

For more about the offence of making a false or misleading statement, refer to [sections 8K](#) and [8N](#) of the TAA and [section 136.1](#) of the *Criminal Code Act 1995*.

## Taking copies of documents

We can require original documents to be produced at an interview under our notice powers. In some cases, we will advise if you can provide a copy of the document instead.

We may refer to documents during the interview. If so, we will:

- show you copies of these documents and their contents
- give you copies of the documents shown or used during the interview if you request them, but only to the extent that the information contained in those documents relates to your own tax affairs or falls within an exception outlined in Division 355 of Schedule 1 to the *Taxation Administration Act 1953*
- only disclose those parts of the document that are relevant to the questions we ask you if it contains material relating to other taxpayers
- mark the documents produced at the interview as an exhibit and identify them for the purpose of the recording/transcript at the time they are first produced.

We may decide to make copies of your documents at the end of the interview and retain them for a reasonable period to allow them to be copied. We will usually request a signed receipt upon returning the documents to you.

During an interview, you may produce documents which haven't been listed in our notice. With your consent, we will retain those documents and make copies of them and provide you with a written receipt specifying the date and method of return. If you object, we may decide

to have access to them or consider issuing a notice to you to produce them.

## **Adjourning the interview**

If an interview has continued for an extended period of time, we will consider if it is appropriate to either:

- continue the interview with a view to finishing it on the day
- adjourn the interview until another day.

If we adjourn the interview, we will make every effort to resume the interview on the next business day. We will take your personal circumstances into account when deciding when to resume and may agree with you to resume the interview on a specific date and time. We may adjourn an interview for longer periods, depending on the circumstances.

If you were previously under oath or affirmation, you will still be under oath or affirmation when the interview resumes.

If you refuse to agree to resume the interview at a later date and time, it may be necessary to conclude the interview. We may issue a further notice requiring your attendance on another day and time, allowing for a reasonable amount of time after the adjourned interview.

## **Finalising the interview**

Our notice may require you to produce documents. Whether we examine these documents during the interview, copy them or retain them for later examination will depend on the number of documents and the complexity of the issues under examination.

After examining your documents, we may have further questions in relation to them. We usually ask you at the time of your interview how you would prefer to answer those questions. We generally ask these questions in writing, by informal interview or by issuing another notice.

At the conclusion of the interview, we will usually:

- ask if you have any comments on what has been asked during the interview, or if you have any general comments about the interview
- confirm what follow-up action (if any) each party needs to take, and clearly set out how and when the follow-up action is expected.

In most cases, where an interview has not been electronically recorded but a written record was made, we will:

- read the record back to you at the end of the interview
- give you a copy of the record
- ask you to confirm the accuracy of the record or make any necessary corrections later – you're not required to sign it.

### **Example: written record of an interview**

An informant, Bruce, is prepared to give anonymous information under the protection of a formal interview but refuses to give us information while being recorded.

Our officer, Braddon, decides that it is better to continue the interview without recording it in order to get the information Bruce is offering.

Braddon makes a written record during the interview, which he reads back to Bruce at the end of the interview.

## **After the interview**

You can contact us to discuss any matter arising from the interview. If you wish to clarify or correct the evidence you gave at the interview, we may require this further information to be given at another interview.

After the interview process is complete, our officer dealing with your case may contact you within a reasonable time to clarify or raise issues. If we need to access further information, we will seek to make arrangements to work with you or your adviser to obtain that information.

## **Reimbursement of expenses**

In some cases, your expenses will be paid according to a prescribed scale if you're required to attend an interview.

If you're giving evidence in respect of your own income or assessment, or the income or assessment of a person whom you represent, your

expenses won't be paid.

### **Example: no reimbursement of expenses**

Gwen is the mother of a minor. We have issued a notice to Gwen to attend an interview concerning the minor's tax return.

Gwen isn't entitled to claim reimbursement for her travel expenses incurred in attending the interview as a representative.

Refer to the scale of expenses under Schedule 2 and regulation 66 to the *Taxation Administration Regulations 2017*.

## **Not complying with a notice to attend**

If you don't comply with any of the requirements contained in our notice to attend an interview when you're capable of doing so, you may be prosecuted.

Prosecution won't be considered if we decide you were incapable of complying with the requirements of the notice – for example, you may have been overseas or hospitalised at the relevant times. However, you won't avoid prosecution by taking steps to make yourself incapable of complying after you have received the notice.

If you're unable to produce documents because another party holds them under a court order, you must notify us of that fact before the interview day or you may still be required to attend the interview.

### **Example: insufficient reason**

After receiving our notice to attend an interview, Nigel books a 2-week holiday in Bali to avoid being present in Australia at the time specified for the interview.

Nigel's claim that he was overseas at the time may not justify his non-attendance and prosecution may be recommended in these circumstances.

### **Example: sufficient reason**

After receiving our notice to attend an interview, Elizabeth is admitted to hospital for heart bypass surgery and is still recuperating in hospital on the date specified in the notice.

Elizabeth is incapable of complying with the requirements of the notice.

We would liaise with Elizabeth upon her discharge from hospital about another time for the interview.

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## **Our formal access powers**

Our access powers allow us to gain access to your premises and documents at all reasonable times for the purposes of laws we administer.

**Last updated** 1 May 2024

### **Overview of formal access powers**

We only exercise our rights of access for the purposes of the laws we administer. In most cases, this is only where we can't obtain the documents or information we require under a cooperative approach.

When using our access powers, we are authorised to enter and remain on any land, premises or place and have full and free access to books, documents, goods or other property. We can make copies of documents for our records but can't seize or remove your documents without your consent. We can only exercise our rights of access for the purposes of the applicable laws we administer.

If we visit your premises, you must give us reasonable assistance and provide adequate facilities. Penalties and prosecution may apply if we are stopped from gaining access or where reasonable facilities or assistance hasn't been provided.

We will generally give you prior notice before exercising an access power. However, in exceptional circumstances we may not give you notice beforehand – for example, if we believe that the documents we need may be destroyed.

Our access powers are limited by legal professional privilege, the accountants' concession and the corporate board advice concession. Our access powers are not restricted by claims of confidentiality or privilege against self-incrimination.

The decision to use our access powers is reviewable by the Federal Court under section 5 of the *Administrative Decisions (Judicial Review) Act 1977*. You have the right to a 'statement of reasons' in respect of our decision under section 13 of the Act.

We list the main legislative provisions supporting our access powers under [Legislative references](#).

Details on the number and type of access taken are available in our Annual Report.

## **Enquiries about current or future tax affairs**

Our access may involve gathering information and documents that relate to current year or future year transactions or planning, in addition to past income years. We may use our access powers to investigate matters that relate to an assessment of income before the return is lodged. Provided these enquiries are done for the purposes of administering the law, our access powers can be used to get documents and information relating to:

- transactions started in the current year, but yet to be completed
- tax products and tax schemes
- transactions that were not carried out but explain the tax implications of completed transactions.

This type of access can help us identify emerging trends, tax schemes and tax products – for example, we may make enquiries about a tax scheme by accessing a tax adviser's client base. This approach provides important information about potential tax implications of future transactions.

The grounds for review of a decision to use our access powers are set out in [section 5](#) of the *Administrative Decisions (Judicial Review) Act 1977*.

## **What to expect from us**

### **Use our access powers for the purposes of the law**

We do not use our access powers to gather evidence for the purpose of prosecuting a breach of an Act. However, evidence already collected using our access powers may be used to prosecute an offence under the TAA or the *Criminal Code Act 1995* at the discretion of the court.

### **Act in good faith**

We will exercise the right of access in good faith. We will conduct our visit with honesty and without malice or intent to defraud, deceive or derive personal advantage.

### **Use the information we already have**

Whenever possible, we will use the information we already have, rather than seek access to the same information – for example, if you have previously supplied information to us for a private ruling request.

### **Determine what information we need before our access visit**

We will determine as far as possible the books, documents and papers we need – and whether the information they might contain is necessary for our access purpose. We will usually advise you why we need the documents.

### **Establish where the information is located**

Before seeking access, we will consider whether the information we require can be got from another source. If the information is available from more than one source, we will consider the cost of getting the information from each source and who should bear the cost of obtaining it.

### **Access documents and information from third parties if necessary**

In most cases, we will try to get the information or documents from you before contacting a third party.

