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

The Administrative Review Tribunal (ART) was established by the *Administrative Review Tribunal Act 2024* and commenced operations on 14 October 2024, replacing the Administrative Appeals Tribunal (AAT).

In this Practice Statement, a reference to a right to seek review of a reviewable objection decision or an extension of time refusal decision in the AAT should instead be read as a reference to a review in the ART.

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 do not 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. What this Practice Statement is about

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

This discretion is an exception to the general rule. The purpose of the discretion is to avoid injustice being caused in a particular case because of the rigid application of a time limit.

This Practice Statement provides guidance on when an extension of time can be granted to late objections. It must be worked out by considering the factors set out in section 4 of this Practice Statement. That process should be approached recognising that the Australian Parliament has entrusted to the Commissioner a discretionary power to extend the time limit in appropriate circumstances.[2]

All legislative references in this Practice Statement are to the *Taxation Administration Act 1953* (TAA), unless otherwise indicated.

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 the objection together with a written request asking that the objection be treated as if it had been lodged within time (the 'late objection').[3]

The written request should include an explanation of why the objection was lodged late.[4] If the explanation seems inadequate, give the taxpayer the opportunity to provide further information or a better explanation. It is not essential that they do and, even if they do not, 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 section 4 of this Practice Statement).

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.[5]

[1] Section 14ZW of the *Taxation Administration Act 1953* (TAA) imposes time limits for lodging objections against taxation decisions. Section 14ZX of the TAA allows the Commissioner to treat a late objection as though it had been lodged within the required period. 'Taxation decision' means the assessment, determination, notice or decision against which a taxation objection may be, or has been, made: section 14ZQ of the TAA.

[2] *Brown v Commissioner of Taxation* [1999] FCA 563 at [59].

[3] Subsection 14ZW(2).

[4] Subsection 14ZW(3).

[5] See Law Administration Practice Statement PS LA 2008/19 *Requests to amend income tax assessments*.

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 within time.

4. Factors you should take into account

You need to weigh up all relevant factors, including:

- the legislative purpose for having a limited objection period[6]
- whether the objection and the application for an extension of time was lodged by the taxpayer as soon as circumstances permitted
- 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 duration of the delay (a delay of several years would require better explanation than a delay of a few days)
  - the extent to which the taxpayer kept us informed that they did not agree with the decision and has taken steps to contest the decision
  - whether a negligent failure to follow instructions on the part of an advisor contributed to the delay
  - whether the taxpayer was informed that they could object but did not do so
- whether the taxpayer has an arguable case that the objection should be allowed in full or in part (do not undertake a full-scale investigation of the merits of the issue)
- whether the Commissioner's consideration of the objection is prejudiced by reason of the delay, including
  - where material documents have been lost, destroyed or are no longer available
  - where witnesses have disappeared or their recollections have faded, and
  - where avenues of useful enquiry have dried up or have become difficult to pursue
- whether the delay is explained, in whole or in part, by an intent to allow a period of review of the correct taxpayer and the correct tax period, as contended in the objection, to expire
- any other matter that the circumstances of the case make relevant.

5. Circumstances in which extensions of time will be appropriate

You must decide each case on its own merits. In considering the explanation of delay, and provided there are no other relevant matters, you would generally allow an extension of time if:

- the taxpayer was too ill to lodge an objection
- the taxpayer was overseas, did not return until the time limit had expired and it is shown that, in all the circumstances, those matters prevented the taxpayer from lodging an objection within time
- the taxpayer did not know about and did not receive the taxation decision because
  - it was sent to the wrong address, or
  - 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 our conduct
- the taxpayer's adviser, despite receiving prompt instructions, was negligent and failed to execute those instructions
- an individual or small business with a 2-year time limit has lodged, within 4 years, an

[6] The time limits set out in the TAA represent the Australian Parliament's judgment that the tax system is best served by objections being lodged within that time.

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 did not object within time
- the only explanation for delay is that the taxpayer has changed advisor
- 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 of 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, for example where 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 2-year time limit has lodged an objection within 4 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 Administrative Appeals Tribunal to have the decision reviewed.[7]

9. More information

The leading case concerning this discretion may provide more guidance for you. See *Brown v Commissioner of Taxation* [1999] FCA 563, per Hill J.

For more information, see:

- How to object to a decision – on how taxpayers should object to a decision
- Decisions you can object to and time limits – on the ATO decisions against which taxpayers can object
- On the information we provide to taxpayers about requesting an extension of time to object, see Application for extension of time to lodge an objection: Objections

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[7] Subsection 14ZX(4).

Amendment history

Date of amendment	Part	Comment
6 July 2023	Throughout	Amended to provide clarification.
21 October 2016	Footnotes	Updated references to TAA 1953.
31 July 2015	All	Update to new LAPS format and style.
8 May 2014	Case references	Updated.
8 May 2014	Contact details	Updated.
18 April 2013	Contact details	Updated.
29 November 2012	Paragraphs 10 and 24	Minor grammatical changes.
29 November 2012	Paragraph 31	Omitted.
29 November 2012	Contact details	Updated.
8 April 2011	Paragraphs 22, 24 and 25	STS taxpayer updated to 'small business entity' due to the introduction of the small business framework in *Tax Laws Amendment (Small Business) Act 2007*.
8 April 2011	Various	'Tax Office' updated to 'ATO' as per Style Guide recommendations.
8 April 2011	Contact details	Updated.
2 September 2009	Contact details	Updated.
8 February 2008	Various	Name changes and minor grammatical corrections.
11 October 2006	Paragraph 22 (inserted) and paragraphs 24 and 26 (amended)	Revised to include new individual and simplified tax system taxpayer timeframes as per the *Report on Aspects of Income Tax Self Assessment* published in August 2004.
22 October 2003	Paragraphs 5 and 6	Amended to provide clarification.

References

Legislative references	TAA 1953 14ZQ TAA 1953 14ZW TAA 1953 14ZW(2) TAA 1953 14ZW(3) TAA 1953 14ZX TAA 1953 14ZX(4)
Case references	Brown v Commissioner of Taxation [1999] FCA 563; 99 ATC 4516; 42 ATR 118
Related Practice Statements	PS LA 2008/19

ATO references

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