PS LA 2008/19 - Request for amendment of income tax assessments

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Australian Taxation Office

Practice Statement Law Administration

PS LA 2008/19

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This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Australian Taxation Office (ATO) staff unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the way explained below. 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.

SUBJECT: **Request for amendment of income tax assessments**

PURPOSE: **To provide direction to staff on:**

- **identifying a request for amendment, and distinguishing it from an objection**
- **assisting taxpayers to provide all of the information required, where the amendment request is incomplete, and**
- **deciding the appropriate way to respond to a request for amendment**

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BACKGROUND

1. Tax officers must distinguish between a request for an amendment[1] and an objection[2] because they have different:
   - legislative bases,[3] and
   - rights of review.[4]
2. Amendment requests and objections also have different service standards[5] and are processed differently.
3. Taxpayers can use a request for an amendment to correct a mistake or omission. The request for an amendment can be made to either increase[6] or decrease their tax liability.
4. In contrast, an objection is a formal avenue of dispute resolution. It requires the Commissioner to consider a taxation decision in an independent manner. This involves full consideration of the facts and the application of the law to them.
5. Tax officers need to exercise judgment in making their decision to treat a request either as an amendment or an objection, after taking into account all relevant information.
6. This approach enables taxpayers to receive the treatment and outcome appropriate to their request, and an appropriate balance between rights of review and timeliness.

SCOPE

7. This practice statement is restricted to taxpayers' requests that seek to change an item that affects their income tax assessment.[7]
8. This practice statement does not apply to a request to amend a return:
   - prior to the issue of an assessment, or
   - during the course of a tax audit[8] of a taxpayer.
9. In addition to providing guidance on straight forward requests, this practice statement sets out a practical approach to considering 'grey area' requests.

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[1] The Commissioner's general power to amend income tax assessments is found in section 170 of the *Income Tax Assessment Act 1936* (ITAA 1936).
[2] Further information on objections can be found in Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments*.
[3] Amendments – section 170 of the ITAA 1936; Objections – section 175A of the ITAA 1936 and section 14ZW of the *Taxation Administration Act 1953* (TAA).
[4] Amendments – no rights of review, refer paragraph 28 of this practice statement; Objections – section 14ZZ of the TAA.
[5] See ATO Service Standards.
[6] Where the taxpayer has requested an amendment that increases their liability, Law Administration Practice Statement PS LA 2006/2 *Administration of shortfall penalty for false or misleading statement*, may need to be considered, as well as Miscellaneous Taxation Rulings MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*; MT 2008/2 *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable* and MT 2008/3 *Shortfall penalties: voluntary disclosures*.
[7] Including where an assessment is deemed to have issued – this applies to those entities subject to full self assessment, for example, a company.
[8] For the purposes of this practice statement, 'tax audit' has the meaning set out in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).

STATEMENT

10. This practice statement identifies the criteria that must be used when a tax officer is considering if a request from a taxpayer (or their authorised agent) is a request for an amendment or an objection.

Determining the nature of the request

11. The use of words such as 'object', 'objection', 'amend', 'amendment', 'review', 'penalty' or 'remission', by the taxpayer in their request, is not necessarily determinative of its nature.

12. To decide if a request is for an amendment or an objection, tax officers must consider:

    - the words contained in the request
    - the implied intent of the taxpayer
    - the context in which the request was lodged,[9] and
    - the most appropriate way to treat the request.

13. A request is to be treated as a request for an amendment, where the taxpayer's language and intention are clear and **both** of the following are present:

    - words such as 'please amend' or 'I request an amendment', and
    - the Commissioner is being requested to correct an error or omission of the taxpayer or the ATO.

14. A request is to be treated as an objection,[10] where **any** of the following are present:

    - a suggestion of, or clear dispute over facts, issues or our interpretation of the law
    - expressions of doubt as to an entitlement included in the requested adjustment, or
    - a suggestion or request to preserve rights of review.

Appropriate form of a request for amendment

15. The legislation does not specify the form in which a request for an amendment is to be made. However, subsection 170(5) of the ITAA 1936 states the Commissioner can amend an assessment after the amendment period has expired, if the amendment request was received before the end of that period and in the approved form[11].

