PS LA 2011/25 - Reconstructing records and making reasonable estimates for taxpayers affected by disasters

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Practice Statement Law Administration

PS LA 2011/25

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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 tax officers 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.

SUBJECT:	**Reconstructing records and making reasonable estimates for taxpayers affected by disasters**
PURPOSE:	**To provide guidelines for tax officers assisting taxpayers to reconstruct records or make reasonable estimates where the taxpayer has been affected by a disaster**

TABLE OF CONTENTS **Paragraph**

SCOPE **1**

STATEMENT **6**

Reconstructing records and/or reasonable estimates 6

Proof of identity 10

Lodging taxation documents and returns using reconstructed records 14

Income tax documents for individuals (not in business) 17

Reasonable estimates for individuals 26

Income tax documents for business taxpayers 33

Reasonable estimates for business taxpayers 38

Other tax implications for business taxpayers 42

GST 42

Employers 44

PAYGW 45

Other taxes 48

ATO assessments 49

Substantiation 54

Income tax 56

Goods and services tax 59
Fringe benefits tax 61
Processing returns and refunds 62
Penalties and interest charges 67
Penalties 67
Interest charges 73

SCOPE

1. This practice statement is designed to provide guidance to tax officers to assist taxpayers and their nominated representatives that have been affected by disaster to reconstruct their tax records, and/or, where appropriate, calculate reasonable estimates for the purposes of obtaining lodgment of taxation documents and returns.
2. For the purposes of this practice statement, a disaster is any event or occurrence causing localised or widespread destruction, including natural disasters such as floods, bushfires or extreme weather events; and personal disaster such as house/business fire or other such event.
3. When providing assistance to taxpayers affected by a disaster, their individual circumstances should be the primary consideration. Tax Officers should demonstrate empathy in all interactions with affected taxpayers and offer practical assistance that minimises delays and compliance costs.
4. The policy contained in this practice statement applies to tax officers assisting taxpayers who prepare their own tax returns and other documents required by a taxation law as well as to tax professionals who prepare returns and other documents required by a taxation law on behalf of taxpayers who have been affected by a disaster.
5. The primary purpose of this practice statement is to explain how the Commissioner can assist taxpayers to reconstruct and lodge income tax documents and returns. However the practice statement can also apply in most cases to reconstruct and lodge documents and returns in relation to fringe benefits tax, superannuation and business activity statement (BAS) provisions.[1]

STATEMENT

Reconstructing records and/or reasonable estimates

6. Where taxpayers' original records have been lost or destroyed as a result of disaster, the Australian Taxation Office (ATO) will assist taxpayers and/or their nominated representative to reconstruct their taxation records for the purposes of lodging taxation documents and returns.

[1] BAS provisions are defined in section 995-1 of the Income Tax Assessment Act 1997 to mean Part VII of the *Fringe Benefits Tax Assessment Act 1986*; and the indirect tax law (for instance goods and services tax (GST) and wine equalisation tax (WET)); and Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (which are about the PAYG system).

7. Where records cannot be fully reconstructed, the ATO will assist taxpayers and/or their nominated taxation representative to make a reasonable estimate of their taxable position (income tax payable or activity statement net amount as appropriate) for the purposes of lodging taxation documents and returns. The ATO will generally take account of this reasonable estimate when making an assessment in certain cases.

8. The ATO will assist taxpayers to lodge all documents and returns that are due, including prior year lodgments.

9. The ATO will rely on records held by the taxpayer, third party intermediaries and/or information already held by the ATO to assist in this process.

Proof of identity

10. The ATO needs to confirm the taxpayer's identify before discussing their tax affairs. The established ATO proof of identity process set out in Corporate Management Practice Statement PS CM 2008/2 is to be followed.

11. Where a taxpayer does not have documentation to establish proof of identify, *PS CM 2008/2 Corporate Management Practice Statement – Proof of Identity* and the CMPI explain that managers have discretion to request different or additional information to confirm a taxpayer's identity. Alternate forms of identification may include:

    - full name and position
    - date of role registration
    - registered address(es)
    - registered telephone number(s)
    - account number(s) of bank accounts registered with ATO
    - spouse details
    - employment history (who the taxpayer worked for, when, location and period)
    - income earned
    - source(s) of investment income (if applicable).