## **Use a cooperative approach where possible**

We prefer to access information using a cooperative approach. We will generally not use our access powers if we think the information can be obtained by telephone, sending a letter or searching other sources. We will advise you when we are relying on your cooperation to enter the premises and view the documents and information.

We may need to use our access powers where you have withdrawn your cooperation or in other situations, such as third-party access, or for reasons of privacy or confidentiality.

## **Scope of our powers**

The use of our access powers isn't limited to the tax affairs of a person who is subject to our compliance activity. We may also use them to make general enquiries – for example, to identify persons engaged in a particular activity.

Our access powers can only be used:

- by authorised persons
- in good faith
- for the purposes of the law we are administering.

## **Authorised officer**

Our rights of access must be exercised by authorised persons only, and they can only access documents for which we have authority under the relevant law. However, a person may be authorised to access documents for more than one purpose.

Authorised persons can't enter and remain on your premises without producing their written authorities unless they have your consent. Anyone lawfully on your premises may inspect these written authorities and make a note of their contents. For security reasons, we don't allow the written authorities to be photocopied, or to leave the authorised persons' possession.

Documents and information obtained in the course of an access visit can be provided to other officers involved in the case who didn't attend.

## **Acting in good faith**

We are required to act in good faith when exercising our access powers.

We use a risk-based approach to formulate our compliance strategies. Your risk categorisation may help guide our approach when we gather information from you. We are more likely to use our access powers when seeking information from taxpayers we regard as higher risk because of their relative size, nature of transactions, tax performance or compliance history.

When exercising our access powers we may also look into the affairs of a particular category of taxpayers.

## **Purposes of the Act we are administering**

We can only exercise our access powers for the purposes of a particular Act and are restricted by the provisions of those Acts. Although we are free to inspect documents and their contents, our access powers don't allow us to copy them without making some effort to consider their relevance.

We will only copy documents that are reasonably relevant to our investigation or other tax matters. We won't copy documents in bulk without initially trying to determine their relevance, and will consider the nature, volume and location of documents before taking copies. We sometimes use a keyword search – for example:

- the name of a jurisdiction where an investment was placed
- the section of the Act
- the name of the arrangement.

Our access powers may be limited in certain ways, including claims for:

- legal professional privilege
- the accountants' concession
- the corporate board advice concession.

We will generally give you adequate time to consider or get advice about your claims. The time we allow you to consult with your adviser will depend on the circumstances, including:

- the volume of data

- the availability of our specialist officers (for example, forensic specialists, interpreters and legal advisers)
- the proximity of your advisers to the information.

When requesting information that could be subject to a claim, we may:

- adopt a staged approach and accept the documents in batches (for example, if we have requested a large amount of electronic data)
- conduct a keyword search of computer records – we expect these searches will be completed without initially reviewing each item for a potential claim.

We provide a detailed explanation of the limits to our access powers under [Limits to our formal powers](#).

## **Accessing land, premises or a place**

We have statutory rights of immediate access under our access powers, although we will usually give you prior notice of our intention to access your records.

Before entering premises to access documents or information, we will usually try to locate an authorised person within the organisation or wait for them to arrive.

We may agree to postpone our examination of documents in respect of which you claim that access may be restricted for a reasonable amount of time if your adviser isn't immediately available. If we don't postpone our access visit, we generally seek your agreement to continue our visit and quarantine those documents that may be subject to your claim.

Where there is a large amount of data, we may agree to a staged approach so that the documents can be reviewed in batches.

## **Accessing a private residence**

If we are contemplating access to a private residence, we will first consider whether there are alternative ways of obtaining the documents and evidence.

When using our access powers to gain access to a private residence, we:

- have at least 2 of our officers attend the premises
- conduct the access during business hours, as far as possible
- attend with a female officer if we reasonably expect a female to be present at the residence.

## **Timing of visit**

We usually discuss the timing of our access visit with you prior to our visit. We may consult with you beforehand to:

- give you reasonable notice of our intention to take access
- establish a convenient time for the access visit
- give you information about your rights and obligations
- get an agreement with you to keep documents secure
- determine who should be contacted at the time of access.

Our right of access can be exercised at all reasonable times. Access during your business hours is generally accepted to be reasonable. We may also agree to have access outside these hours to suit your availability or workloads. We usually seek your agreement if we require access to your premises outside business hours.

Maintaining the integrity of documents we wish to access is paramount. We may need to remain on your premises for an extended length of time to complete the access and keep the documents secure.

If we need to be at your premises for an extended period of time, we will work with you to avoid inconvenience. We may agree to secure the documents by sending them to an independent third party for keeping, or by placing them in a protected location.

When accessing documents and information at your premises, we have a statutory right to remain on the premises. We are protected from an action for trespass when acting in good faith and within the powers conferred by the law.

## **Immediate access**

In some cases, having entered your premises and examined documents in cooperation with you, we need to move to a formal

approach and use our access powers. These circumstances include where:

- you stop cooperating and we are not confident of getting all relevant documents
- we become aware of a second set of records, or that relevant information is being withheld
- we discover that documents are to be shredded, and you don't allow us to examine the documents before they are destroyed
- we discover information that was claimed not to exist
- you claim that documents are subject to privilege without providing any basis for the claim
- we have a reasonable belief that documents will be disposed of, altered or destroyed.

## **Providing reasonable facilities and assistance**

An occupier of land, premises or a place has a legal obligation to provide all reasonable facilities and assistance to us when we visit the premises and exercise our access powers.

When visiting land, premises or a place, we require the reasonable use of your photocopiers, telephones, light and power to be provided to us. We may also require facilities to extract relevant information stored on computers or other electronic devices, and adequate space to work.

### **Example: Providing reasonable assistance**

John is an employer who is subject to an FBT audit. John's employee records have been sent to an archival service.

Our officer, Bruce, has been granted access to the building that stores the records. If John knows the reference number of the box, drawer or shelf where the records are located, he is obliged to tell Bruce these details.

If we need your assistance or facilities, we will keep any disruption to a minimum wherever possible. If we need to search paper or computer

records, we will leave those records as we found them.

Your reasonable assistance may include:

- answering questions about the location of books, documents or other records
- providing computer passwords or logging on to the computer and then allowing us to operate it
- advising us who might have the password to the computer or other device
- removing obstructions, such as unlocking facilities (if within your power) or suggesting other reasonable methods of obtaining access
- explaining index systems or computer folders (if necessary) to identify, interpret and locate books and documents
- explaining codes and symbols when this is necessary to identify, interpret and locate books and documents
- locating user guides to explain the computer program that needs to be accessed
- providing codes and passwords to decrypt encrypted data.

### **Example: Not providing reasonable assistance**

We are seeking access to Peter's documents which are stored in a safe with a combination lock. Peter is capable of unlocking the safe.

Peter refuses to unlock the safe or provide the combination – this is a denial of full and free access. This behaviour is in breach of the access provisions because reasonable assistance hasn't been provided to enable access.

We also require you to provide reasonable facilities, which may include:

- adequate lighting, heating and air conditioning consistent with other areas of the premises
- a workspace appropriate to the circumstances

- photocopying facilities – although we may bring scanners or portable photocopiers
- computer facilities, such as keyboards, display units, instruction manuals and printers (if no hard copies are supplied).

It is an offence under the access provisions not to provide reasonable facilities and assistance to us. In more serious matters, such as hindrance or obstruction, we may decide to prosecute those who don't allow us access.

## Copying and removing information

We can seek a wide range of information, but we usually only access information required for a particular enquiry. Wide-ranging searches are generally not conducted without a specific purpose.

Our access powers extend to all books, documents, goods and other property – whether or not they are found in a building or other place. The right of access applies to both paper records, such as entries in a diary or notebook, and information stored electronically.

Examples of information stored electronically include files stored on a computer, server, external hard drive, thumb drive, mobile phone or camera. We explain our approach to gathering electronic information under [Gathering electronic information](#).

Under our access powers we have the right to make copies of, or take extracts from, any documents for any of the purposes of the respective laws we administer. This may include unopened mail that we find at your premises. However, we are not authorised to copy material that isn't relevant to our purpose under the law or seize or remove documents or books from your premises without your consent.

We are also able to inspect, examine, count, measure, weigh, gauge, take samples and test or analyse any goods or other property.