16. To enable an amendment to be processed in a timely manner, the following information should be provided:

    - taxpayer's name

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[9] For example, is the request from a tax agent? Given the tax agent's familiarity with the meaning of the word 'objection' in a tax context, its use may have different connotations to that of an unrepresented individual, who may be unaware of the meaning of the word in its tax context.

[10] See paragraphs 30 to 32.

[11] See section 388-50 of Schedule 1 to the TAA.

- tax file number (TFN)[12]
- the year shown on the assessment the taxpayer wants to amend
- the tax return item number and description
- the amount of income or deductions to be added or taken away, if relevant
- the amount of tax offsets to be increased or decreased, if relevant
- the claim type code - if one applies to the item being changed
- the cause of the omission or mistake[13]
- a declaration as follows: 'I declare that all the information I have given in this letter, including any attachments, is true and correct'
- the date, and
- the taxpayer's signature.[14]

17. To assist taxpayers preparing a request for amendment, the Commissioner provides forms on the ATO's internet site for both individual taxpayers and tax agents.[15] Use of the appropriate form is encouraged as it will assist taxpayers and tax agents to provide all necessary information, but it is not compulsory to do so.

18. Tax officers must ensure the request for amendment contains all of the required information and assist taxpayers to provide the necessary information where appropriate.

19. A request for an amendment is processed in the Client Account Services Income Tax product delivery area of the ATO.

Time limits

20. The law imposes time limits[16] within which the Commissioner can amend both an original and amended assessment.

21. Commencing from the 2004-05 year of income, for individuals and small business entities, the time limit for reviewing an assessment is generally 2 years from the day that the Commissioner gives notice of the assessment.[17] For other taxpayers, the period is 4 years.[18]

22. In a number of situations, the Commissioner may still amend an assessment even though the amendment period has passed, including where:

- the taxpayer had applied for the amendment in the approved form before the end of the time period (subsection 170(5) of the ITAA 1936)

[12] The ATO is authorised to collect tax file numbers. It is not an offence not to provide a TFN, however, this may result in a delay in processing a request for amendment.
[13] The cause of the mistake or omission will be relevant in deciding whether any shortfall penalty should be imposed where the amendment results in a tax shortfall (see Law Administration Practice Statement PS LA 2006/2 and Miscellaneous Taxation Rulings MT 2008/1, 2008/2 and 2008/3).
[14] Refer also Law Administration Practice Statement PS LA 2005/20 *Signature requirements for approved forms lodged electronically or given by telephone*.
[15] 'Request for amendment of income tax return for individuals' Nat 2843-07 2006.
[16] Subsections 170(1) and 170(2) of the ITAA 1936.
[17] Items 1-3, subsection 170(1) of the ITAA 1936.
[18] Item 4, subsection 170(1) of the ITAA 1936.

- it will give effect to a private ruling under Division 359 in Schedule 1 to the TAA that was applied for before the end of the amendment period (subsection 170(6) of the ITAA 1936),
- it will give effect to provisions of law set out in subsections 170(9B), 170(9D), 170(10), 170(10AA), 170(10A) or 170(11) of the ITAA 1936.

23. Taxpayers cannot ask for an extension of time to request an amendment where the amendment period has lapsed. The taxpayer will also be out of time to lodge an objection against the assessment. However, the taxpayer may be able to request an extension of time to lodge an objection[19] to enable the matter to be dealt with.

Consideration of a request for amendment

24. The Commissioner is authorised to accept in full or in part, a statement made in a return of income, or otherwise made by or on behalf of the taxpayer, such as an amendment request.[20]

25. Responsibility for the accuracy of the information in the request rests with the taxpayer. The Commissioner may accept a statement without detailed checking of the facts, or accuracy of the claim. Effectively this allows the taxpayer to 'self amend' an assessment.

26. However, the Commissioner may examine the request in more detail either before it is processed (for example, to adjust a mathematical error or an obviously incorrect claim) or after the request is processed[21] (for example, during the course of a tax audit).

