Obtaining client instructions and authorisation

Presented by Debra Anderson, Board Member, Tax Practitioners Board

Welcome

'In the spirit of reconciliation, we acknowledge the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past, present and emerging. We extend that respect to all Aboriginal and Torres Strait Islander peoples today'.

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What we will cover today

- Client instructions and authorisations
- Engagement letters
- Managing client money and property held on trust
- Defining a trust
- What it means to hold property on trust
- How to hold and return money or other property
- Liens
- Other important matters requiring client authorisation
- Q&A

Meet your presenter

- Debra Anderson
- Board Member
- Tax Practitioners Board

Client instructions and authorisations

Client instructions and authorisations

- Obtaining your clients' instructions is the foundation of your engagement and relationship with your client.
- You should determine your client's expectations about the scope of advice or assistance you will provide.
- Seeking client authorisation is a simple way to ensure that you comply with obligations.
- Client authorisation gives you the authority to act on your client's behalf.

Using engagement letters

Why use an engagement letter?

Engagement letters are not compulsory, but they can assist you to:

- establish a clear understanding of the engagement
- comply with your obligations under the Code
- maintain an ethical practice
- ensure you provide professional service
- avoid disputes about fees and the scope of work to be completed.

What to include in an engagement letter ☑

An engagement letter may include:

- a description of the work to be done
- how much it will cost
- confidentiality and disclosing information to third parties
- record keeping and storage arrangements
- your responsibilities as the tax practitioner
- how you manage tax refunds
- your name and registration number.

Other information to include

An engagement letter should also include:

- client responsibilities
- your duty to act lawfully
- conflict of interest arrangements
- the rights and obligations of the client.

Managing client money

Code of professional conduct

Code item 1
Act honestly and with integrity

Code item 2
Comply with tax laws in the conduct of your personal affairs

Code item 3
Account to your client for money or other property you hold in trust

Code item 4
Act lawfully in your client's best interest

Code item 5
Manage conflicts of interest

Code item 6
Do not disclose information without client permission

Code item 7
Ensure tax agent services are provided competently

Code item 8
Maintain the knowledge/skills relevant to the services you provide

Code item 9
Take reasonable care to ascertain your client's state of affairs

Code item 10
Take reasonable care to ensure taxation laws are applied correctly

Code item 11
Do not obstruct the proper administration of taxation laws

Code item 12
Advise your client of their rights and obligations

Code item 13
Maintain professional indemnity insurance

Code item 14
Respond to requests and directions from the Board

Code item 3

If you receive money or property from or on behalf of a client you must account for it.

- Money or property on trust includes:
  - money held or received in advance for settling or meeting liabilities
  - client tax refunds
  - money paid for specialist advice.
- You must keep money or other property held on trust separate from personal money.

Trusts

What is a trust?

- A trust is a relationship which exists where A holds property for the benefit of B.
- A is known as the trustee and is the legal owner of the property which is held on trust for the beneficiary B.
- Three elements are required to make up a trust:

The trustee

The beneficiary

Trust property

When is property held on trust?

- Property will be held on trust where an entity has property that they hold for, or on behalf of, another entity to be applied for a particular purpose.
- For tax and BAS agents, a trust will generally arise where you receive money or other property on behalf of a client.
- You must keep that money or other property separate from your own.

Example

- Simon is a registered tax agent.
- He receives a client refund from the ATO.
- He doesn’t have an agreement with his client for handling the refund.
- Simon has received the refund on behalf of the client and keeps this money separate, so we’d consider this refund is held on trust for the client.

Accounting for money or property

How to account for money or other property

Some ways to account for money or other property held on trust include:

- keeping your personal or business funds separate
- keeping accurate and up-to-date records
- seeking instructions from clients about how and where to pay money
- passing tax refunds on to clients within 14 days
- promptly answering any questions clients raise
- reconciling the trust records and reporting to clients
- applying money or other property lawfully in accordance with the directions of the client.

Poll

- Angus is a tax agent who receives a client's tax refund cheque.
- He deposits the cheque into his personal/business account.
- Angus and his client have an engagement letter in place where they've agreed for Angus to take his fee from the tax refund.
- Has Angus complied with his obligations under Code item 3?
    - Yes
    - No
    - Unsure

Claiming a lien

About liens

- A lien is defined as the right to hold the property of another as security for the performance of an obligation or the payment of a debt.
- Liens may arise by express contract, implied contract, or legal relations between parties.
- There are two kinds of liens:
  - A particular (or specific) lien – the right to retain property until the obligation in respect of that property has been settled by the owner
  - A general lien – the right of a particular class of persons (for example, solicitors, bankers or stockbrokers) to retain property until the owner of the property has settled all their outstanding obligations to that class of persons.

When to claim a lien

- A lien is legal in nature and we encourage agents to seek legal advice if exercising a lien.
- To exercise a lien over client property, you must:
  - be claiming the lien in your own right
  - have possession of the client's property
  - ensure the debt or demand is connected to the property over which the lien is being claimed.