We use a range of techniques to make copies and take extracts – these include photocopies, photographs, videorecording or scans. Machine-readable disks, hard copy or tapes may be used to copy information stored on your computer.

We may take photographs or a videorecording of premises, a production process or articles in safe deposit boxes. We will only take

photographs and make video recordings for the purpose of a relevant law and in accordance with privacy laws.

## **Record of removal**

Whenever possible, we will copy documents (or other records) at your premises or the place we access. We may bring a photocopier or scanner to make these copies. If a scanner is used, we will usually provide you with a copy of the scanned material if you request it.

We don't have the right to seize your documents. We may seek your permission to take your records back to our office for examination and copying.

If you allow us to remove records, we will:

- usually make a record of that conversation and/or execute a written agreement with you – a copy of the record or agreement will be provided to you
- issue you with a receipt which describes the documents in as much detail as is practicable
- generally ask you to sign an authority stating that you have voluntarily authorised the removal of the documents
- deliver the records to you if you ask for their return.

If you don't permit us to remove the documents from your premises and it's not practical for us to copy them, we may issue a formal notice requiring production of the documents.

## **Records held by third parties**

We are empowered to access records held by third parties, including lawyers, accountants, tax agents, employers, suppliers and banks. We seek to work cooperatively with these third parties and explain the purpose of our enquiries where possible – subject to privacy and secrecy considerations.

We will generally contact you before we seek access to third-party documents or information. However, there are some situations when we may not contact you beforehand, including when:

- we are collecting information about a large number of taxpayers in similar circumstances

- we are collecting information to help decide which individuals or businesses to audit
- we are making enquiries under an international tax treaty
- we are collecting information relating to enquiries, reviews or investigations under the promoter penalty laws
- transfer pricing audits are involved
- we decide access without notice is appropriate
- we have asked you for the information, but it has not been given to us
- there is a potential risk to the safety of our officers
- the matter relates to refund integrity
- you can't be contacted
- it is otherwise impossible, impracticable or inappropriate to contact you.

When we visit third-party premises, we usually seek agreement on how we will:

- access documents stored on a computer
- inspect documents subject to claims of legal professional privilege, the accountants' concession or the corporate board advice concession.

If we don't know the specific document or information we require, we will look to minimise the volume of data accessed and the costs involved – for example, an IT employee of the third party may work with us to help our access.

### **Example: Records held by a bank**

Rowena has a large portfolio of shares. She keeps her records on share purchases and sales at her bank.

We need to examine Rowena's share trading records for the purposes of a taxation law, but she has refused to supply the records.

We may use our access powers under section 353-15 of

Schedule 1 to the TAA 1953 to gain access to the records at the bank.

### **Example: Records held by a tax agent**

Our officer, Phil, has requested information from a tax agent for an income tax audit.

The tax agent has disregarded Phil's request and not given him any information or provided documents. The reasons given include a lack of resources and that the client's fees are unpaid. These grounds were considered by the audit team to be unsatisfactory.

As neither the tax agent nor the taxpayer have cooperated with us, Phil may use our access powers to obtain the information and documents at the tax agent's office and the taxpayer's business premises.

## **Interviews during access**

During an access visit, we may ask you questions which are incidental to the conduct of our access – for example, questions about the location of records and how we can get them. You're required to answer these questions, but we can't insist on answers to other questions that are unrelated to our access.

In practice, many interviews proceed on a cooperative basis without us needing to use our formal powers. We can only ask you questions that go beyond our access visit if:

- we have advised you that there is no compulsion to answer
- you agree to answer the questions.

Our questioning must be done in good faith and for the purposes of the law we are administering. We will stop if you object.

If we have reasonable grounds to seek further information and you're unwilling to supply it on a cooperative basis, we may consider using our formal powers to get it.

## **Costs of access**

We will usually provide you with an opportunity to discuss the scope of our access visit, the timeframes and any difficulties likely to be encountered. We will consider ways of reducing your costs of providing reasonable facilities and assistance to us – for example, we may ask to use a photocopier when it isn't being operated by your staff or may supply our own paper to make copies.

We may seek access to documents or information for a category of persons (rather than an individual taxpayer) if we are likely to get a result from these enquiries. Before making a request about large numbers of taxpayers, we may take samples of your information to determine if getting bulk data will be effective.

When seeking access, we are not liable for any fee or charge and won't agree to pay any such fee or charge as a condition of using our access powers. We will consider who should bear the costs incurred in producing the information we request, although in most cases this will be you. You may be able to claim a tax deduction for costs incurred in complying with our access request.

## **Access without notice**

In most cases, we will inform you if we intend to visit your premises to access your documents or information. However, in exceptional circumstances we don't give notice, including when we:

- suspect tax evasion, fraud, secrecy or concealment
- have a reasonable belief that documents may be disposed of, altered or destroyed.

In these cases, we will have a reasonable belief that:

- a cooperative approach won't work
- relevant documents are held at the premises.

If you're not present at your premises, we will:

- try to contact you or your legal representative
- consider proceeding with the access and quarantining of documents if you or your representative can't be contacted

- if necessary, allow you or your representative reasonable time to claim that our access to certain documents is restricted.

If access without notice is being conducted at a third party's private premises, we will:

- contact the occupier or custodian of the records at those premises
- consider undertaking the access and quarantining documents if the occupier or custodian isn't present or can't be contacted
- if necessary, allow you or your representative reasonable time to claim that our access to certain documents is restricted.

We may postpone our examination for a reasonable amount of time to enable you to consult with your representative. Our decision whether or not to postpone will be guided by real or perceived risks to the integrity of the documents of interest. Any delay allowed would rarely be more than a few hours. If we decide not to postpone our access without notice, we may attempt to reach an agreement with you about a suitable process to continue with our access.

If you're the occupier of the premises we are accessing, we will provide you with:

- a copy of the decision to take access without notice
- a copy of the statutory provisions relevant to our access
- information setting out your rights and obligations in relation to the access
- reasonable time and opportunity to consult another person – for example, a legal adviser.

An access without notice won't be carried out unless a designated senior officer considers that a proposed access without notice isn't inappropriate.

An explanation of how our access to documents may be restricted is provided under [Limits to our formal powers](#).

## **Recording an access without notice**

We may ask to make an audio recording of an access without notice, or some parts of the access. We will usually explain why we wish to

make the recording and provide you with the opportunity to refuse consent but may continue to record without it.

If you provide consent, our recording usually includes:

- our explanation of your rights and obligations in relation to the access visit
- your questions and our responses to them.

We will provide you with a copy of our recording, generally within 7 calendar days of the conclusion of the access without notice.

## **Access without notice – law and accounting firms**

We can access the premises of a law or accounting firm without notice. Before doing so, we carry out a risk assessment to decide whether it is appropriate to notify the firm of our intended visit (though not of the name of any taxpayers of interest).

An access without notice on the premises of a law or accounting firm won't be carried out unless a designated senior officer considers that a proposed access without notice isn't inappropriate.

If we decide to give notification, we attempt to notify the principal or the managing partner of the firm or, if they are not available, another partner or senior employee.

We generally:

- advise of the number of our officers who will be attending the firm
- advise of our points of contact
- provide as much additional information about our visit as practicable – but the names of taxpayers of interest won't be disclosed
- ask for the primary contact (and alternative contact) details for the visit.

If we give notification of our visit, it will usually be at least one business day before the access visit. In exceptional circumstances, we may require urgent access and will give as much advance notification as is practicable.

We expect to work with the primary contact person, and generally require them to:

- meet us at the specified date and time or, if unavailable, ensure that a suitable person is available to meet and is appropriately briefed
- brief other senior persons within the firm who need to be informed
- organise the facilities required for the access visit, including a suitable meeting room and access to a photocopier
- advise where files may be located at an offsite archive facility, and put the facility area on standby
- arrange for legal and other advisers to be available to make and resolve any claim that the documents are protected by legal professional privilege, the accountants' concession or the corporate board advice concession
- arrange for the availability of IT specialists to help us access electronic records.

## **Offsite archiving facilities**

We may need to access files, documents and other information held by a law or accounting firm at an offsite storage or archiving facility. If so, we will generally consult with that firm's nominated representative to minimise disruption at the facility.

We will work with the representative to develop a workable protocol to retrieve and review the files or documents we need. This approach may allow for:

- the management of claims for legal professional privilege, the accountants' concession and the corporate board advice concession
- early access to the files or documents for which no claims are made.

