PS LA 2008/19 - Requests to amend income tax assessments

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PS LA 2008/19
Requests to amend income tax assessments

This Law Administration Practice Statement shows how to:

- differentiate between a request for an amendment and an objection
- deal with requests for amendment, and
- help taxpayers provide complete information in a request for amendment.

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.

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1. Scope and context

This practice statement provides guidance on how to deal with requests from taxpayers to amend their income tax assessments; and, in the course of this, how to differentiate between amendment requests and objections to ATO decisions.

The laws, rights of review and service standards for objections are not the same as those that apply to requests for amendments. They are also processed differently.

Amendment Requests are designed to correct mistakes or omissions the taxpayer may have inadvertently made on an income tax return, or that we may have made in our assessment.

Objections are formal avenues for disputing some ATO decisions.

This practice statement does not apply to an amendment request where the taxpayer is being audited.

2. How to determine if the taxpayer is objecting or requesting an amendment

Just because a taxpayer (or their agent) uses words like 'objection', 'amendment' or 'review', doesn't necessarily mean that they are actually requesting any of those things. Contact the taxpayer or use your judgment to decide whether it is an objection or an amendment request, and consider each case on its own merits referring to the following examples to guide you.

When you are making your determination, think about:

- the words the taxpayer used in the request
- the taxpayers' apparent intention, and
- the context of the request.

It is a request for an **amendment** if the language clearly indicates that is what the taxpayer wants; *and* they have used words such as 'please amend' or 'I request an amendment'; *and* the taxpayer is requesting that we correct an error or omission, whether theirs or ours.

It is an **objection** if the taxpayer is disputing facts, issues or the way we have interpreted the law; *or* if they are not sure whether or not they have included all their income and entitlements; *or* they want to preserve their right to seek an external review.

Examples

The following examples are possible wording that might be in a request from a taxpayer.

Requests for Amendment

	Taxpayer's statement	Reason
1	I entered the wrong amount at question X on my tax return. Please change the figure from $Y to $Z.	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.	The words used by the taxpayer suggest their intent. Even though the taxpayer is providing additional information, there is no cause to doubt that the request for an amendment is appropriate: the taxpayer knows the additional claim is valid and clearly wants the omission 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 ...	The taxpayer in this case has stated their omission and is clearly requesting that we amend their assessment. The wording is unambiguous.
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?	This wording in this request suggests we may have made an error when we processed the return. If when we reviewed the return it became apparent that there was an oversight on our part, then we would need to correct that oversight and amend the assessment.
5	I object to 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.	This example is similar to Example 1, with the addition of a first sentence that includes the words 'I object'. Even though the taxpayer has used the word 'object', it doesn't automatically mean this request is an objection. It is a request to correct an error and treating it as an amendment would produce a more timely result for the taxpayer. Where a request appears to be a request for an amendment but uses the word 'object' or 'objection' you should consider the request's context. This could include checking internal ATO systems or contacting the taxpayer. If we decide not to amend the assessment, it may be appropriate to treat this as an objection so that the taxpayer's rights of review are preserved.

Objections

	Taxpayer's statement	Reason
1	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?	This request does not use the word 'objection' but it is expressing doubt about the earlier guidance we provided and that the taxpayer followed. We would need to consider the facts and how the law applies to the taxpayer's specific circumstances.
2	I want to question my 20XX tax assessment because 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.	The taxpayer is clearly questioning the action we took, believing it to be incorrect. The taxpayer has provided some additional information. This case requires that we consider the facts independently and determine how the law should be applied to them.
3	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.....	This is not a straightforward request for an amendment because the taxpayer is expressing doubt about whether or not the new claim is valid. Under those circumstances this request might more properly be an objection. We would need to consider the facts independently and determine how the law applies specifically to this case.
4	I wish to object to my assessment for the year 20XX. When I lodged the return 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 below ...	It is clear that the taxpayer is asking us to examine the matter, to reconsider the facts and make an independent decision about their particular case.
5	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.	While the example asks us to 'amend' the return, it is clear that a decision is required on how the law applies to newly-provided facts.
6	I wish to object to my assessment. The adjustments made by ATO are without foundation and are contested on the following grounds...	The taxpayer is clearly expressing dissatisfaction with an assessment and providing arguments about why it should be changed. It is clear that we would need to consider our earlier actions and advise the taxpayer accordingly.
7	I refer to my income tax assessment for the 20XX year. In accordance with section 170 of the *Income Tax Assessment Act 1936*, 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.	The taxpayer is challenging the correctness of the assessment. The wording suggests 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.
8	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.	The taxpayer clearly believes that because they have now supplied the requested information the expenses will be allowed. However, 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.