12. This information can be provided over the telephone if the taxpayer has not requested on-site assistance. The taxpayer can contact the ATO's dedicated emergency support info line on 1800 806 218.

13. The tax officer, when in the field, may also call this number and use details provided by the taxpayer to confirm proof of identity quickly.

Lodging taxation documents and returns using reconstructed records

14. Under the self assessment system, the Commissioner will generally make an assessment of income tax under section 166 of the *Income Tax Assessment Act 1936* (ITAA 1936) on the basis of the return which the taxpayer is required to

lodge by reason of section 161 of the ITAA 1936. Similar legislative provisions exist in respect to other revenue products administered by the ATO.[2]

15. Pursuant to Division 388 of Schedule 1 to the *Taxation Administration Act 1953* (TAA), lodgment of returns, notices, statements, and other documents under a taxation law in an approved form must include a declaration by the taxpayer that any information in the document is true and correct (section 388-60 of Schedule 1 to the TAA).

16. Where a taxpayer's records have been destroyed as a result of a disaster, the taxpayer may not be able to lodge a return, notice, statement or other document in the approved form.

Income tax documents for individuals (not in business)

17. If some or all personal records of an individual taxpayer (who is not a business taxpayer) have been destroyed and ATO data is available, the following guidelines are to be followed.

18. Lodgment of current year income tax returns can be made using *e-tax* (where available) which offers pre-filling using information held by the ATO.

19. *E-tax* requires taxpayers to pass a proof of identity check using information obtained from prior year notices of assessment. If a notice of assessment is not available, the taxpayer can still use *e-tax* if they have a tax file number, name and date of birth, and one of the following:

    - a BSB, account number and account name of any bank account that has earned interest
    - the gross income figure from a PAYG payment summary or a Centrelink payment summary, or
    - a shareholder reference number/holder identification number from a dividend statement

    Any of these pieces of information can relate to the two previous income tax years.

20. *E-tax* is constantly updated with pre-fill information as that information is provided to the ATO by third parties. If pre-filling is not an option, the tax officer should identify the taxpayer's employer. If the employer's records are held outside of the disaster-affected region, they may be readily available to establish the taxpayer's employment income.

21. If the employer has also lost records and no pre-filling is available, it may be possible to establish the taxpayer's employment income from the net salary amounts identified on the taxpayer's bank statements. The taxpayer should request copies of the statement from their bank, and the net salary amounts should be grossed up using the appropriate tax tables to calculate the total salary and wages, and the amount of withholding.

[2] Under section 72 of the *Fringe Benefits Tax Assessment Act 1986*, the Commissioner is deemed to make an assessment of FBT when the employer furnishes their FBT return. A liability for GST can arise independently of an assessment, see section 9-40 of the *A New Tax System (Goods and Services Tax) Act 1999*.

22. If a taxpayer has only salary or wage income, and those records have been reconstructed, *e-tax* can be used to lodge the return or a paper return can be lodged.

23. If lodgment is made via a paper return, the words 'disaster affected' should be clearly written on the top of the front page of the return. Completed returns are to be sent to 'Client Account Services, Key Processing, Penrith', for immediate processing.

24. Where lodgment is made via a paper return, any refunds due are to be fast-tracked.

25. If all of the necessary records cannot be reconstructed to enable a return to be lodged, then tax officers should consider whether the taxpayer is able to make a reasonable estimate of their taxable income or whether to apply the default assessments provisions discussed in paragraphs 49 to 53 of this practice statement.

Reasonable estimates for individuals

26. In the circumstances covered by this practice statement, if a taxpayer is unable to fully reconstruct their taxation documents, they may be able to lodge an income tax return on the basis of a signed statement by the taxpayer setting out a 'reasonable estimate' of their taxable income (or other relevant amount). The 'Reasonable estimate for documents destroyed by disasters' form (NAT 72981) is available on ato.gov.au.

27. Taxpayers may request assistance from the ATO to help reconstruct their records for the purposes of making a reasonable estimate.

28. To assist a taxpayer to make a reasonable estimate of their taxable income, the tax officer should:

- access previous year income data and ask the taxpayer if this is a reasonable estimate of their current year income and deductions; and
- consider the factors set out in paragraph 53 of this practice statement.