We will provide your nominated representative with a reasonable opportunity to review the files and documents we wish to access and make claims to restrict access where appropriate.

## **Access and excise**

Our access powers under some excise legislation differ in some respects from our powers under other tax and superannuation laws.

We have broad powers of access in relation to excisable goods – these include petroleum and other fuel products, alcoholic beverages and tobacco. The powers may be used to ensure that unlawful goods and those involved in their unlawful manufacture and distribution of them are dealt with according to the law.

Our excise access powers allow us to stop vehicles and seize goods. We may open packages and examine, weigh, mark and seal goods, and take samples and dispose of them in certain situations. We are empowered to detain and search when we have reasonable cause to suspect that someone is unlawfully carrying goods.

## **Obstructing our access**

Our right of full and free access allows us to take whatever steps are appropriate to remove a physical obstruction to our access, provided that those steps are not excessive. We remove obstructions to gain access only in rare circumstances. If obstructed or hindered, we may either:

- remove the obstruction
- seek an injunction if we are concerned that the documents could be lost, tampered with or destroyed
- take prosecution action.

We will usually give you adequate time if you wish to obtain advice. In these circumstances, we may need to remain on your premises to ensure that the records of interest are not removed, altered or destroyed.

If your adviser isn't available, where possible we will make arrangements with you to secure the documents and inspect them as soon as possible after you have obtained advice, preferably on that same day.

We may arrange to secure the records if a longer delay is agreed to or we have reasonable belief that the documents of interest will be removed, altered or destroyed. We may do this by placing them in a sealed envelope or sealing the storage device they are contained in for the duration of the delay.

## Forced access

In exceptional circumstances, and with the approval of a senior officer, we may need to use force to gain access to places or premises.

If domestic premises are unattended, we:

- will make a reasonable attempt to locate the occupier to facilitate our access
- will generally not remove obstructions
- will ordinarily only access the 'business type' areas of the premises
- may ask the relevant state or territory police to ensure the premises are unoccupied and there are no hazardous materials at the premises before we enter.

Before undertaking forced access, we will consider:

- the importance of the material which we plan to access
- the risk that the material may be destroyed, altered or removed
- the degree of force necessary to gain access, and the extent and cost of damage likely to result
- whether the material could be obtained by other means, such as use of our formal notice powers
- whether all reasonable alternative means of obtaining access have been exhausted
- if Australian Federal Police assistance by way of a search warrant is needed in cases where serious offences appear to have been committed
- the potential for harm to our officers
- the reason for the denial of assistance
- the urgency of the matter.

We prefer to use a master key or engage the services of a locksmith rather than break a lock. Where practicable, we will discuss our intended method of gaining access with you beforehand.

### **Example: Forced access to premises**

Documents relating to a company believed to be involved in tax evasion are in a locked warehouse. Our officers, Stan and Olivia, have received information that the documents relevant to their investigation are located in the building. The taxpayer and occupier have fled the country and are not expected to return.

Stan and Olivia force access by engaging a locksmith to open the door to the warehouse.

## **Locked storage facilities**

If we require access to your locked storage facility, we will give you an opportunity to open the facility before we use force. If force is warranted, we will first consider alternative ways to open the facility, including:

- searching for a key
- engaging a locksmith to open the lock
- breaking open the locked facility (with permission from a senior officer).

Although we will use the minimum force needed to open the facility, damage may result in some cases. We may not be liable for damage if you have the means to open the facility and were given reasonable opportunity to do so. If we damage a locked facility and the occupier hadn't denied our request to unlock it, we will arrange for its repair.

If you wish to claim that documents contained in the facility are covered by legal professional privilege, the accountants' concession or the corporate board advice concession, we will allow you a reasonable amount of time to make that claim. In these cases, we will generally remain on your premises and continue to seek access to the remaining documents.

## **Search warrants**

In cases where we suspect a criminal breach – for example, a serious offence or fraud, we may request the Australian Federal Police to execute a search warrant. Under a search warrant, the original documentation is seized and removed from your premises – only documents described in the warrant can be seized.

The alleged or suspected offences which may cause us to seek a search warrant include:

- offences against the *Crimes (Taxation Offences) Act 1980*
- major fraud or conspiracies to defraud the Commonwealth in respect of tax revenue – for example, under the *Criminal Code Act 1995*
- serious breaches, such as fraudulent record keeping under section 8T of the TAA or identity fraud under section 8U of the TAA.

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## Limits to our formal powers

In some situations, you may be able to claim concessions or protection over documents sought through our formal powers.

**Last updated** 1 May 2024

### Overview of our limits

The notice and access powers we use to gather information are limited in some circumstances. You may be able to claim your documents are protected from production by either:

- legal professional privilege
- the administrative concessions that apply to
  - professional accounting advisers' papers (the accountants' concession)
  - corporate board advice on tax compliance risk.

Where our published statements and guidance are followed, we won't draw an adverse inference merely because you make a claim and do not provide your documents to us.

## Legal professional privilege

Legal professional privilege protects confidential communications between you and your lawyer that are made for the dominant purpose of:

- legal advice – enabling you to get, or your lawyer to give, legal advice
- litigation – where litigation is taking place or is reasonably anticipated at the time the communication was made.

Privilege belongs to a client and not the lawyer. Only the client (or their lawyer under a retainer) has the power to decide whether or not privilege should be claimed. Communications made with the intention to obtain or give legal advice or for the conduct of actual or contemplated litigation, even though they are not in fact used in the litigation, may be privileged. In some circumstances, communications made between either you or your legal adviser and a third party may also be privileged.

Privilege can be claimed in other circumstances, including when:

- the client is an entity rather than a natural person
- there has been a disclosure of privileged communications to a third party who has an interest sufficient for 'common interest privilege' to apply
- there is more than one client who has retained the lawyer in the matter in question, in which case 'joint privilege' may apply.

A copy made of a document that is subject to legal professional privilege is normally also privileged in the hands of the lawyer or the client, particularly if the copy is made for record-keeping purposes, unless the privilege has been expressly or impliedly waived.

### Dominant purpose test

The purpose for which the communications or documents were made is central to legal professional privilege. They must be made or brought into existence for one of the following:

- the dominant purpose of obtaining or giving legal advice
- the dominant purpose of conducting actual or contemplated litigation

- more than one purpose, where the dominant purpose is one of giving legal advice or conducting litigation.

The dominant purpose test is an objective test – the onus is on you as the claimant to establish your privilege claim.

## Exceptions

Legal professional privilege doesn't always protect communications, including if:

- privilege is waived, either expressly or impliedly
- there is evidence of illegal or improper purpose and the communication was made to further that purpose
- the communication consists of observed facts.

## Waiver

Legal professional privilege can be waived by you, a lawyer acting on your behalf or through the conduct of a third party. Waiver of privilege can be express or implied.

**'Express waiver'** (or intentional waiver) usually occurs where you consent to the release of certain privileged communications or documents.

**'Implied waiver'** (or unintentional waiver) may occur in the circumstances where your conduct is inconsistent with maintaining the privilege.

Privilege may be waived if a third party other than your lawyer (for example, a bank) has custody of your documents that are subject to a privilege claim.

## Illegal or improper purpose

Legal professional privilege will be lost if a communication is made for a purpose that is contrary to public interest; that is, where the communication is made in furtherance of an illegal or improper purpose. The illegal or improper purpose covers all forms of fraud and dishonesty. This applies whether or not the lawyer dealing with the matter is ignorant of the illegal purpose.

It also applies where the illegal or improper purpose was that of a third party, even if neither you nor your lawyer had an improper purpose.

### **Example: Improper purpose**

Our officer, Tom, was conducting an audit of the income tax affairs of a promoter of a mass marketed scheme.

Communications were made by the lawyer for the dominant purpose of hindering us, by detailing how the records could be shielded from us by creating a double set of books.

The communications were determined to be for an improper purpose. On that basis, privilege didn't apply to the documents of interest.

### **Observed facts**

Legal professional privilege won't apply to communications which evidence transactions which do not by themselves amount to the giving or receiving of advice or for litigation – for example, contracts, conveyances, declarations of trust or receipts.

We can request information from an adviser about clients who have purchased, implemented or entered into certain arrangements. The provision of names and addresses in these circumstances doesn't require the disclosure of privileged communications to us.