Refusal to amend

27. The Commissioner may decide not to process a request for amendment[22] for reasons including where:

- the request for amendment is made out of time and so cannot be dealt with as an amendment [23]
- there is insufficient information to establish the nature of the amendment being requested, and attempts to seek further information (including personal contact) have been unsuccessful[24]
- the request is for an adjustment that cannot be processed (for example, a retrospective change in law favourable to the taxpayer has been announced but not yet enacted)

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[19] See Law Administration Practice Statement PS LA 2003/7 *Taxation Objections – late lodgment.*
[20] See subsection 169A(1) of the ITAA 1936.
[21] Subsection 170(3) of the ITAA 1936 enables the Commissioner to refresh the amendment period. This permits the Commissioner to examine the amendment to the assessment, notwithstanding that the original assessment itself can no longer be amended.
[22] *Brownsville Nominees Pty Limited v. Federal Commissioner of Taxation* 88 ATC 4513; 19 ATR 1504.
[23] However, the taxpayer may be able to request an extension of time to lodge an objection to enable the matter to be dealt with, see PS LA 2003/7 Taxation Objections – late lodgment.
[24] Where possible, the taxpayer should be contacted and the required information sought. If a written approach is unsuccessful then consider telephoning the taxpayer.

- the request will have no impact on the assessment (for example, allowing or increasing a tax offset for a taxpayer, whose taxable income is below the tax free threshold), or
- the request is more appropriately dealt with by the Commissioner in another way, usually as an objection (for example, where the amendment request raises questions of fact or law that require more detailed scrutiny, or where taxpayers query or seek to alter the outcomes of a tax audit).

28. Where the Commissioner refuses to amend the assessment, the taxpayer has no statutory right of review of that decision under section 170 of the ITAA 1936 or any other income tax law.[25]

29. A decision by the Commissioner refusing to amend an assessment is specifically excluded from review under the *Administrative Decisions (Judicial Review) Act 1977* by the definition of 'decision to which this Act applies' in subsection 3(1) in conjunction with paragraph (e) of Schedule 1 to the Act.

What is an objection

30. An objection is a formal avenue of dispute resolution. Where a taxpayer has objected against a taxation decision[26] the Commissioner must make an objection decision.[27] The tax officer, who decides the objection, cannot be the original decision maker.[28] This officer must consider the facts and application of the law specifically to the taxpayer's situation.

31. Section 175A of the ITAA 1936 states that a taxpayer, who is dissatisfied with an income tax assessment, may object against it in the manner set out in Part IVC of the TAA. Section 14ZU in Part IVC requires that a person making a taxation objection must:

    (a) make it in the approved form[29]

    (b) lodge it with the Commissioner within the period set out in section 14ZW, and

    (c) state in it, fully and in detail, the grounds that the person relies on.

32. Further information on objections can be found in Taxation Ruling TR 2011/5 Income Tax: objections against income tax assessments.

[25] It may be open to the taxpayer to lodge an objection (see paragraphs 30 to 32). Tax officers should assist taxpayers to lodge a valid objection.
[26] Taxation decision means the assessment, determination, notice or decision against which a taxation objection may be, or has been, made (see section 14ZQ of the TAA).
[27] See section 14ZY of the TAA.
[28] The Taxpayers' Charter where it discusses Rights of review says that reviews are conducted by a tax officer who did not make the original decision. Corporate Management Practice Statement PS CM 2007/1 Respecting Clients Rights of Review at paragraph 23 says that reviews must be conducted by someone other than the original decision maker.
[29] Examples of approved forms can be found on the ATO web site at www.ato.gov.au.

Distinguishing between a request for an amendment and an objection

33. The following are examples of possible wording that might be in a request from a taxpayer. Note that these examples assume that documents are lodged within the statutory time limitations and all other matters raised earlier in this practice statement have been met.