3. What information does the taxpayer need to provide in their request for an amendment?

The request must be in writing and, although we encourage taxpayers to use the forms on ato.gov.au, it isn't compulsory to do so. Although it is the taxpayer's responsibility to make sure the information they provide is accurate, you should make sure that their request includes:

- their name
- their tax file number (TFN)
- the year on the assessment that 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 reduced, if relevant
- the claim type code, if one applies to the item being changed
- the cause of the omission or mistake
- a declaration as follows: 'I declare that all the information I have given in this letter, including any attachments, is true and correct'.

The request for amendment should be dated and signed.

4. Time limits for amendments

Generally, an individual or a small business has two years to request an amendment. Other taxpayers have four years.

If the amendment period has lapsed, taxpayers cannot ask for extensions. They may, however, be able to request an extension so they can lodge an objection (see PS LA 2003/7 *Taxation objections - late lodgment)*.

However, there are certain situations where the law allows the Commissioner to amend an assessment even if the 2 or 4 year amendment period has passed. These situations are covered in provisions within section 170 of the *Income Tax Assessment Act 1936*.

Situations in which we can amend an assessment after the period has ended:

- we received the taxpayer's request before the end of the amendment period, and the claims are not considered allowable until after the period has ended[1]
- the taxpayer applied for a private ruling before the end of the amendment period, and the ruling allowing an entitlement is made after the amendment period,[2] and
- the taxpayer included an amount in assessable which is subsequently repaid after the amendment period has ended, and the repayment cannot be deducted in any income year, for example, the taxpayer is not carrying on a business.[3]

5. Consideration of a request for amendment

The responsibility for the accuracy of an amendment request rests with the taxpayer. We may accept the request for amendment without detailed checking of the facts, or accuracy of the claim.

6. Not all amendment requests are granted

We may decide not to grant a request because:

- the request was not made within the time limit
- the taxpayer did not provide enough information, even though we made attempts to get it
- it is not possible to process the adjustment (say, if it relates to a law that has not yet been enacted)
- the requested adjustment will not affect the final assessment
- it would be more appropriate to deal with the request in another way – for example, as an objection.

7. If we refuse to amend an assessment, the taxpayer can lodge an objection

If we refuse to grant an amendment request, a taxpayer may lodge an objection against the assessment. The objection must state, in writing and in detail, the grounds on which they are objecting to the assessment, and it must be lodged within the specific time limit. If the specific time period has expired the taxpayer must lodge an application with the objection requesting us to treat the objection as it were lodged within time.

[1] Subsection 170(5) of the *Income Tax Assessment Act 1936* (ITAA 1936).

[2] Subsection 170(6) of the ITAA 1936.

[3] Subsection 170(10AA) of the ITAA 1936 table item 22.

8. More information

For more information:

- on how taxpayers should request an amendment, see Correct a mistake or amend a return
- on what decisions taxpayers can object to, and how they should object, see Dispute or object to an ATO decision
- to obtain copies of objection forms, see Objection forms

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Amendment history

Date of amendment	Part	Comment
24 September 2015	All	Revised to new practice statement style and format.
8 May 2014	Footnotes 6, 13 & References	Replace 'PS LA 2006/2' with 'PS LA 2012/5' and 'MT 2008/3' with 'MT 2012/3'.
	Contact details	Updated.
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 20	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.

References

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 170
Other references	Client Contact Guidelines (link available internally only) Objection form - for taxpayers (NAT 13471) Objection form - for tax professionals (NAT 13044) Request for amendment of income tax return for individuals (NAT 2843) Taxpayers' charter ATO Service Standards
Related public rulings	TR 2011/5 MT 2012/3
Related practice statements	PS LA 2003/7

References

File references	File 08/4109
Related public rulings	TR 2005/9
ATOlaw topic	Income tax ~~ Deductions ~~ Substantiation and record keeping

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