### **Documents partly privileged**

In some cases, only parts of a document are created for the dominant purpose of legal advice or litigation and will be covered by legal professional privilege – for example, minutes of a meeting.

In this situation, the part you're claiming is privileged must satisfy the dominant purpose test. You must provide the complete document and redact (edit out) the part you claim is subject to privilege.

### **In-house lawyers**

We recognise that legal professional privilege can apply to advice given by a lawyer employed by the client, provided the dominant purpose test is satisfied and the lawyer:

- can demonstrate an appropriate level of independence from the employer client

- was acting in the capacity of a lawyer at the time that the communication was made
- has been admitted to practice as a lawyer.

If an in-house lawyer holds more than one position or function, it may be unclear as to which role they are acting in when providing the advice – a person giving legal advice may not necessarily be acting in a lawyer and client relationship.

When reviewing the level of an in-house lawyer's independence, we may consider:

- the lawyer's role within the organisation and their reporting lines to management
- if the lawyer's remuneration is linked to business performance
- if the lawyer has authority to report directly to the directors where their opinion differs from management's position.

A communication from an in-house lawyer must be made (or the document prepared) in their capacity as a lawyer, and not in a management role or other capacity.

The lawyer must be acting in a legal or professional capacity, and the advice given must be of a legal nature. Generally, the advice can't relate to policy or executive decision making or be commercial in nature.

The following factors may be relevant to an in-house lawyer's legal or professional capacity:

- how the lawyer signed or described him or herself in the document or communication
- whether the lawyer also holds a senior role within the organisation, and if job descriptions are attached to each position
- whether the lawyer has several functions, positions, roles and responsibilities within the company
- the capacity in which the lawyer was acting at the time the document or communication was made or prepared.

### **Third parties**

Legal professional privilege can extend to non-agent third parties who have made a communication – for example, communications may be authored by an accountant for their client to be used in obtaining legal advice.

The third-party communication must satisfy the dominant purpose test, and the communication must be confidential to be privileged.

Communications between a lawyer or client and a third party which are for actual or reasonably contemplated litigation may also be privileged.

### **Example: Third parties**

Nathan seeks advice from his accountant on structuring a transaction. Both Nathan and his accountant intend to submit the advice to a lawyer for comment.

While the lawyer's comments may be privileged, the accountant's advice won't be because its purpose is independent of the need for legal advice.

Alternatively, Nathan may be able to claim that these advice documents should remain confidential if they are restricted under the accountants' concession.

## **How to claim legal professional privilege**

We will give you an adequate opportunity to claim legal professional privilege (LPP). When using our notice or access powers, we will allow time for you to consult with your lawyers.

[Compliance with formal notices – claiming legal professional privilege in response to formal notices – Legal professional privilege \(LPP\) protocol](#) contains our recommended approach for identifying communications covered by legal professional privilege and making legal professional privilege claims to the ATO. A [compendium](#) is published together with the LPP Protocol.

The LPP Protocol has been developed to help you and your advisors when making legal professional privilege claims in response to requests for information we make under our formal information gathering powers.

Its purpose is to set out an approach which, in our view, will best help us in deciding whether to accept, review or challenge a legal professional privilege claim. It is **voluntary** to follow the approach set out in the LPP Protocol.

We expect that a person claiming legal professional privilege will provide us with an explanation that allows us to decide what to do with a claim for privilege. The LPP protocol sets out the approach and information that we think would allow us to quickly decide how to treat your claim for privilege.

## **Our forms for claiming legal professional privilege**

Use our legal professional privilege forms to provide sufficient details to support your claim.

If you're:

- responding to formal notices to explain your privilege claim, as recommended in the LPP protocol, use the [LPP form - responding to formal notices](#)
- providing us with information, but we haven't issued you with a formal notice, use the [LPP form – general claims](#).

You can [download the forms](#) as both PDF and excel versions.

We will work with you to resolve disputed claims, or where more details are needed to support your claims.

## **Resolving claims**

We will work with you where possible to agree on a procedure for resolving legal professional privilege claims. If we reach an agreement, we will give you a written statement of what was verbally agreed and ask you to sign it.

There are limited circumstances when we may look at a privileged document while exercising our access powers, including:

- to determine if the document is relevant to our enquiries in order to decide whether to copy it
- when there is no one present to make a claim
- when you have made a blanket claim for privilege.

If we look at your documents in these circumstances, we won't argue that your privilege has been waived.

## **Inspection agreements**

We may use an inspection process to resolve multiple claims for legal professional privilege. Under this approach, each party nominates a person to inspect the documents or alternatively an independent expert will be appointed to consider the claims for legal professional privilege.

An inspection agreement will usually clarify certain matters, including setting a date for completion and deciding a process for resolving disputes if either party disagrees with the decision of the independent expert.

## **Considering your claims**

We consider your claims for legal professional privilege against your supporting material and decide whether to:

- accept the claims
- ask for more information in support of your claims
- refuse the claims
- negotiate any disputed issues with you.

If we decide more information is needed to support your claims, we will usually:

- specify what further information is required
- request completion of a claim form
- specify a timeframe for you to provide the information and forms.

Where a claim for legal professional privilege has been made, but is disputed by the ATO, we will first attempt to resolve the dispute with the person. An alternative dispute resolution process may be engaged. However, if the matter can't be resolved within a reasonable time, then we may notify the person that the documents in question may be accessed within 28 days unless the person starts legal proceedings. The ATO may itself start legal proceedings.

## **Securing documents**

If we decide to secure the documents, we may ask you to seal them in a suitable container – for example, an envelope, box, locked filing cabinet or locked room, depending on the volume of documents.

We sometimes use this approach before you have made a legal professional privilege claim, especially where a large volume of documents is to be inspected. In this case, we may arrange for:

- a secure room at your business premises to be available for the duration of the access which can be sealed by our representative at the end of each day
- the potentially relevant documents to be taken to the secure room where we can inspect the contents to determine their relevance.

When we secure your documents in a container, we will:

- not argue implied waiver because of our inspection
- usually ask you to prepare a schedule of documents held in the container together with a description of each document.

We may allow you to make photocopies of the documents under our supervision before the container is sealed.

We may agree to use a container of a third party to hold the documents if privilege has been claimed and is in dispute. If we agree on a third party – for example, a firm of solicitors – we may get a written undertaking from the third party in relation to the safe keeping and return of the documents.

## **Accountants' concession**

The accountants' concession is an administrative concession we have granted to clients of professional accounting advisers. Under the concession, we will generally not seek access to certain advice documents, which we refer to as restricted source and non-source documents.

The concession recognises that while we have the statutory power to access most documents, there is a class of documents that should, in all but exceptional circumstances, remain confidential to you and your professional accounting advisers.

In respect of such documents, you should be able to consult with your professional accounting adviser to enable full discussion of your rights

and obligations under tax laws, and for that advice to be communicated frankly.

Forms for claiming the accountants' concession are available via:

- [Accountants' concession form 1 \(AC1\)](#), which is relevant to a claim for the concession in relation to a document
- [Accountants' concession form 2 \(AC2\)](#), which is relevant to a claim for the concession in relation to an attachment to a document (note that an attachment isn't covered by the concession merely because it is attached to a primary document which is prima facie covered by the concession).

## Document classification

Our approach to access under the concession varies for differing types of documents. These are classified as:

- Source documents – records of transactions (we seek unrestricted access to these documents).
- Restricted source documents – advice documents shedding light on transactions (we seek access to these documents only in exceptional circumstances).
- Non-source documents – other advice documents (we seek access to these documents only in exceptional circumstances).

The following are some examples of how we may classify various types of documents under the accountants' concession.

### Source documents

Accounting records, including:

- ledgers, journals and working papers (used for financial statement preparation)
- profit and loss accounts – balance sheets
- source records – passbooks, invoices and similar.

Permanent audit file documents, including:

- those outlining an organisation's history, structure or chain of command
- a company's constitution

- the chart of accounts
- copies of continuing contracts – for example, leases.

Tax working papers used to:

- compile information for completing tax returns
- prepare a trial balance and tax return reconciliation
- maintain files and documents for record retention or self-assessment requirements
- analyse shareholding continuity prior to the completion of tax returns.

Other documents including:

- certain non-tax advice on debt restructuring
- transaction documents – contracts and conveyances
- formation documents – partnership agreements and declarations of trust
- accountant trust records and client lists.