29. Only one signed statement is required from a taxpayer to cover all lodgments made using reasonable estimates. The ATO is to ensure that all individual lodgments based on reasonable estimates are endorsed as 'disaster affected'.

30. The tax officer must ensure that the taxpayer is fully aware that the tax law imposes heavy penalties for giving false or misleading information.

31. The tax officer must ensure that tax withheld credits claimed by employees match their employer's figures. Unless there are reasonable grounds to believe otherwise, the tax officer should assume that the figures provided by the employer are reliable. If the employer's records have also been destroyed, the tax officer will use the appropriate rates and tables available on the ATO website as the basis for calculating the amounts withheld.

32. If the taxpayer has not lodged prior years' income tax returns and they consider the lodgment of income tax returns as not necessary, the taxpayer has two options. If they have a tax agent, they can request the agent to access the Portal and key 'return not necessary'; or for self-preparers, they can complete a *pro-forma* non-lodgment advice provided by the ATO.

Income tax documents for business taxpayers

33. If activity statements have been lodged, but not the income tax return for the year in question, the ATO will use the activity statements data to construct the income tax return. This data should contain most information required.

34. The words ‘disaster affected’ should be clearly written on the top of the front page of the return. Completed returns are to be sent to ‘Client Account Services, Key Processing, Penrith’ for immediate processing.

35. Refunds due are to be fast-tracked.

36. Where activity statements have not been received, the tax officer should attempt to reconstruct the taxpayers’ records to determine the net amounts owed for each period of lodgment. Where records can be reconstructed, the tax officer can manually key the information relating to the activity statements into ATO systems. These figures can then be used to complete the income tax return.

37. If the necessary records cannot be reconstructed then tax officers should consider whether the taxpayer is able to make a reasonable estimate of their taxable income or whether to apply the assessment provisions, discussed in paragraphs 49 to 53 of this practice statement..

Reasonable estimates for business taxpayers

38. If a business taxpayer is unable to reconstruct their tax records for the purposes of lodging taxation documents and returns, the taxpayer can make a reasonable estimate of their tax payable. The tax officer should request the taxpayer complete and lodge a ‘Reasonable estimate for documents destroyed by disasters’ form.

39. Taxpayers may request assistance from the ATO to help reconstruct their records for the purposes of making a reasonable estimate.

40. To assist a taxpayer to make a reasonable estimate of their taxable income, the tax officer should consider the following:

- If no current year activity statement or only partial year activity statement data is available, tax officers should obtain all the ATO data available, preferably for the last three years, being activity statements and income tax returns. Note, that some tax professionals may be able to access this data using the Tax Agent Portal.
- The tax officer can use prior year lodgments to make a trend-based reasonable estimate of income and deductions. The estimate is based on the three year trend average of activity statements and income tax returns; unless there is good reason to do otherwise, for example, the current year contains exceptional circumstances:
  - ATO statistics as published on ato.gov.au will be applied as part of the process when averaging data.
  - Any estimate of this kind must take into consideration identified, annual downturn in business.
- If a trend-based estimate is not possible, the tax officer should consult with the taxpayer to determine if it is reasonable to base their returns and activity statement on the previous year’s returns and/or statements for the same period. No uplift factor need be applied. As an example, if a credit

for the same period last year was issued, and a trend-based estimate cannot be made, the ATO would generally issue a refund for the same amount.

- Applying the factors set out in paragraph 53 of this practice statement.

41. If the taxpayer cannot make a reasonable estimate of their taxable income and no data exists for the current year, then the tax officer should consider alternative bases for making a default assessment of income and other tax obligations, including the factors set out at paragraph 53 of this practice statement.

Other tax implications for business taxpayers

GST

42. In the circumstances covered by this practice statement, if a taxpayer is unable to fully reconstruct their taxation documents, they may be able to lodge a BAS on the basis of a signed statement by the taxpayer setting out a 'reasonable estimate' of their GST. The 'Reasonable estimate for documents destroyed by disasters' form (NAT 72981) is available on ato.gov.au.

43. However, if tax invoices cannot be obtained or reconstructed for the relevant period to enable input tax credits to be attributed to the relevant periods, the assessment provisions in section 105-5 of the TAA should be considered.

Employers

44. The tax officer should consider additional tax implications should the business be an employer.

PAYGW

45. Efforts must be made to ensure pay as you go (PAYG) withholding is appropriately reported and no discrepancies arise as a result of ATO action.

