

Responding to ATO enquiries

9-step tip sheet for tax practitioners

Introduction

Tax practitioners are usually the first contact point for ATO enquiries about their clients' tax affairs. This 9-step tip sheet provides suggested actions and considerations for tax practitioners to contemplate when responding to an enquiry from the ATO. These steps can be applied to various types of engagements include verification checks, reviews and audits across all types of taxpayer segments.

Selected current focus areas for the ATO include:



Individuals

Work-related deductions
Rental properties
Capital gains
Undeclared income



Small business & private wealth

Trust taxation
Personal use of business assets
Restructures & succession planning
Offshore income and investments



Tax practitioners

Teardrop risk model
Practitioner risk view
Performance across registration, lodgment, reporting and payment



Tax governance

Weaknesses in accountable management and oversight
Reporting integrity
Oversight of tax issues and risks



Shadow economy

Undeclared income
Unexplained wealth
Poor record-keeping
Lodgment performance
Employee entitlements



Tax avoidance and fraud

Trust taskforce
Anti-avoidance provisions
Illegal phoenixing
Serious financial and organised crime

Engaging with the ATO can be a challenging and stressful experience for clients and their representatives. This tip sheet is intended to support tax practitioners to plan a response, properly inform and advise clients and protect their practice.

9 steps to consider when responding to ATO enquiries

1. Determine the ATO's purpose
2. Review client file
3. Undertake risk assessment
4. Inform your client
5. Prepare to respond
6. Engaging with the ATO
7. Complaints, objections and disputes
8. Objecting
9. Tax Practitioners Board.

1. ATO purpose

The ATO will have a reason for contacting you and the initial communication should provide some explanation as to the purpose of their enquiry. ATO contact details should be provided to you and this enables you to seek further details as required.

Consider:

- A. What is the purpose of the enquiry?
- B. Which Client Engagement area is contacting you?
- C. What product does the engagement fall under?
 - Risk review – specific issue or comprehensive
 - Integrity or refund checks
 - Audits
 - Engagement programs – Top 1000, Top 500, Next 5000
- D. Which tax risks or issues are being considered?
 - What are the specific tax issues?
 - Is it a particular tax return label?
- E. What are the concerns?
 - Substantiation
 - Incorrect tax treatment
 - Restructuring or commercial deals
 - Poor economic or tax outcomes
 - Undeclared income.

These details enable you to scope the enquiry and better tailor your response. This can save a lot of time and resources for your client, the ATO and you.

2. Review client file

Check the engagement terms you have in place with your client including:

- A. Review the letter of engagement
- B. Confirm the right to act on behalf of your client
- C. Identify and manage any conflicts of interest
- D. Ensure that confidentiality can be maintained
- E. Check audit insurance terms and conditions.

Be clear on the scope of services to be provided under the letter of engagement and determine any additional arrangements or fees that may be required. Consider whether the requirements of an audit insurance policy may be a consideration when determining the engagement approach.

3. Undertake risk assessment

For your client

Assessing the level of risk in relation to the enquiry enables you to provide informed advice to your client about the possible approaches and potential outcomes.

- A. Identify available documentation and evidence relevant to the ATO enquiry
- B. Confirm knowledge and interpretation of the relevant provisions and associated administrative and judicial guidance
- C. Risk-assess the client's position against the Commissioner's view
- D. Assess the likelihood or risk of an ATO adjustment
- E. Assess the potential penalty based on available evidence
- F. Consider Part IVC of the Taxation Administration Act 1953.

For your practice

Practitioners should also undertake a risk assessment from a practice management perspective. Consider:

- A. Establishing record-keeping practices consistent with ATO guidance
- B. Setting up document management protocols to ensure that relevant documents are kept for the minimum retention periods
- C. Seeking independent advice for:
 - Second opinions
 - Risk management or mitigation strategies including voluntary disclosures
 - In the event of a Tax Practitioners Board (TPB) or promoter penalty investigation being commenced
- D. Risk-assessing practice processes against the Tax Agent Services Act 2009 Professional Code of Conduct and TPB guidance.

4. Inform your client

Once you have scoped the ATO enquiry, assessed the level of risk and considered the available options:

- A. Confirm authority to act and the scope of engagement as required
- B. Address any conflicts of interest or confidentiality issues
- C. Inform your client of their rights and obligations under the [Taxpayers' Charter](#) and other relevant information
- D. Discuss the ATO enquiry
- E. Advise clients of their risk profile and inform them of their options to manage and mitigate risk
 - Is there a reasonably arguable position?
 - Has reasonable care been taken?
 - Is there sufficient documentation to support the position?
 - What are the potential responses from the ATO?