## **Restricted source documents**

Advice papers:

- on how to structure or record a transaction or arrangement which is carried out
- solely for the purpose of advising a client on tax-related matters.

## **Non-source documents**

Advice papers:

- provided after the relevant transaction has been completed
- relating solely to transactions or arrangements which haven't, and are not intended to be put into effect
- that don't materially contribute to a tax strategy.

Current audit and assurance files (including statutory audit, prudential tax audit and due diligence reviews), such as:

- the engagement letter

- the audit plan
- letters of confirmation
- testing results and analysis
- working papers and commentaries.

Non-source documents also include tax return opinions that merely state an accountant's opinion on the matters presented in a tax return.

### **Example: Source documents**

Our officer, John, has issued a formal notice to an accountant. John is seeking information about the identification of the persons who set up or participated in an arrangement, the fees charged to them and the contributions they made.

The notice requires documents in relation to the conception and implementation of the arrangement to be produced to John.

These are source documents, so the accountants' concession doesn't apply to restrict John's access to them.

The concession only applies to documents prepared by external professional accounting advisers who are independent of you. It does not apply if either:

- you make any documents covered by the concession available to us
- the documents relate to non-tax purposes – for example, to determine a potential liability under a contract.

A document prepared by an accountant could also be subject to legal professional privilege if it was created for the dominant purpose of obtaining legal advice or use in actual or contemplated litigation. In that case, the privilege claim would generally be determined first – if privilege does not apply, we would then consider the accountants' concession.

## **Guidelines to accessing professional accounting advisers' papers**

It is accepted that there is a class of documents which should, in all but exceptional circumstances, remain within the confidence of

taxpayers and their professional accounting advisers. In respect of such documents the ATO acknowledges that taxpayers should be able to consult with their professional accounting advisers on a confidential basis in respect of their rights and obligations under taxation laws to enable full and frank discussion to take place and for advice to be communicated on that basis.

For more information, view the [guidelines to accessing professional accounting advisers' papers](#).

## Exceptional circumstances

We will only seek access to restricted source documents and non-source documents in exceptional circumstances and with the approval of a designated senior officer.

We may consider there are exceptional circumstances and lift the accountants' concession when:

- the documents provided do not enable us to determine the tax consequences of the particular transactions or arrangements
- the law requires us to determine the purpose for which a transaction or arrangement was entered into – for example, under Part IVA of the ITAA 1936 or the promoter penalty laws
- we have reasonable suspicion of tax evasion or fraud, an offence under the TAA or any other illegal activity
- there is a likelihood that your source documents may be lost or destroyed.

The accountants' concession isn't the same as legal professional privilege – there are several significant differences, including:

- a request for tax advice or instructions isn't protected by the concession
- you can't redact part of a document based on the concession because it is based on a sole purpose test.

If we intend to lift the concession, we will specify the nature of the exceptional circumstances we intend to rely on. In most cases, you will be given adequate opportunity to respond and argue your position.

## Corporate board advice concession

The corporate board advice concession is an administrative concession we have granted in respect of advice for a corporate board on tax compliance risk. This is the information within a document created:

- by advisers (being suitably qualified in-house or independent advisers)
- for the sole purpose of providing advice or opinion to a corporate board (including properly constituted sub-committees) relating to a major transaction, arrangement, corporate system or process
  - on the likelihood and impact of the tax compliance risk
  - as to whether the ATO or an administrative or judicial decision making authority may take a contrary view or position to that of the taxpayer on the tax compliance issue, or
  - for courses of action to effectively manage the tax compliance risk.

We will seek access to these documents only in exceptional circumstances, such as when:

- you haven't cooperated or are not cooperating with us to provide full and complete information in a timely manner and the advice or information subject to a claim for the concession is considered relevant to the compliance activity (relevance is a matter for us to determine)
- information important to the compliance activity, including evidence as to the purpose for entering into or carrying out a transaction or arrangement, can't be sufficiently established from your documents and other enquiries
- you have a history of serious non-compliance, for example, involving fraud or evasion or persistent avoidance of your tax obligations, or are under investigation in that regard
- the Commissioner has reasonable grounds to believe that an anti-avoidance provision may apply
- you have a demonstrated history of aggressive tax positions that we have significant concerns about.

The decision to lift the protection under the corporate board advice concession must be made by a designated senior officer. The decision

will specify the nature of the exceptional circumstances we intend to rely on. In most cases, we allow you an adequate opportunity to respond before the decision is made.

Some advice for a corporate board on tax compliance risk may also be subject to claims for legal professional privilege or the accountants' concession. In these circumstances, claims regarding the documents in dispute will generally be evaluated in the following order:

- legal professional privilege
- accountants' concession
- corporate board advice concession.

The corporate board advice concession does not cover documents:

- prepared for a reason other than providing advice, but attached to that advice
- merely labelled as advice, but which identify a transaction.

Under the corporate board advice concession, redaction is possible if the advice is for the sole purpose of advising the board on tax risk.

For more about our policy regarding ATO access to advice for a corporate board on tax compliance risk, refer to [PS LA 2004/14](#) - *ATO access to advice for a corporate board on tax compliance risk*

Find out more about how to [submit a claim for the concession](#).

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## Gathering offshore information

We have powers to obtain and exchange information with other tax jurisdictions.

**Last updated** 1 May 2024

## **Overview of how we collect offshore information**

As more Australian taxpayers conduct international dealings and hold investments overseas, we have increased our focus on international tax issues.

When gathering information from overseas during compliance activities, we generally use a cooperative approach first. We may also collect information and documents located offshore by:

- using our domestic information-gathering powers to get information about offshore dealings by accessing information held by entities in Australia
- issuing an offshore information notice
- an exchange of information with other jurisdictions under various arrangements.

The requirement to substantiate your returns and statements rests with you. If your records are kept offshore you're still required to provide them to us. You can't refuse to provide records we require under a notice simply because your returns or advice were prepared outside Australia.

## **Using our domestic powers**

Although we have specific powers to gather information and documents from offshore jurisdictions, we can also use our domestic notice and access powers in certain situations.

We can use our domestic notice powers if an entity in Australia has custody or control of documents located offshore. These powers require the entity in Australia to obtain the documents from offshore and give them to us.

The following examples explain our approach to gathering information where an entity in Australia has custody or control of documents located offshore.

## **Example: Custody and control of offshore documents**

Australia Bank Ltd is a bank listed on the Australian Securities Exchange. The bank operates a business in Australia and has central management and control situated in Australia. Australia Bank Ltd has a branch in New York City.

Australia Bank Ltd has custody and control of the documents and information in respect of the branch located in New York – this is because a branch located offshore isn't a separate legal entity.

## **Example: Control of offshore documents**

Harrinder is an Australian resident taxpayer living in Sydney. Harrinder has a safe deposit box with a bank in Liechtenstein, where she keeps financial statements and documents in respect of her offshore assets.

In this situation, the safe deposit box is under the control of Harrinder. She can get the contents of the box by making a request to the bank. We can issue a formal notice to Harrinder requiring details of the contents of the safe deposit box.

## **Example: Control of information about foreign bank accounts**

We issue a notice under section 353-10 of Schedule 1 to the TAA 1953 to a bank in Australia requiring details of foreign bank accounts held in the bank's digital database in Australia.

The bank must comply as the notice was issued for the proper purpose of ascertaining whether persons may have an Australian

tax liability. The notice isn't limited to information directly relating to Australian taxpayers.

This example relating to control of information about foreign bank accounts is based on the decision in [Australia and New Zealand Banking Group Limited v. Konza & Anor \[2012\] FCAFC 127](#).

## Banking transparency

In recent years, we have increased the number of information requests made to banks in order to help identify undisclosed foreign-sourced income evident in bank transactions.

The validity of our formal notices isn't inhibited by any foreign law that purports to prohibit the disclosure of information in Australia to us, provided the notice is issued for the purposes of the tax laws.

## Offshore information notices

If we believe that the information or documents we need about your tax affairs are located outside Australia, we can issue you with an offshore information notice.

We may issue you with an offshore information notice for any information or document that we reasonably believe is:

- relevant to the assessment of a tax-related liability of yours
- 'offshore information' or an 'offshore document'.

'Offshore information' is any information that is:

- within the knowledge (whether exclusive or otherwise) of an entity outside Australia
- recorded (whether exclusively or otherwise) in a document outside Australia
- stored (whether exclusively or otherwise) by any means whatsoever outside Australia.