	Statement from taxpayer	Amendment or objection	Reason
1	I entered the wrong amount at question X on my tax return. Please change the figure from $Y to $Z.	Amendment	It is clear from the wording that the taxpayer has made an error and would like it corrected.
2	I did not realize I could claim the X offset of $Y. The relevant details are…. I would like my return amended to include it.	Amendment	The words used by the taxpayer suggest their intent. Even though the taxpayer is providing additional information, there is no cause to have any doubt about the correctness of the request. The taxpayer has made an omission that they would like corrected.
3	Please fix my return. I forgot to complete my spouse details when I sent in my return and you have charged me the Medicare levy surcharge. The details of my spouse are …	Amendment	The taxpayer in this case has stated their omission and is clearly requesting the Commissioner to amend their assessment. The wording of the request suggests this intent.
4	I am entitled to the X offset and claimed this in my return. However, it has not been included in my assessment and you have not explained why. Can you please fix this for me?	Amendment	This request is indicating that the Commissioner has made an error when processing the return. Upon reviewing the return, it was apparent that there was an oversight by the Commissioner, which needs to be corrected.
5	I object against the tax assessment you have sent me. I entered the wrong figure at item X on my tax return. Please change the figure from $Y to $Z.	Amendment (note the 3rd paragraph in the Reason column)	This example is similar to example 1 with the addition of a first sentence that includes the words 'I object'. In this case, the use of the word 'object' is not necessarily determinative. The request should be treated as a request for an amendment, as it remains a request to correct an error, and it would produce a more timely result for the taxpayer. Where a request appears to be a request for amendment but uses the word 'object' or 'objection' it will be important to consider the context of the request. This could include checking internal ATO systems or contacting the taxpayer. If the Commissioner decides not to amend the return, it may be appropriate to treat this as an objection so as to preserve the taxpayer's rights of review.

	Statement from taxpayer	Amendment or objection	Reason
6	Before I put my return in, I rang the ATO and was told that I could not claim X. Yesterday I read an article in the paper which says that people in my situation are entitled to claim it. My situation is…. Could you please decide if I am entitled to this?	Objection	This request does not use the word 'objection'. However, it is expressing doubt about the earlier guidance which was provided and followed by the taxpayer. The Commissioner will need to consider the facts and the application of the law to the taxpayer's circumstances.
7	I want to question my 20XX tax assessment as I have been incorrectly assessed for the Medicare levy surcharge. I had private health insurance for the whole of 20XX. My wife did not. I can understand why she would need to pay the Medicare levy surcharge. However, given I had private health insurance; I was surprised to hear I also had to pay the surcharge.	Objection	The taxpayer is clearly questioning the action taken by the Commissioner, believing it to be incorrect. The taxpayer has provided some additional information. This case requires the Commissioner to consider the facts and determine how the law should be applied to them.
8	When I lodged my return I didn't think I was entitled to claim X, but now I think I might be because of the following factors…..	Objection	This is not a straightforward request for an amendment as the taxpayer is expressing doubt about the correctness of the claim. The application of the law to the facts needs to be determined.
9	I wish to object to my assessment for the year 20XX. When I lodged the return for 20XX I was unsure whether I was entitled to claim a deduction for Y. I did not have time to investigate this matter before lodging the return, so I did not include the claim. I would like the ATO to determine if this claim is allowable. Full information is provided below.	Objection	It is clear that the taxpayer is asking the Commissioner to examine the matter, turn his mind to the facts and make a decision as to the application of the law in the specific case.
10	At the time I lodged my return I believed that all my income was assessable. However, I now understand that some of my income may be exempt. I would like the Commissioner to consider the following facts and arguments and make a decision about whether this income is exempt and amend my return accordingly.	Objection	While the example asks the Commissioner to 'amend' the return, it is clear that a decision on the application of the law to newly provided facts is needed.

	Statement from taxpayer	Amendment or objection	Reason
11	I wish to object to my assessment. The adjustments made by ATO are without foundation and are contested on the following grounds...	Objection	The taxpayer is clearly expressing dissatisfaction with an assessment and providing arguments as to why it should be changed. It is clear that the Commissioner needs to consider his earlier actions and advise the taxpayer of his decision.
12	I refer to my income tax assessment for the 20XX year. In accordance with section 170 of the Income Tax Assessment Act, I hereby request an amendment to that assessment on the following basis, and for the reasons stated. In order to protect my interests in this matter, this request should be treated as an objection.	Objection	The taxpayer is challenging the correctness of the assessment. The wording of the request may be suggesting that there is some doubt that we would agree with the taxpayer's arguments. In any case the taxpayer is requesting that their rights of review are protected. This can only be achieved if the request is treated as an objection.
13	When I was audited 4 months ago I was asked to provide a diary of my overseas travel to support my claim. I was not able to do so and the auditor disallowed my claim. I have now found my diary; please amend my tax return to allow these expenses.	Objection	While the taxpayer believes that because they have now supplied the requested information the expenses will be allowed; this may not be the case. The expenses must not only have been incurred but must also be allowable. An objection case officer must consider both matters.

