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

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PS LA 2011/25
Reconstructing records and making reasonable estimates for taxpayers affected by a disaster

This Practice Statement guides tax officers assisting taxpayers to reconstruct records and make reasonable estimates where the taxpayer has been affected by a disaster.

This Practice Statement is an internal ATO document and 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

When a taxpayer's original records have been destroyed by a natural disaster, we can assist them or their nominated representative to reconstruct their records. This Practice Statement is to guide you through that process.

In particular, it is to provide guidelines for:

- reconstructing records to lodge returns
- making reasonable estimates to enable the lodgment of returns for
  - income tax
  - fringe benefits tax (FBT)
  - superannuation guarantee
  - goods and services tax (GST)
  - other documents required by a taxation law, and
- issuing a default assessment (if neither of the earlier listed options is possible).

This Practice Statement sets out a range of other matters you will need to consider when assisting a taxpayer, including:

- establishing proof of their identity (section 3 of this Practice Statement)
- reconstructing documents for non-business individuals (section 4 of this Practice Statement)
- reconstructing documents for businesses (section 5 of this Practice Statement)
- default assessments (section 8 of this Practice Statement)
- substantiation requirements for various taxes (section 9 of this Practice Statement)
- false and misleading statements (section 10 of this Practice Statement)
- penalties and interest charges (section 11 of this Practice Statement).

What a 'disaster' means

A 'disaster' is:

- a natural disaster causing localised or widespread destruction, such as a flood, a bushfire or any other such extreme weather event
- a personal disaster, such as a house or business fire or any other such event.

2. General policy on disaster-affected taxpayers

In general, when a taxpayer has a 'disaster-affected' indicator on a case, we will not impose penalties for:

- failure to maintain records
- failure to lodge documents or returns on time
- failure to withhold (section 11 of this Practice Statement).

Processing disaster-affected returns and refunds

If you receive documents and returns that follow this Practice Statement, clearly note 'disaster-affected' in the description field on the associated Siebel work item.

Any lodgment or refund that has been marked 'disaster-affected' will be fast-tracked for immediate processing.

3. Establishing proof of identity

Before you can discuss the tax affairs of a taxpayer, you will need to confirm their identity by following the guidelines for establishing proof of identity set out in Chief Executive Instruction Identity management (link available internally only).

When working in the community, you can phone the Emergency Support line on **1800 806 218** to confirm the taxpayer's identity.

4. Assisting taxpayers who are not in business with their tax return

You can assist the taxpayer to lodge their current year tax return by using:

- pre-fill information from myTax
- information from the taxpayer's employer, or
- if these options are not available, net salary amounts on the taxpayer's bank statements, which need to be grossed-up to an annual amount and have the withholding calculated.

If the requisite information cannot be obtained, consider whether the taxpayer can make a reasonable estimate of their taxable income.

Lodging the tax return based on a reasonable estimate of a taxpayer's taxable income

The taxpayer may be able to lodge their current year tax return based on a signed statement by them setting out a reasonable estimate of their taxable income in a Reasonable estimate for documents destroyed by disaster form (NAT 72981).

Only one signed statement is necessary from a taxpayer to cover all lodgments made using that reasonable estimate.

Assisting in making a reasonable estimate of a non-business taxpayer's taxable income

At the taxpayer's request, you can assist them to make a reasonable estimate of their taxable income by:

- accessing previous year income data and asking the taxpayer if this is a reasonable estimate of their current year income and deductions
- contacting third parties who are able to supply information and documents (the taxpayer should approach third parties in the first instance to obtain the information and documents)
- taking into account if the taxpayer is eligible to receive insurance payouts for destroyed assets
- taking into account if the taxpayer is eligible to receive assessable income protection insurance payouts
- taking into account whether the taxpayer is eligible for rebates and other entitlements
- ensuring pay as you go (PAYG) withholding tax credits claimed by the taxpayer match employer records on the assumption those records are correct, unless there are reasonable grounds to believe otherwise
- using the appropriate tax rates and tables available on our website or app to work out their PAYG withholding tax credits if the employer records have also been destroyed.

5. Assisting taxpayers who are in business to lodge a tax return

You can assist the taxpayer to lodge their current year tax return by:

- using data from business activity statements (BAS) that have been lodged to construct the tax return
- attempting to reconstruct the taxpayer's records to determine the net amounts owed for each period of lodgment where BAS have not been lodged.

You can manually input the information relating to BAS into our systems, which will then be used to complete their tax return.

If all the requisite information cannot be obtained to enable their current tax return to be lodged, you need to consider whether the taxpayer is able to make a reasonable estimate of their taxable income.