An 'offshore document' is any document that is outside Australia (whether or not copies are in Australia or, if the documents are copies of other documents, whether or not those other documents are in Australia).

An offshore information notice will request you to:

- give us the relevant information
- produce the relevant documents
- make copies of the relevant documents and produce those copies.

Although we are not required to specify a period to which our request relates to in these notices, we will generally provide you with these dates.

The information we request in the notice doesn't need to be in your custody or under your control. There are no penalties or criminal sanctions for non-compliance with an offshore information notice. However, if you refuse or fail to give us the information or documents requested in the notice, then that information or those documents (or secondary evidence of the documents) are inadmissible in any court or tribunal proceedings relating to a tax-related liability of yours, unless we consent to it.

You can challenge our decision to issue an offshore information notice under the *Administrative Decisions (Judicial Review) Act 1977*.


## **Form of an offshore notice**

An offshore information notice we issue must be in writing and include:

- the legislative provision under which it is issued
- your name
- your address for service
- the date of issue
- details of the assessment of a tax-related liability of yours to which the information and documents are relevant
- information to be given, the documents to be produced and the documents to be copied and produced
- details on how to comply with the notice, including
  - the time you have to comply
  - names of our contact officers
  - the address to which the information, documents and copies are to be sent

- any other requirement as to the manner in which compliance is required
- the consequences of not complying.

## Time given to comply

We give you at least 90 days to comply with an offshore information notice. You can download the approved form [Request for extension of time to comply with an offshore information notice \(PDF, 242KB\)](#)  for an extension of time to comply with the notice. That application must be received by us before the end of the period stated in the notice. We will consider your application and provide you with a response in writing.

## Exchange of information

The exchange of information with other jurisdictions improves tax administrative practices worldwide. Mechanisms used to exchange tax information with other jurisdictions include:

- exchange of information articles included in our double tax agreements
- tax information exchange agreements.

Exchange of information is limited to jurisdictions that have an agreement with Australia. The exchange is dependent on the cooperation of their tax administrations to collect information, and in some cases there may be restrictions on how we use the information and documents received from them.

Information can be requested by us or may be given by the foreign authority on its own initiative. Before requesting information from another jurisdiction, we consider whether the information is either:

- held within Australia, or is in the custody or control of someone within Australia, and may be accessible using our domestic access powers
- able to be got using an offshore information notice.

We generally make requests for information from foreign tax authorities where:

- we have been unable to get information or documents from you or third parties in Australia
- we suspect you or your representative has failed to disclose offshore income or assets to us
- we require bulk data to confirm foreign-sourced income is being returned by Australian taxpayers.

## **Multilateral conventions**

Australia is also a party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*. The convention is a freestanding agreement designed to promote international cooperation. It provides for:

- the exchange of information
- the service of documents
- other forms of cooperation including joint audits
- assistance in collection of outstanding tax liabilities.

Some tax treaty articles and multilateral conventions also facilitate international debt recovery and use a cooperative approach to collection.

## **Cross-border initiatives**

Cross-border transactions within the global economy create the potential for tax risks across tax administrations, including Australia's.

Our participation in the Joint International Tax Shelter Information Centre is a key part of our overall strategy to deal with aggressive tax planning. The centre plays an important role in the detection of abusive tax schemes and identifying those who promote and invest in them. Our membership increases our intelligence on abusive tax schemes and helps us deal with those schemes.

We also work with the Organisation for Economic Cooperation and Development (fiscal affairs working party) on tax evasion matters to address the economic, social and governance challenges of globalisation.

QC 56551

# Gathering electronic information

Guidance on providing your information electronically.

**Last updated** 1 May 2024

## Overview of how we gather electronic information

When gathering electronic information, we will work with you to help ensure the information is given to us in an efficient and effective way. We prefer you to give us electronic information if possible. The benefits of providing copies of electronic information include:

- you may save time and money by not having to copy or print the documents
- electronic information is likely to be easier and less costly to copy and send
- our activities are likely to be completed in a shorter timeframe – for example, we can analyse the information by using computer-assisted verification.

If your information is to be given to us electronically, we will usually arrange a meeting with you to discuss:

- your accounting systems
- the format and extent of the electronic records you keep
- any documentation you have that may assist in our analysis – for example, your chart of accounts, reference tables or data dictionary.

Your tax adviser and information technology specialists can attend this meeting if you wish.

Under our notice and access powers, documents include anything from which sounds, images or writings can be reproduced, with or without the aid of anything else. This means we can seek information

stored electronically, such as data on thumb drives and computer hard drives.

For the full definition of a document, see [section 2B](#) of the *Acts Interpretation Act 1901*.

We will consider your costs during the planning of our access visit and throughout our information-collection activities. However, you're not entitled to reimbursement for those costs incurred in giving us access or complying with a formal notice.

## **Cloud computing**

Electronic information may be stored with a third party, including data stored on a cloud. Cloud computing entrusts a user's data, software and computation with a remote service provider via the internet from any location. An email account or file storage arrangement are examples of cloud computing.

Where the documents stored on a cloud are immediately accessible to you, we may use our notice or access powers to obtain them. We may also seek the information under a double tax agreement.

We may send you a formal notice under section 353-10 or section 353-25 of Schedule 1 to the TAA 1953.

A section 353-10 notice can be sent to any person who has control of the documents in question, whether or not they have custody. The notice to produce the relevant documents can be issued to you or to a third party who has custody of the documents.

If you fail to respond to a section 353-25 notice (that is, an offshore information notice), you may not be able to produce the offshore documents as evidence in a legal dispute with us relating to a tax-related liability of yours, unless we consent.

## **Using our formal powers**

### **Notice powers**

We may issue a notice requiring you to give information stored on a computer. We may require you to produce the information in either electronic form or as paper documents, or both.

Our notices may require the production of electronic information at any place that we reasonably nominate, including your premises.

## **Access powers**

When using our access powers, we may ask to copy information from your computer system to an electronic storage device and will provide copies of these to you on request.

We will also provide you with a letter confirming our receipt of the downloaded information, if required.

We won't operate your computer system unless we are taking formal access and you have chosen not to access it for us.

If we need to operate your computer system, we will usually:

- have our computer specialists access your computer
- give you a reasonable opportunity to be present during the access
- record the steps we take to search for and copy your data.

## **Copying electronic information**

We may find that a large number of the documents we require are stored on your computer. Our officers must make an effort to determine the relevance of those documents before copying them.

## **Providing reasonable facilities and assistance**

As the occupier of land, premises or a place being accessed, you must provide us with reasonable use of your facilities and assistance to extract relevant information stored on computer if we need it.

We may require facilities and assistance to:

- make extracts or copies, whether hard copies or in electronic format
- access a computer including login codes, keys, passwords and software manuals
- copy an encrypted document for us – in this situation, you may need to remove the encryption, provide the password or operate the computer for us.

You may prefer to operate your computer, work together with us to enter passwords, and help us to locate the information we need on your computer system.

### **Example: Reasonable facilities and assistance**

During an access visit our officer, Lucy, needs to gain access to a computer system. She needs to make a hard copy of some of the information.

Lucy must be provided with reasonable assistance and facilities by the occupier of the building.

If she needs an electronic copy, Lucy can copy that information held on computer to an electronic storage device, with the occupier's assistance.

## **Verifying electronic information**

We may use various methods to verify the accuracy and completeness of information provided electronically, including statistical sampling and forensic testing.

If you maintain electronic financial records, we may use computer-assisted verification to analyse the records. This method allows us to test for errors, quantify a tax risk and identify particular items of interest.

Computer-assisted verification has a range of benefits, including:

- it may be cheaper and more efficient for you to give us information electronically
- we may make fewer requests for paper copies of transactions and reports
- we may need less time at your premises and so minimise disruption to your regular business activities.

We use specialised computer verification software to verify that the electronic information you provide is accurate and complete. We can then conduct a series of tests on your data to ensure you comply with the tax laws.

At the completion of the compliance activity, we will securely store the copied electronic information as part of our case file. Both the electronic and paper records provided to us are held in accordance with the secrecy provisions contained in the TAA and the Privacy Act.

Find out more about respecting your privacy under [Your rights](#) in the [ATO charter – what you need to know](#).

