PS LA 2003/7 - How to treat a request to lodge a late objection

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PS LA 2003/7
How to treat a request to lodge a late objection

This Law Administration Practice Statement provides guidance on requests to treat out of time objections as if they were lodged within time.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. Overarching principles

We have the discretion to treat a late objection as if it had been lodged within the time limit.[1]

As a general rule, requests for extension of time are to be approached on the basis that extensions will be granted, unless there are exceptional circumstances.

2. What must a taxpayer do to have the out of time objection considered as if it was lodged within time?

If a taxpayer wants to object to a decision but the time limit has passed, they can lodge a late objection together with a written request asking that the late objection be treated as if it had been lodged within time.

The written request should include an explanation why the objection was lodged late[2]. If their explanation seems inadequate give them the opportunity to provide further information or a better explanation. It is not essential that they do; and, even if they don't, the absence of a detailed explanation should not be the sole reason for refusing to agree to extend the time. You must consider the explanation together with other factors in arriving at a decision (refer to paragraph 4).

If a request has been received without the objection you will need to ask the taxpayer to lodge the objection. You cannot consider the request until the objection has been received.

3. Out of time objection lodged within amendment period to amend

Where an out of time objection has been lodged without a written request, but within the time limit allowed to amend an assessment, and the claim is reasonable and likely to be allowed in full, it is not necessary to ask the taxpayer to lodge a written request. The late objection is to be treated as an amendment request.

But if there is some doubt the claim is allowable, then the taxpayer needs to lodge a written request asking that the out of time objection be considered as if it had been lodged in time.

4. Factors you should take into account

When considering a request for an extension, you need to weigh up such factors as:

- the taxpayer's explanation for failing to lodge the objection within the time limit (in certain cases the explanation itself may be so compelling that you may not need to consider other factors);
- the circumstances of the delay, including the extent to which the taxpayer kept us informed that they did not agree with the decision;
- whether the taxpayer has a good case for the objection to be allowed in full or in part (do not undertake a full scale investigation of the merits of the issue);
- any other relevant matters the case may bring up, such as prejudice to the Commissioner, or injustice to the taxpayer because of the negligent failure of their adviser to follow instructions.

5. Circumstances in which extensions of time will be appropriate

You must decide each case on its own merits but, provided there are no other relevant matters, you would allow an extension of time if:

- the taxpayer was too ill to lodge an objection

[1] Subsection 14ZX(3) of the *Taxation Administration Act 1953* (TAA).
[2] Subsection 14ZW(3) of the TAA.

- the taxpayer was overseas and did not return until the time limit had expired (but if they had an adviser, the adviser should have let us know there was a problem with the time limit)
- the taxation decision was sent to the wrong address
- there were problems with the mail service
- the taxpayer thought that lodging an objection was futile until a court decision – or a change in legislation or a public ruling – delivered shortly after the time limit expired made the objection reasonable
- the taxpayer thought that lodging an objection was futile but then discovered they may have believed this because we gave them incorrect information
- the issue involves an important question of law or practice
- the taxpayer has a strong case and has previously advised us before the time limit expired that they did not accept the decision and would be lodging an objection
- the taxpayer has a strong case for allowing the objection, and had requested an extension within a period for which there is a reasonable explanation for the delay
- the delay in lodging an objection in time was caused by misleading conduct by ATO officers
- the taxpayer's adviser, despite receiving prompt instructions, was negligent and failed to execute those instructions
- an individual or small business with a two-year time limit has lodged, within four years, an objection that discloses an arguable case for the objection to be allowed in full or in part.

6. Circumstances in which extensions of time may not be appropriate

Again, you must decide each case on its own merits but you would normally not allow an extension of time if:

- despite receiving prompts from us, the taxpayer has not explained why they didn't meet the deadline
- it has been an excessively long time since the taxation decision was made and the taxpayer has not offered a satisfactory explanation for the delay
- if an administrative decision is being challenged and documents have been destroyed or the decision maker has left, and we therefore cannot recall all the circumstances for making that decision
- granting an extension would prevent us from conducting our operations fairly and efficiently
- granting an extension would be contrary to the public interest and the extension would re-open a matter that has already been settled
- despite having advisers, it was the taxpayer's own decision that led to the failure to lodge a timely objection
- an individual or a small business with a two-year time limit has lodged an objection within four years that **does not** disclose an arguable case for the objection to be allowed in full or in part.

7. Notify the taxpayer

If you **refuse** a request for an extension of time you must give the taxpayer written notice of that decision.

You must note all the factors you considered and how you weighted their relevance to your final decision. For example, you might say that 'the objection does not disclose an arguable case', or 'the prejudice against the taxpayer is outweighed by the prejudice against the Commissioner'.

8. Contesting our decision

If we refuse to grant an extension and the taxpayer is not satisfied with that, they may apply to the Tribunal to have the decision reviewed.[3]

[3] Subsection 14ZX(4) of the TAA.

9. More information

The leading case concerning this discretion may provide more guidance for you. See the judgment of Justice Hill in Brown v. FC of T (1999) 42 ATR 118; 99 ATC 4516; [1999] FCA 563

For more information:

- On how taxpayers should object to a decision, see How to object to a decision
- On the ATO decisions against which taxpayers can object, see Decisions you can object to, and time limits
- On the information we provide to taxpayers about requesting an extension of time to object, see Extension of time to object

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