

Mr Klarence Lim
Australian Taxation Office

Email: IAITLA@ato.gov.au

9 November 2023

Dear Klarence,

**PCG2018/4DC Draft Practical Compliance Guideline:
Income Tax – legal liability of a legal personal representative of a deceased
estate**

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 173,000 members in over 100 countries and regions. We make this submission in response to the ATO's – [PCG2018/4DC Draft Practical Compliance Guideline: Income Tax – legal liability of a legal personal representative of a deceased estate](#) (PCG) on behalf of our members and in the broader public interest.

We make the following comments and key points for your consideration which we believe would further improve the efficacy of the amended PCG.

1. Paragraph 9 - Uplift the threshold to \$10 million

We welcome and support the PCG in uplifting the threshold for the market value of estate assets from \$5 million to \$10 million and the inclusion of additional examples to provide greater certainty to legal personal representatives (LPR) of less complex estates of the deceased in distributing estate assets before the expiration of the relevant review period without concern.

2. Paragraph 9 – tax exempt entity

A transfer of assets usually constitutes a capital gains tax event. However, a specific exemption exists in the *Income Tax Assessment Act 1997* to ensure that any capital gain or loss resulting from the transfer of assets owned by the deceased just before they died to their executor or a beneficiary is disregarded.

The exception to this rule is for transfers to tax exempt entities that are not deductible gift recipients (DGR). Transfers of assets under a will to a non-DGR charity may result in a capital gain in the hands of the deceased in the final tax return of the deceased. Therefore, we suggest the reference in the paragraph to a tax exempt entity should be a tax exempt entity that is not a DGR instead.

3. Paragraph 15 – affairs of a deceased estate

Given the PCG's focus per paragraphs 7 and 12 relates to the outstanding tax-related liabilities of the deceased person that an LPR may have up to the date of death, for clarity and completeness we recommend that for paragraph 15, the paragraph could be rephrased as follows:

“15. Where the ATO has decided to review or examine the affairs of a deceased person and their deceased estate, it will notify the LPR. The LPR will have notice of liabilities that may arise from the review. Where any outstanding tax-related liability arises, such as from omissions of rental income from estate assets, the ATO will amend relevant returns.”

4. Paragraph 15 – written legal advice

The paragraph refers to "...An LPR who abdicates responsibility and relies in blind faith on their co-LPR, a solicitor, accountant or other person is not considered to be acting reasonably. Reliance on written legal advice that they have sought about a particular matter may, however, be a relevant factor in establishing that an LPR has acted reasonably.

Given the reference to professionals other than solicitors, we suggest the sentence could be rephrased as follows:

"Reliance on written advice from a solicitor, accountant or financial adviser that they have sought about a particular matter may, however, be a relevant factor in establishing that an LPR has acted reasonably."

5. Paragraph 18 – notifying the ATO of material irregularity

With paragraph 18, the ATO needs to advise the address for the LPR 'to bring material irregularities in a tax return in writing (for example, by requesting an amendment)'.

We assume it is the same ATO address as provided in the following ATO forms:

- [Request for amendment of income tax return for individuals](#) (NAT 2843-11.2014), and
- [Request for amendment of income tax return lodged by tax professionals](#) (NAT 71837-03.2023).

If our assumption is correct, the ATO needs to include the above ATO amendment forms and the ATO address to send tax amendments in the paragraph:

Australian Taxation Office

PO Box 3004

PENRITH NSW 2740

6. Paragraph 21 – within the 6-month period

Where the ATO has 'not been able to process the amendment request within the 6-month period' as per the first bullet in paragraph 21, it is necessary for the ATO to issue a written notification to the LPR. It is unreasonable for the LRP to not have in writing anything from the ATO confirming its intention after six months. We suggest paragraph 21 could be rephrased as follows:

"21. For example, this may arise where the ATO has:

- not been able to process the amendment request within the 6-month period. The ATO will notify the LPR in writing that the amendment request will be processed and the LPR has notice of an ATO claim, or
- had to seek further information to confirm the details of the amendment request."

7. Paragraph 46 – error in the assessment

Paragraph 46 of Example 5 refers to an error in disclosure of the period the rental property was rented out and not an error in the rental income reported in the tax return. On those facts, the tax assessment is correct and not as stated 'an error in the assessment for the 2015 income year'. Therefore the paragraph could be rephrased as follows:

"When preparing the date of death tax return, John thought that there was an error in the assessment for the 2015 income year, noting that the tax return for that year disclosed that Susan's rental property was rented for half a year when in fact the property was rented for a full year. Following enquiries with Susan's property manager, John confirmed that the reported rental income for the 2015 income year was still correct."

Example 5 illustrates what is not a material irregularity due to an error in disclosure, we recommend the ATO to also state in the example that where there is an error in the calculation of the income tax liability instead, the error is material irrespective of the quantum of the amount. This is because the Commissioner has no power to write off/waive a debt owing to the Commonwealth. That power is vested with the Finance Minister (which is intended to, among other things, avoid conflicts of interest).

If you have any queries, contact Bill Leung, Tax Technical Advisor on (03) 9606 9779 or bill.leung@cpaaustralia.com.au.

Yours sincerely,

Elinor Kasapidis
Head of Policy and Advocacy