QC 56551

## Resolving information gathering disputes

How the ATO seeks to identify and resolve information gathering disputes as early as we can

**Last updated** 15 May 2025

### Resolving an information gathering dispute

Many disputes with the ATO involving information gathering arise because of simple misunderstandings. To help minimise misunderstandings, where possible we manage our information-gathering activities by:

- gaining an understanding of your circumstances, what records you keep and how you keep them
- working with you to obtain information in a mutually convenient format
- clearly explaining why we need your information
- discussing the due dates of our request for information with you
- contacting you shortly after we send a request for information
- having regular discussions with you on the progression of our information-gathering activities.

If you have a dispute with us in relation to our information-gathering activities, you can expect that we will:

- seek to identify the issues in dispute and resolve them as early and fairly as possible
- engage our advisers and decision makers if needed

- consider the cost of managing the dispute for both of us
- manage disputes in a courteous manner
- follow our principles for managing disputes
- use alternatives to more formal dispute resolution approaches, where appropriate
- ensure we obtain relevant information and evidence
- ensure we litigate the right cases for the right reasons.

View our [Disputes policy](#) for more about our principles for managing disputes.

## **Alternative dispute resolution**

Agreeing to an alternative dispute resolution process when we plan our information gathering with you can help clarify and limit the scope and issues of a dispute. The process can occur at any stage of a dispute. Engaging in dispute resolution at the right time is more likely to resolve an issue.

We are committed to timely and cost-effective dispute resolution and aim to provide transparency around our processes. To help reduce disputes, when we request information for large or more complex cases, we will generally:

- provide you with an opportunity to discuss the scope, appropriateness and relevance of the information we have requested – when possible, we will provide reasons for our request
- work with you to identify the most efficient way to respond to our information request – when there are significant difficulties in providing the information requested, we will work with you to identify alternative documents
- consider whether other information sources could minimise compliance costs – but there are times when we require specific documents and can't accept alternatives or substitutes
- give you an opportunity to explain the information and documents you provide.

For more routine matters and smaller or less-complex cases, including high-volume requests, we will usually provide a contact person so that

you can discuss our request, if necessary.

For more information about our policies and guidelines for attempting to resolve or limit disputes by alternative means, refer to [PS LA 2013/3](#)

[🔗](#) *Alternative Dispute Resolution (ADR) in ATO disputes.*

## Mutual expectations

If a dispute arises when we are gathering information, we will seek to resolve it with you as early and fairly as possible, to avoid it developing into a more formal dispute. You're encouraged to discuss your concerns with our officer managing your case in the first instance.


## What to expect from us

To resolve disagreements before they become more formal disputes, we will:

- use open and transparent dialogue to ensure we have a shared understanding of the issues and relevant facts of your matter
- request the information we need to make our decision, and explain why we need it
- explain our view, listen to your views, and consider any issues or alternative views you put forward
- identify issues we agree on and work with you to identify and resolve any issues in dispute
- when possible, accept information in a different format if you're unable to give it to us in the format we have requested
- engage you early and regularly for cases that are larger or more complex, such as large business and international issues
- follow through on any issues in a prompt manner to seek their resolution
- have our senior officers available to settle disagreements when you ask for an issue to be escalated.

Our obligation to act as a model litigant applies to proceedings before courts, tribunals, inquiries and commissions. The obligation extends to arbitration and alternative dispute resolution processes.

In handling claims, our officers and lawyers are to act with complete propriety and fairness and in accordance with the highest professional standards. They are not to start legal proceedings unless they are satisfied litigation is the most suitable method to resolve a dispute.

For more information about how we conduct litigation, see [PS LA 2009/9](#)  *Conduct of ATO litigation and engagement of ATO Dispute Resolution*.

## What we expect from you

To resolve disagreements before they become more formal disputes, we expect you to:

- give us all relevant information so we can make correct and timely decisions
- respond promptly and accurately if we ask you for information or clarification about something
- clearly explain the reasons why you can't give us the information we have requested – and offer alternative information when possible
- let us know as soon as possible if you consider the information we have requested won't resolve the issue at hand – and tell us what information you consider should be provided
- give us your view on how the relevant laws apply to your circumstances, if you consider this would help us
- let us know as soon as possible if you think we have misunderstood something or made a mistake
- ensure that your representatives are prepared, willing and appropriately skilled to work with us to resolve a disagreement and have the authority to do so.

## Our escalation process

We encourage open conversations. Your feedback is welcome at any stage during our compliance activity. We give you access to our senior officers when issues need to be escalated. Feedback you provide or concerns you raise won't influence our view of your compliance or your future interactions with us.


If you believe our officers haven't conducted themselves according to the principles and practices in these guidelines, a senior officer will be available to hear your concerns. We take any claim of abuse of our formal powers seriously. We consider the facts and circumstances of each case. Our investigations could result in counselling or disciplinary proceedings against the officers involved.

There are consequences for not complying with our formal notice. If you receive a notice from us that you disagree with, you should contact us before the due date. If there is a delay in giving us your information, we expect you to discuss this with our compliance team – early discussions help to identify and resolve issues causing the delay. This can give you clarity about our information request, resolve the reasons for the delay and canvass future action should a resolution not be reached. Some matters will require escalation within your own organisation or within ours to a senior officer.

Our escalation process is intended to help resolve information-gathering issues without us needing to use our formal powers. The role of our senior officer in these circumstances isn't to assume control of the compliance activity, as that responsibility will usually remain with our compliance team. Instead, the senior officer will work with you and the compliance team to try to resolve the issues. At the end of this escalation process, if the matter isn't resolved, each party should clearly understand the other's position, the issues and the next course of action.

It is helpful if we agree on an escalation plan at the beginning of the compliance activity. This would generally include the contact details of your senior representatives and the name of our senior officer who can be contacted for unresolved matters.


Our officers will negotiate with the taxpayer to try and resolve any information gathering issues that arise. If the issue can't be resolved it will be escalated to a senior officer.

 **Our officers negotiate to resolve information gathering issues with taxpayers, and will escalate any issues to our senior officers, as previously described in this section.**

### **Making a complaint**

If you have concerns that you can't resolve with our compliance team, you can escalate the matter to our senior officer nominated at the start

of your case.

If you're still not satisfied, you can make a complaint to us – we try to resolve [complaints](#) quickly and fairly. If you are not satisfied with how we have handled your complaint, the [Tax Ombudsman](#)  may be able to help you.

## Your rights

It is important that you're aware of your rights and obligations when dealing with us. If we intend to undertake a compliance activity in relation to your tax affairs, we will advise you about your rights and obligations by providing information set out in the [ATO Charter](#).

## Privacy and confidentiality

The *Privacy Act 1988* (Privacy Act) contains provisions designed to safeguard your information. These provisions aim to balance the protection of individual privacy against public interests, such as the efficient functioning of government.


We are required to comply with the Australian Privacy Principles contained in the Privacy Act. The principles tell us how we must deal with your personal information. They set out our obligations to act in an open and transparent way when:

- collecting personal information, including how we will use your information and for what purpose
- storing and securing personal information
- giving you access to, and allowing you to correct, personal information
- checking the accuracy of personal information before using it, and only using it for administering the laws
- using and disclosing personal information.

To find out how we deal with collection, storage, access to, use and disclosure of personal information, see the [ATO privacy policy](#).

If you think our actions have breached your privacy or the confidentiality of your tax information, your first step is to try to resolve the matter with our case officer.

If the matter can't be resolved with our case officer, you can escalate the matter to our senior officer nominated at the start of your case.

If you're still not satisfied, you can make a complaint to us – we try to resolve [complaints](#) quickly and fairly. If you're not satisfied with how we have handled your complaint, the [Office of the Australian Information Commissioner](#)  may be able to help you.

## Freedom of information

The *Freedom of Information Act 1982* gives you the right to [access information](#) in documents we hold about you. You have the right to ask us to change personal information we hold about you if you think the information is incomplete, incorrect, out of date or misleading.

If you want to access any of our documents, you should contact us first. We can provide copies of some of the more commonly requested documents without the need for you to make a freedom-of-information request.

We may refuse to give you access to documents if they are exempt – for example, when a request is made while you're under audit or enquiry, and disclosure could reasonably be expected to prejudice an investigation or the proper administration of the law.

For more information, see [Our approach to information gathering](#).

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## Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year

before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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