Assisting in making a reasonable estimate of a business taxpayer's taxable income

At the taxpayer's request, you can assist in making a reasonable estimate of their taxable income by:

- using data from BAS that have been lodged to construct their tax return
- using data available in both tax returns and BAS from the previous 3 income years where there is no current BAS or only partial-year BAS available
- using data available in their tax returns and BAS to make a trend-based estimate of the current income year's income and deductions, unless

there are circumstances where this may not be appropriate, such as

  - our statistics as published on our website 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

- consulting with the taxpayer to determine if it is reasonable to base their tax returns and BAS on previous years' returns and statements for the same period. In this situation, no uplift factor should be applied. For example, if a credit was issued for the same period last year, we would generally issue a refund for the same amount.

Lodging the tax return based on a reasonable estimate of a taxpayer's taxable income

The taxpayer may be able to lodge their current year tax return based on a signed statement by them setting out a reasonable estimate of their taxable income in a Reasonable estimate for documents destroyed by disaster form (NAT 72981).

Only one signed statement is necessary from a taxpayer to cover all lodgments made using that reasonable estimate.

If the requisite information cannot be obtained, consider whether the taxpayer can make a reasonable estimate of their taxable income.

You may also need to consider:

- whether there are third parties who are able to supply information and documents (the taxpayer should approach third parties in the first instance to obtain the information and documents)
- whether Australian Transaction Reports and Analysis Centre transaction reports are available to assist in reconstructing purchase and sales records for businesses (you should not pass on this information to the taxpayer)
- if the taxpayer received insurance payouts for destroyed assets
- if the taxpayer has any PAYG withholding instalment obligations which may need to be varied
- what rebates and other entitlements the taxpayer was eligible for previously and will continue to be eligible for.

6. Assisting taxpayers who are in business to lodge their business activity statement

The taxpayer may be able to lodge a BAS using a signed statement by them setting out a reasonable estimate of their GST.

If the requisite tax invoices cannot be obtained or reconstructed to enable input tax credits to be attributed to the relevant periods, consider an assessment for a net amount under section 155-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

7. Assisting taxpayers who are in business with other tax obligations

PAYG withholding

Refer to Law Administration Practice Statement PS LA 2011/18 *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts* when establishing a reasonable estimate of PAYG withholding where business records have been destroyed. Once you have made a reasonable estimate, you will need to provide this information to the taxpayer's employees for use in their individual tax returns.

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

Superannuation

You should ensure that any superannuation liability is correctly raised and reported.

If required, there can be a default assessment of superannuation guarantee shortfall and of the superannuation guarantee charge payable on the shortfall under section 36 of the *Superannuation Guarantee (Administration) Act 1992*.

Fringe benefits tax

You may also need to consider any FBT obligations.

If required, you can make a default assessment of the FBT amount and the amount of FBT payable under section 73 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

8. Default assessments

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

- income tax – section 167 of the *Income Tax Assessment Act 1936*
- FBT – section 73 of the FBTAA
- superannuation guarantee charge – section 36 of the *Superannuation Guarantee (Administration) Act 1992*
- GST or fuel tax net amount for a tax period – section 105-5 of Schedule 1 to the TAA applies for tax periods starting before 1 July 2012; for tax periods starting on or after 1 July 2012, section 155-5 of Schedule 1 to the TAA applies
- PAYGW amounts – section 268-10 of Schedule 1 to the TAA.

You 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 methods, statistical information or extrapolation from previous years' returns.

You will also need to refer to Law Administration Practice Statement PS LA 2007/24 *Making default assessments: section 167 of the Income Tax Assessment Act 1936*.

9. Substantiation requirements

Substantiation provisions in various taxation Acts may prevent a taxpayer from claiming losses or outgoings unless they can provide documentary support.

Where records have been lost as a result of disaster, the provisions discussed in this Practice Statement may relieve the taxpayer of having to substantiate reconstructed records.

Income tax – section 900-205 of the Income Tax Assessment Act 1997

Division 900 of the *Income Tax Assessment Act 1997* (ITAA 1997) sets out particular substantiation requirements for:

- work expenses
- car expenses, and
- business travel expenses.

It requires that taxpayers be able to show how they reasonably arrived at a claim for any other expense.

Under section 900-205 of the ITAA 1997, a taxpayer may be relieved of these obligations if they have the following, as these may be treated as the original document:

- a complete copy of the original document, or
- a substitute of the original document that sets out all the required information.

Alternatively, if the taxpayer does not have a complete copy or suitable substitute document, they may still be relieved of the necessity to substantiate if:

- you are satisfied that they took reasonable precautions to prevent the loss or destruction, and
- it was not reasonably possible for the taxpayer to get a substitute document.

For more information, see:

- Law Administration Practice Statement PS LA 2005/7 *Substantiating an individual's work-related expenses*, which sets out the substantiation requirements in more detail, and
- Taxation Ruling TR 97/24 *Income tax: relief from the effects from failing to substantiate*.