F. Support the client to decide how to proceed:

- amendments
- voluntary disclosures
- audit adjustment
- objection
- litigation.

Different clients will have different preferences with their decisions influenced by a range of factors including finances, time and emotional cost. It's important to consider the wellbeing of your clients and understand their needs.

5. Prepare to respond

Agree with the client on the course of action and then establish a plan to respond to the ATO.

Tailor the response to the ATO's enquiry and request additional time or refinements to scope as early as possible (if required).



Be mindful that the ATO keeps records of all conversations and correspondence with the ATO.

A. Ensure to:

- Fully understand the ATO's line of enquiry
- Establish a proper understanding of the facts

B. Gather evidence and support your client to identify and collate the necessary documentation and information

C. Check documents for direct relevance, legal professional privilege/accountants' concession and attached metadata

D. Identify areas of uncertainty

- What additional evidence or advice may support the client's position?
- How might the ATO respond to a disclosure or in an audit?

E. Communicate with the ATO

- Targeting information requests
- Confirming the basis of the enquiry

F. Prepare for any meetings with the ATO

- Scope of discussion
- Focus responses on the issues
- Remember statements will be kept on record by the ATO whether the engagement is informal or formal
 - If your conversation is recorded, request a transcript from the ATO for review and correction
- Ensure your client is informed about the penalties for false and misleading statements and the Commissioner's information gathering powers.

6. Engaging with the ATO

Be prepared for ATO interactions and be aware of the evidence – written or verbal – that you are providing on behalf of your client. Keep your client informed as ATO enquiries can often evolve over time.

- A. Identify the ATO contact and escalation points
- B. Establish a common understanding of the issue and the facts with the ATO
- C. Be mindful Professional Code of Conduct obligations under the *Tax Agent Services Act 2009* (TASA).



Consider the evidence and statements you provide to the ATO.
Do not give up clients' legal professional privilege or accountants' concession.
Be aware of metadata such as timestamps and geolocation records attached to digital files.

7. Complaints, objections and disputes

Understanding the complaints, objections and disputes processes are important if your client wish to seek an independent review or to access dispute resolution services to resolve issues that arise, often in an audit setting.

The Taxpayers' Charter sets out the ATO's [commitments](#) to taxpayers subject to a review or audit including the right to be informed and the right to question decisions. ATO officers are required to inform taxpayers and their representatives of their rights throughout the process.

Where you or your client believe the ATO has not met your expectations or not conducted itself as outlined in the Taxpayers' Charter, you or your client have the right to [make a complaint](#).

If there is disagreement with a technical decision the ATO has made about your client's tax affairs, your client has the right to have the decision reviewed through the formal process. There are a range of decisions that [can](#) be objected to but also a number that [cannot](#) be objected to but where there are generally other ways of having the decision reviewed.

8. Objecting to a decision

Consider [lodging an objection](#) if:

- you disagree with the way the ATO has interpreted the law
- you're uncertain about your interpretation of the law
- you want the option of seeking an external review if the ATO doesn't agree with you
- the ATO has made a decision to retain a refund.



Ensure that the objection form is properly completed.
The reasons for objection should be thoroughly reasoned and clearly articulated.
Arguments that are not included in the objection are difficult to raise at later stages.
Seek specialist advice if required.

When looking to determine the basis of the objection:

- A. Review the basis of the decision (e.g., position paper or reasons for decision) including any penalties
- B. Has the ATO correctly interpreted the law and properly considered the relevant evidence?
- C. Is the level of penalty, if any, commensurate with the client's behaviour?
- D. What are the potential consequences for your client, you or your practice if no objection is lodged?
- E. Is there additional evidence or information not disclosed during the audit phase that may change the Commissioner's position?

9. Tax Practitioners Board and the Code of Professional Conduct

The TPB received almost 1300 referrals in 2021-22, of which almost 250 were from the ATO. Potential breaches of the *TASA* identified by ATO officers during their engagements may be [referred](#) to the TPB.

You should consider seeking legal advice if contacted by the TPB in relation to a complaint, preliminary enquiries or an [investigation](#).

Adhere to your obligations under the [Code of Professional Conduct](#), in particular:

CODE ITEM 7

You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.

CODE ITEM 9

You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.

CODE ITEM 10

You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

CODE ITEM 12

You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.

About the author

This tip sheet has been created from the content presented in CPA Australia's 1 March 2023 webinar, What to do when the ATO comes knocking – Understanding the ATO's engagement approach. The information is current as at March 2023.

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