46. The Commissioner has a limited power to estimate the unpaid and overdue amount of PAYG withholding for a particular period. In determining a reasonable estimate of PAYG withholding where business records have been destroyed, the tax officer should have regard to the policy contained in Law Administration Practice Statement PS LA 2011/18. These estimates are then to be provided to the business employees for use in their individual income tax returns.

47. Where records have been destroyed, lodgment of PAYG withholding annual reports and the issuing of payment summaries will not be required.

Other taxes

48. Additionally, the officer should ensure that any superannuation liability is correctly raised and reported. There may also be fringe benefits tax implications to consider.

ATO assessments

49. Where records have been lost or destroyed as a result of disaster and cannot be reconstructed, the Commissioner can make an assessment or an estimate under various provisions of the taxation laws:

- default assessment of assessable income on which income tax ought to be levied (section 167 of the ITAA 1936)
- default assessment of the fringe benefit taxable amount and the amount of fringe benefits tax payable (section 73 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA))
- default assessment of superannuation guarantee shortfall and of the superannuation guarantee charge payable on the shortfall (section 36 of *Superannuation Guarantee (Administration) Act 1992*)
- assessment of a net amount for a tax period (section 105-5 of Schedule 1 to the TAA)
- assessment of a net fuel amount for a tax period, or a fuel tax return period (section 105-5 of Schedule 1 to the TAA)
- estimate of unreported pay as you go (PAYG) withholding amounts (section 268-10 of Schedule 1 to the TAA).

50. The Commissioner may make an assessment on any basis that is reasonable in light of the information available in the particular circumstances. This includes the use of third party information, indirect audit methodologies, statistical information or extrapolation from previous years' returns.

51. Where it is appropriate, an assessment may be issued taking account of a signed statement by the taxpayer setting out a 'reasonable estimate' of their net taxable income (or other relevant amount).

52. If the taxpayer is unable to make a reasonable estimate of their net taxable income, or net amount for GST purposes, tax officers will work with the taxpayer to establish a reasonable basis for making an assessment.

53. Some factors which the tax officer may consider when making an assessment of taxable income or net amount for taxpayers whose records have been destroyed as a result of disaster include:

- Review the policy contained in the *Law Administration Practice Statement PS LA 2007/24 – Making default assessments: section 167 of the Income Tax Assessment Act 1936 and other similar provisions*.
- Identify the taxpayer's source of income. Are they in business or do they receive a salary or wage?
- Does the taxpayer have a tax agent? Do they hold records relevant to the making of a default assessment?
- Does the taxpayer have any records?
- Is the taxpayer up to date with their lodgments?
- When relevant, ask the taxpayer why they have not previously lodged. Advise the taxpayer that future lodgments should be made on time.
- Can the taxpayer reconstruct/extrapolate information from the records they still have?

- If a business taxpayer, do small business benchmarks exist for the taxpayer's industry? Can the taxpayer use existing information and the benchmarks to arrive at a reasonable estimate?
- Are there third parties who are able to supply information, for example, banks? The taxpayer should approach third parties in the first instance to obtain information. ATO officers should be aware of privacy concerns when seeking advice from third parties and sharing advice received.
- Australian Transaction Reports and Analysis Centre (AUSTRAC) transaction reports may be available to assist the case officer in reconstructing purchase and sales records for businesses (not to be provided to the taxpayer).
- Is the taxpayer accessing any insurance payouts for destroyed assets?
- Is the taxpayer accessing any assessable income protection insurance?
- Does the taxpayer have any PAYG instalment obligations which may need to be varied?
- Is there capacity to pay if an assessment is made?
- Was income received prior to the disaster?
- What rebates and other entitlements was the taxpayer eligible for previously and will continue to be eligible for?
- What are the future prospects for the taxpayer in terms of employment or business income?
- Are there third parties who are able to supply copies of tax invoices? Has the taxpayer attempted to obtain copies of tax invoices?
- Is the absence of tax invoices due to factors beyond the control of the taxpayer?

Substantiation

54. Substantiation provisions under various taxation Acts may prevent a taxpayer from claiming certain losses or outgoings unless they hold documentation substantiating the claim.