GST – subsection 29-70(1B) of the A New Tax System (Goods and Services Tax) Act 1999

If you can reasonably conclude from a document that there is a creditable acquisition, you may apply the discretion.

For detailed information, see:

- Goods and Services Tax Ruling GSTR 2013/1 *Goods and services tax: tax invoices*
- Law Administration Practice Statement PS LA 2004/11 *Treating a document as a tax invoice or adjustment note*.

If there is no document to establish the creditable acquisition, consider whether you can make an assessment under section 105-5 of Schedule 1 to the TAA or, for a tax period starting on or after 1 July 2012, under section 155-5 of Schedule 1 to the TAA.

Fringe benefits tax – subsections 123(5) and (6) of the Fringe Benefits Tax Assessment Act 1986

If FBT documents have been lost, refer to subsections 123(5) and (6) and section 123B of the FBTAA for exceptions to the substantiation requirements.

10. False or misleading information

The lodgment will be subject to normal compliance activities if information received suggests that a taxpayer:

- has made false or misleading information in a lodgment, or
- lodged with the intent to either
  - obtain a financial benefit they are not entitled to, or
  - commit fraud.

Ensure that the taxpayer is fully aware that the tax law imposes heavy penalties for providing false or misleading information.

11. Penalties and interest charges

Penalties

A penalty is not payable until the taxpayer is informed by written notice and provided with the reason the penalty was imposed.

Refer to the following Practice Statements for details:

- Law Administration Practice Statement PS LA 2011/19 *Administration of the penalty for failure to lodge on time*
- Law Administration Practice Statement PS LA 2005/2 *Penalty for failure to keep or retain records*
- Law Administration Practice Statement PS LA 2007/22 *Remission of penalties for failure to withhold*
- Law Administration Practice Statement PS LA 2021/3 *Remission of additional superannuation guarantee charge*.

Where a disaster-affected indicator is present on a case, do not impose penalty for:

- failure to lodge taxation documents or returns on time
- maintain records, or
- failure to withhold.

If penalties have been automatically imposed, refer to the other Practice Statements listed in this Practice Statement and consider whether the penalty should be remitted.

Interest charges

All or part of the general interest charge (GIC) imposed for late payment may be remitted under section 8AAG of the TAA.

For guidance on when GIC may be remitted, refer to Law Administrative Practice Statement PS LA 2011/12 *Remission of General Interest Charge*. In most cases, GIC will be remitted for taxpayers who are affected by a disaster.

However, administration and nominal interest components of GIC applied to superannuation guarantee charges will not be remitted.

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Amendment history

4 July 2024

Part	Comment
Throughout	Updated to ensure compliance with current ATO style and accessibility guidelines.
Throughout	Wording updated for clarity.

6 May 2020

Part	Comment
Throughout	Updated contact details, ato.gov.au page title and CEI title.

8 June 2017

Part	Comment
Throughout	Rewritten into new LAPS format and style.

23 April 2015

Part	Comment
Throughout	General edit for clarity.
Throughout	Change of template and reorganisation of content.
Throughout	Edited references to legislative provisions for consistency.
PS LA reference	Replaced PS LA 2006/1 with PS LA 2011/28.
CM reference	Replaced PS CM 2008/2 with Identity Management CEI.

3 April 2014

Part	Comment
Contact officer	Updated.

3 May 2013

Part	Comment
Footnote 2	Additional text inserted.
Paragraph 42	Updated for clarification.
Paragraph 59	Removed reference to GSTR 2000/17 and replaced with GSTR 2013/1.
Throughout	Minor formatting.
Other references	Updated.

9 October 2012

Part	Comment
Paragraphs 43, 49 and 60	Include reference to section 155-5 of Schedule 1 to the TAA 1953.
Legislative references	Updated.

22 December 2011

Part	Comment
Paragraph 32	Remove reference to TX160.

References

Legislative references	ANTS(GST)A 1999 29-70(1B) FBTAA 73 FBTAA 123(5) FBTAA 123(6) FBTAA 123B ITAA 1936 167 ITAA 1997 Div 900 ITAA 1997 900-205 SGAA 1992 36 TAA 1953 8AAG TAA 1953 Sch 1 105-5 TAA 1953 Sch 1 155-5 TAA 1953 Sch 1 268-10
Other references	Identity management CEI (link available internally only) Reasonable estimate for documents destroyed by disaster form
File references	File 1-1W8HAV9
Related rulings	TR 97/24 GSTR 2013/1
Related practice statements	PS LA 2004/11 PS LA 2005/2 PS LA 2005/7 PS LA 2007/22 PS LA 2007/24 PS LA 2011/12 PS LA 2011/18 PS LA 2011/19 PS LA 2021/3

ATO references

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