What can be subject to a lien

- Registered agents can only claim a lien over property that they have expended labour and made more valuable.
- The following could be subject to a lien:
  - a general ledger
  - balance sheet
  - draft income tax return prepared by a tax agent
  - electronic property.
- A lien would not extend to invoices or a sales journal where the agent only checked them.

Who owns the documents?

- Unless stated otherwise, the following documents generally belong to the client:
  - source documents – such as ledgers, receipts, invoices or journals
  - correspondence between the ATO and the client and notices of assessment
  - letters of advice, books of accounts, tax returns and financial statements prepared by an agent for the client (once paid for).
- Working documents of the agent would not belong to the client unless the client specifically instructed the agent to prepare the drafts for them and had paid for them.

Difference between trust money and a lien

- Liens should be distinguished from money or other property held on trust.
- If you receive money from or on behalf of a client, and you hold the money or other property on trust you must account to your client for it.
- Client tax refunds cannot be a subject to a lien unless agreed to by the client in writing.

Client authorisation

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What is information?

- Information refers to knowledge you have acquired or derived about a client, whether directly or indirectly.
- It is only necessary that the information relates to the affairs of a client.

Who is a 'third party'?

- A third party means any entity other than the client and the registered tax practitioner.
- A third party includes:
    - a related entity of the client and/or tax practitioner
    - any entity that is engaged to outsource work
    - entities that maintain offsite data storage systems (including 'cloud storage').

Obtain your client's permission

When disclosing a client's information to a third party you should:

- clearly inform the client about the information you are disclosing
- advise them to whom and where the disclosure will be made
- obtain their written permission.

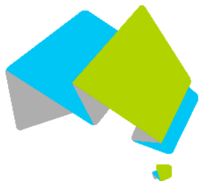
Legal duty to disclose

- You may disclose information about a client’s affairs to a third party without their permission if you have a legal duty to do so.
- If you are concerned whether there is a legal duty, consider seeking independent legal advice.

Outsourcing and offshoring

- Outsourcing is where you transfer portions of the services you provide (or even an entire operation) to third parties rather than completing it yourself.
- Offshoring is where you enter into an arrangement to transfer a process, function, service or activity to a country other than Australia.
- It's important to recognise that there are various arrangements that can be a mixture of both outsourcing and offshoring.

Outsourcing



Offshoring

Example: Outsourcing

- Jackie runs a local coffee shop. She engages Tony's Tax Services to prepare and lodge her BAS and provide tax advice.
- Tony's Tax Services separately engages a registered BAS agent to prepare the BAS.
- Tony's Tax Services obtains Jackie's explicit permission by way of a signed engagement letter.

Poll

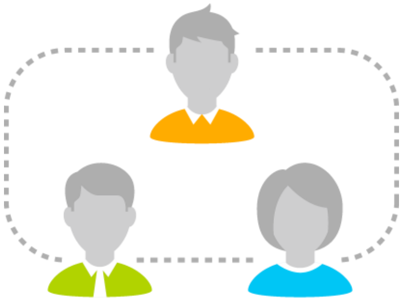
- Vee Co is a large accounting firm and a registered tax agent company.
- To minimize its operating costs, they enter an offshore agreement with a data processing firm in Vietnam.
- The firm will perform all the data processing work for Vee Co's clients.
- In order to send the client's information overseas for processing what must Vee Co do?
    1. Disclose the agreement with the overseas firm to all clients.
    2. Obtain client's permission.
    3. Complete a signed agreement with each client.
    4. All of the above.

Managing conflicts of interest 

- You must have adequate arrangements in place for the management of conflicts of interest that may arise in relation to activities you undertake in the capacity of a registered tax practitioner.
- Code item 5 does not prohibit you from having conflicts of interest but creates an obligation to appropriately manage conflicts that arise or may arise.

What is a conflict of interest?

- A conflict of interest is where a tax practitioner has a personal interest, or duty to another person, which is in conflict with the duty owed to the client.
- A conflict of interest may be an actual or potential conflict.



Managing conflicts of interest

There are a number of mechanisms to manage conflicts of interest:

Disclose

Control

Avoid

Disclosing conflicts of interest

Disclosure should:

- be made at the earliest possible opportunity
- be specific and meaningful to the client
- occur before or when the service is provided
- refer to the specific service to which the conflict relates.

Example: Marital break ups

- Terrence and Sandra have recently divorced. They have used Craig as their registered tax agent for the past seven years.
- In preparing their income tax returns, Craig determines that the claiming of a rebate by Terrence would prevent Sandra from claiming the rebate.
- Craig discloses his conflict of interest to Terrence and Sandra and receives a waiver from both parties in relation to the conflict.

Case study

- A tax agent failed to pass on tax refunds promptly to 19 clients.
- The agent also held the refunds in their personal account instead of a trust account.
- Our investigations confirmed the agent failed to properly communicate receipt of tax refunds to their clients. They remained inaccessible when clients attempted to contact them about their refunds and also failed to respond to our enquiries.
- In addition to the above breaches (Code items 3 and 7), the agent failed to maintain professional indemnity insurance that met our requirements.
- The Board Conduct Committee terminated the tax agent’s registration.

Questions

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