55. Where records have been lost as a result of disaster, the following provisions may apply to relieve the taxpayer from compliance with substantiation requirements in relation to reconstructed records:

- section 900-205 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- subsection 29-70(1B) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)
- subsection 123(5) and 123(6), and section 123B of the FBTAA.

Income tax

56. Division 900 of the ITAA 1997 outlines the substantiation requirements that apply in respect of:

- work expenses

- car expenses calculated under either the one-third of actual expenses method or the log book method
- business travel expenses.

For other expenses incurred by individuals, a taxpayer must be able to show how they reasonably arrived at a claim, although the legislation does not specify the form that evidence must take.

57. Section 900-205 of the ITAA 1997 provides for relief, subject to certain conditions, if documents are lost or destroyed.

58. Tax officers should apply the policy concerning the application of section 900-205 of the ITAA 1997 as set out in *Law Administration Practice Statement PS LA 2005/7 – Substantiation of deductions claimed by individual taxpayers for work and car expenses incurred in the course of earning non-business and non-investment income*, and *Taxation Ruling TR 97/24 – Income tax: relief from the effects from failing to substantiate*.

Goods and services tax

59. Generally, a taxpayer must hold a tax invoice to claim an input tax credit; however under subsection 29-70(1B) of the GST Act the Commissioner has a discretion to treat as a tax invoice a particular document that does not meet the requirements for being a tax invoice.[3] Where it is reasonable to conclude from the available evidence that there is a creditable acquisition, tax officers should apply the policy set out in *Goods and Services Tax Ruling GSTR 2000/17 – Goods and services tax: tax invoices*, and *Law Administration Practice Statement PS LA 2004/11 – The Commissioners' discretion to treat a particular document as a tax invoice or adjustment note*.

60. However, if there is no documentary evidence to support a creditable acquisition, the tax officer should consider whether it is possible to make an assessment of a net amount pursuant to section 105-5 of Schedule 1 to the TAA.

Fringe benefits tax

61. Subsections 123(5) and 123(6) and section 123B of the FBTAA provide exceptions to the substantiation requirements for fringe benefits tax documents where documents have been lost as a result of actions beyond the taxpayer's control.

Processing returns and refunds

62. Documents and returns lodged in accordance with the policy contained in this practice statement should be clearly marked 'disaster affected'. When these documents and returns are received for processing, the notation 'disaster affected' should be included in the description field on the associated Siebel work item.

63. Any refunds resulting from a document or return that has been marked 'disaster affected' will be given priority and fast tracked.

[3] The discretion was contained in subsection 29-70(1) of the GST Act until 30 June 2010. From 1 July 2010 the discretion is contained in subsection 29-70 (1B) of the GST Act.

64. Tax officers actioning high risk refunds will be able to identify from Siebel notes that the related lodgment was prepared with the assistance of a tax officer using the policy contained in this practice statement. Identified refund cases will have a 'disaster affected' indicator and/or Siebel Alert present and will be released without further review.

65. The ATO will not undertake compliance action in respect to disaster related lodgments. The use of Siebel indicators, and the 'disaster affected' description will be used as exclusions when risk assessing taxpayers for case selection.

66. If third party intelligence is received, or other information is identified which suggests that a lodgment made includes false or misleading information, or that the lodgment was made with the intent to obtain a financial benefit to which the taxpayer is not entitled or the intent to commit fraud, then the policy contained in this practice statement will no longer be applied, and the lodgment will be subject to normal ATO compliance activities.

Penalties and interest charges

Penalties

67. The law imposes penalties for a variety of administrative failures including failing to lodge on time, failing to withhold amounts from payments; and failing to maintain appropriate records.

68. Generally, a penalty does not become payable until the Commissioner gives written notice of the liability to pay the penalty, and the reasons why the taxpayer is liable to pay the penalty.

69. The Commissioner's policy on when various penalties will be imposed, including when remission may be appropriate is set out in various practice statements. Tax officers should refer to:

- *Law Administrative Practice Statement PS LA 2011/19 – Administration of penalties for failing to lodge documents*
- *Law Administrative Practice Statement PS LA 2005/2 – Penalty for failure to keep or retain records*
- *Law Administrative Practice Statement PS LA 2007/22 – Remission of penalty for failing to withhold as required by Division 12 of Schedule 1 to the Taxation Administration Act 1953*
- *Law Administrative Practice Statement PS LA 2006/1 - Remission of additional superannuation guarantee charge imposed under Part 7 of the Superannuation Guarantee (Administration) Act 1992 and administrative penalty imposed under subsection 284-75(3) of Schedule 1 to the Taxation Administration Act 1953.*

70. If a 'disaster affected' indicator is present on a case, penalties should not be imposed for failure to maintain records, failure to lodge taxation documents or returns on time and failure to withhold.

