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Public advice and guidance compendium – PCG 2018/4

This is a compendium of responses to the issues raised by external parties to draft PCG 2017/D12 *Income tax: liability of a legal personal representative of a deceased person*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	We welcome the protections proposed by this draft PCG. We suggest you do not delay finalisation pending solution to all issues, including institutional differences between States. This PCG is a great step towards providing certainty for LPRs. This is a welcome release from the ATO. This is progress. We have been asking for guidance so we got some.	No action required.
2	Scope should be wider – we are not aware of any legislative requirement relative to the LPR liability predicated on the nature of the estate assets.	This Guideline is a concession only. It is targeted at smaller and less complex estates because they present less risk. For more information about practical compliance guidelines refer to Practical Compliance Guideline PCG 2016/1 <i>Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance</i> .
3	We would welcome assurances that the protections intended by this PCG be reviewed in 12 months with a view to extending those protections and fine tuning them – for example, by extending to larger estates.	Agreed. We will review the operation of the Guideline in the future with a view to extending the protection it offers.

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4	It would be good to see the final Guideline also providing certainty for LPRs who don't meet the criteria for the smaller less complex estates. For example, one or two year period in relation to the deceased's outstanding returns for all other estates.	We will consider expanding the scope of the Guideline when we review its operation.
5	Concept of notice of claim is not valid.	There are different views about the way the law operates. This Guideline is a pragmatic approach to dealing with the issue of notice without the need to resort to litigation.
6	In regards to 'material irregularity', an LPR is required to establish the compliance of deceased returns to the level of an audit.	We do not require an audit of returns lodged by the deceased. We expect disclosure only of items that have come to the attention of the LPR, or should reasonably have done so, in administering the estate.
7	Concept of material irregularity is unreasonable in necessitating professional judgment requiring hiring of an accountant.	We do not expect that an accountant should have to be hired solely for this purpose. If there is a concern about materiality, the matter can simply be disclosed. In time we may be able to add further examples to help clarify the concept of material irregularity.
8	Delay in present entitlement will arise from an inability to fully provide for liabilities during a six month period. Delay in distribution of funds.	LPRs can choose to apply the Guideline timelines if they wish to obtain a high level of assurance around their tax treatment of the deceased's affairs, but they can choose not to 'rely' on the Commissioner's protection, where in their judgment, such assurance is not needed.
9	The six month notice period will create delays – an LPR should be able to 'rely' on a notice of assessment, as normal, with standard periods of review.	The Guideline is intended to effectively reduce statutory periods of review and, for those that need to rely on it, should facilitate faster estate administration.
10	An LPR should have access to the tax file number, four years of tax returns, assessments, objections and paid	This is a matter being considered separately from the issue dealt with by this Guideline.

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	tax liabilities.	
11	Will the ATO issue a product for where probate has not been obtained? Once the Guideline is in operation, the issue of how section 260-145 of Schedule 1 of the <i>Taxation Administration Act 1953</i> applies for an executor properly administering an estate without probate as Queensland law facilitates, may be able to be mitigated by fine tuning this PCG, or other administrative measures.	It is not clear that there is a need for such a product. This Guideline is intended to provide certainty about the scope of an LPR's liability. There is no such liability under section 260-145.
12	Does this Guideline deal with liabilities relating to superannuation?	This Guideline will apply to liabilities under Divisions 291, 292 and 293 of the <i>Income Tax Assessment Act 1997</i> . For this reason the scope has been limited to estates where the deceased was not a member of a self-managed superannuation fund.