Amending assessments where the time period has ended

34. The following are examples of situations where, notwithstanding the time for amendment has ended, the Commissioner may still amend an assessment.

	Situation	Explanation
14	The day prior to the end of the period of review of a tax year, the ATO received in the approved form a request from the taxpayer that their assessment be amended. Seven days elapsed before the request was considered by a tax officer.	Notwithstanding that the amendment period has ended, the Commissioner may amend the assessment, as the request was received by the ATO before the end of the time period.
15	The taxpayer lodged an application for a private ruling in respect of three years - two where the assessment had issued and one for the current tax year. Favourable private rulings are made seven days after the amendment period for the first of the three years had ended.	Provided that the taxpayer indicates they wish to rely on the private ruling, notwithstanding that the amendment period for the first of the three years has ended, the Commissioner may amend that assessment to give effect to the private ruling.
16	Six years previously, the taxpayer had returned an amount as assessable income. The taxpayer is required to, and has repaid, that amount. The ATO has determined that section 59-30 of the ITAA 1997 applies, and therefore the amount previously returned is not assessable income.	Section 59-30 ITAA 1997 is one of the provisions listed in subsection 170(10AA) ITAA 1936, where an amendment can be made at any time.

Amendment history

Date of amendment	Part	Comment
18 April 2013	Contact details	Updated.
29 November 2012	Paragraph 32, footnote 2 and related rulings references	Updated draft TR 2010/D10 to final TR 2011/5
	Footnotes 16 and 21	Removed.
	Contact details	Updated.
8 April 2011	Paragraph 32, footnote 2 and related rulings references	Updated ruling reference as TR 96/12 has been replaced by TR 2010/D10.
	Various	'Tax Office' updated to 'ATO' as per Style Guide recommendations.
	Contact details	Updated.

Subject references	amendment of assessments extension of time extension of time to lodge an objection objections self amendment of assessments tax administration tax assessments
Legislative references	ITAA 1936 subsection 169A(1) ITAA 1936 section 170 ITAA 1936 subsection 170(1) ITAA 1936 subsection 170(2) ITAA 1936 subsection 170(3) ITAA 1936 subsection 170(5) ITAA 1936 subsection 170(6) ITAA 1936 subsection 170(9B) ITAA 1936 subsection 170(9D) ITAA 1936 subsection 170(10) ITAA 1936 subsection 170(10AA) ITAA 1936 subsection 170(10A) ITAA 1936 subsection 170(11) ITAA 1936 section 175A ITAA 1997 section 59-30 ITAA 1997 subsection 995-1(1) TAA 1953 section 14ZQ TAA 1953 section 14ZU TAA 1953 section 14ZW TAA 1953 section 14ZY TAA 1953 section 14ZZ TAA 1953 Schedule 1 TAA 1953 Schedule 1 Division 359 TAA 1953 Schedule 1 section 388-50 ADJR 1977 subsection 3(1) ADJR 1977 Schedule 1 paragraph (e)
Related public rulings	TR 2011/5 MT 2008/1 MT 2008/2 MT 2008/3
Related practice statements	PS LA 1998/1 PS LA 2003/7 PS LA 2005/20 PS LA 2006/2 PS CM 2007/1 (link available internally only)
Case references	*Brownsville Nominees Pty Limited v. Federal Commissioner of Taxation* 88 ATC 4513; 19 ATR 1504
Other references	Client Contact Guidelines (link available internally only) Objection form (non-tax professionals) NAT 13471 Objection form (tax professionals) NAT 13044 Request for amendment of income tax return for individuals Nat 2843-07 2006 Taxpayers' Charter ATO Service Standards
File references	08/4109

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