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Contingency fees – the hidden risk behind refund promises

Tax professionals offering to work for a percentage of your refund may be putting you at risk of increased ATO scrutiny.

Last updated 7 April 2026

Tax professionals play an important role in the tax system and most work hard to assist their clients to comply with their tax obligations. However, we've identified that some tax professionals are:

- advising taxpayers to claim refunds they may not be entitled to
- charging fees based on a percentage of any refunds received, with no other fees charged.

While contingency fees are legal, this fee structure can indicate a refund claim is at higher risk of being incorrect and could attract our scrutiny. If we identify that you're not entitled to the refund, we'll require you to repay any overclaimed amounts along with any financial penalties we may impose.

Aggressive tax planning is risky

We're particularly concerned about contingency fee arrangements where tax professionals encourage historical refund claims without ensuring the taxpayers have the necessary supporting information to substantiate the claim.

In addition to the fee structure, other common warning signs can include:

- promises of guaranteed tax savings

- complex structures with unclear benefits
- not verifying facts or examining documentation before making a claim
- claims of 'specialist' advice that's not tailored to your specific circumstances of the claim
- pressure to act quickly.

What we're seeing

We've listed some common areas we're concerned about.

High-risk refund claims

Below are some examples of higher-risk refund claims where tax professionals charging contingency fees have approached taxpayers, including through unsolicited contact, about potential refund claims:

- GST refunds – claims they can secure substantially higher GST refunds, sometimes relying on broad estimates with limited supporting evidence and, in some cases, contrary to established ATO views.
- Research and development tax incentive (R&DTI) – offers to assist with R&DTI claims, often made through unsolicited contact. In many cases, the tax professionals provide limited or no advice to the taxpayer on their eligibility, or their record-keeping and substantiation obligations.
- Fuel tax credits – claims that taxpayers have missed out on claiming their full fuel tax credit entitlements in previous years and encouraging them to make inflated and unsubstantiated claims for those prior periods. We're also aware of situations where taxpayers have been advised we've endorsed their position and that amending prior claims will not be scrutinised.

Approaches of this kind can place taxpayers at heightened risk of review by us, which may lead to amended assessments, increased liabilities, and financial penalties.

Superannuation

We've observed tax professionals advertising a method of accessing super to purchase a personal property using a self-managed super fund (SMSF). The taxpayer establishes a SMSF, which they invest with the tax professional. The tax professional then subtracts a significant percentage as their fee before transferring the remaining monies to the taxpayer, despite them not meeting any of the conditions to personally access or use their super.

Illegal early access to super will cost taxpayers a lot more than the super withdrawn and may lead to significant financial consequences and lost retirement savings.

Working together to address misconduct

Where we see early indicators of potential misconduct by tax professionals, we engage promptly with partner regulators such as the Tax Practitioners Board (TPB) to support timely intervention and integrity of the system.

We collaborate with the TPB through regular engagement, active intelligence-sharing and referrals. This enables the TPB to act on breaches of the Code of Professional Conduct by registered tax practitioners.

A tax practitioner is a tax professional who's registered with the TPB. Only registered tax practitioners can charge a fee for preparing and lodging your tax return or business activity statement (BAS). You can check whether a practitioner is registered by visiting the TPB Public Register.

Using a registered tax practitioner provides an important level of consumer protection, as the TPB ensures they:

- meet education and experience requirements
- comply with the Code of Professional Conduct
- hold appropriate professional indemnity insurance.

However, engaging a tax practitioner doesn't transfer your responsibility for what's lodged on your behalf. You're still accountable for the accuracy of your tax return and may be liable if claims are incorrect.

If you have concerns about a registered tax practitioner's conduct and cannot resolve the issue directly with them, you can:

- anonymously **report** your concerns to us
- make a complaint to the TPB, including for services provided by unregistered preparers.

Check risky advice before acting

Following risky advice may lead to financial penalties. Before acting on any tax advice that raises red flags, we encourage you to:

- ensure the tax professional has provided the basis for their advice
- ask for the ATO view (for example, rulings or taxpayer alerts) so you can confirm whether the advice you've received aligns with our published guidance
- request precedents or case outcomes that support the **advice**, if relevant
- consider seeking an independent second opinion from a different qualified tax professional
- verify documentation provided by the tax professional and ensure assumptions are clearly explained in writing.
- contact our **early engagement advice service** to check if the advice you've received, or an arrangement you've been offered, is correct.

This will help you assess the potential risks involved in adopting a particular position.

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