71. If the ATO automated systems have applied penalties to taxpayers that are affected by disaster, the tax officer can apply the policies contained in the previously mentioned practice statements when considering whether a remission of a penalty is warranted.

72. In all situations, the tax officer should have regard to the taxpayers' particular circumstances to determine whether it is appropriate to remit any penalty imposed.

Interest charges

73. Taxation interest charges are imposed for late payment of taxation liabilities. The charges are imposed from the date a taxation liability should have been paid to the actual date of payment.

74. The Commissioner has the discretion to remit part or all of the general interest charge for late payment under section 8AAG of the TAA.

75. *Law Administration Practice Statement PS LA 2011/12 Administration of general interest charge (GIC) imposed for late payment or under estimation of liability* provides guidance on when that discretion may be exercised. Where a taxpayer identifies that they have been impacted by disaster, the Commissioner's discretion will generally be exercised to remit part or all of the general interest charge.

76. The Commissioner's discretion does not extend to the administration and nominal interest components of general interest charge applied to a super guarantee charge.

Amendment History

22 December 2011	Paragraph 32	Remove reference to TX160

Subject references	Taxpayer identification Documentation & records Loss or destruction of records Lodgement of tax returns Default assessments Substantiation
Legislative references	ITAA 1936 161 ITAA 1936 166 ITAA 1936 167 ITAA 1997 Div 900 ITAA 1997 900-205 ITAA 1997 995-1 FBTAA 1986 72 FBTAA 1986 73 FBTAA 1986 123(5) FBTAA 1986 123(6) FBTAA 1986 123B ANTS(GST)A 1999 9-40 ANTS(GST)A 1999 29-70(1) ANTS(GST)A 1999 29-70(1B) SGAA 1992 36 TAA 1953 8AAG TAA 1953 Sch 1 Part 2-5 TAA 1953 Sch 1 Part 2-10 TAA 1953 Sch 1 105-5 TAA 1953 Sch 1 268-10 TAA 1953 Sch 1 Div 388 TAA 1953 Sch 1 388-50 TAA 1953 Sch 1 388-60
Related public rulings	TR 97/24 – Income tax: relief from the effects from failing to substantiate GSTR 2000/17 – Goods and services tax: tax invoices
Related practice statements	PS LA 2004/11 – The Commissioner's discretions to treat a particular document as a tax invoice or adjustment note PS LA 2005/2 – Penalty for failure to keep or retain records PS LA 2005/7 – Substantiation of deductions claimed by individual taxpayers for work and car expenses incurred in the course of earning non-business and non-investment income PS LA 2006/1 – Remission of additional superannuation guarantee charge imposed under Part 7 of the Superannuation Guarantee (Administration) Act 1992 and administrative penalty imposed under subsection 284-75(3) of Schedule 1 to the Taxation Administration Act 1953 PS LA 2007/22 – Remission of penalty for failing to withhold as required by Division 12 of Schedule 1 to the Taxation Administration Act 1953

	PS LA 2007/24 – Making default assessments: section 167 of the Income Tax Assessment Act 1936 and other similar provisions PS LA 2011/12 – Administration of general interest charge (GIC) imposed for late payment or under estimation of liability PS LA 2011/18 – Enforcement measures used for the collection and recovery of tax related liabilities and other amounts PS LA 2011/19 – Administration of penalties for failing to lodge documents PS CM 2008/2 – Corporate Management Practice Statement – Proof of Identity
Case references	
Other references	Fact sheet: Reconstructing records and making reasonable estimates for individuals (Nat 72973-04.2009) Fact sheet: Reconstructing records and making reasonable estimates for businesses (Nat 72972-04.2009) Form: Reasonable estimate for documents destroyed by disaster (Nat 72981-04.2009)
File references	1-1W8HAV9
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Other Business Lines consulted	Debt, ME&I, GST, Excise, MCL, GGR, SPR, TPALS, OCTC