

The following **Precedent client engagement letter**, the accompanying **Clients' rights and obligations under the taxation laws** document and the **Precedent guarantee for fees** document should all be read in conjunction with the document, **Guidance notes for the practitioner**.

Please note that the highlighted segments in this document are intentional, and generally indicate that information needs to be inserted or deleted. Refer to the **Guidance notes for the practitioner** document for further details.

Precedent client engagement letter

[Date]

[Insert name]

[Address line 1]

[Address line 2]

Dear [insert name],

Thank you for your instructions to attend to the accounting and taxation requirements for your family members and corporate and trustee entities. A list of the individuals and entities for whom we are to act (**the Group**) is set out in the accompanying *Schedule of Clients* and our comments below are directed to all those persons.

This letter sets out our terms of engagement and the scope of the work to be performed by us within that engagement, and supersedes any previous engagement letter provided by us. Please read it carefully and if you have any queries or wish to discuss any aspect, do not hesitate to contact us.

Since 1 March 2010, tax practitioners have been regulated in accordance with the requirements of the *Tax Agent Services Act 2009 (TASA)* and the accompanying regulations. The TASA regime has implications for registered tax agents and also for their clients.

An important feature of TASA is the provision of a "safe harbour" protection from penalties in certain circumstances for taxpayers who engage registered tax agents.

To obtain the benefits of safe harbour protection, the legislation requires the taxpayer to provide the registered tax agent with "all relevant taxation information" to enable accurate statements to be provided to the Australian Taxation Office (ATO). This requirement may be important to both parties in identifying and understanding the purpose and scope of the engagement as set out below and may also affect other matters discussed below.

You will find further discussion on the safe harbour protections in the accompanying document entitled **Clients' rights and obligations under the taxation laws**.

We may become ethically required to disclose non-compliance with laws or regulations to a regulatory authority if the non-compliance has a material effect on the work that we perform under this engagement.

If the terms of our engagement are acceptable, we ask that all persons sign the enclosed copy of this engagement letter in the places indicated and return it to our office.

Please note that we are unable to perform any work for you until we receive the signed copy.

1. Purpose and scope of engagement

Our engagement is to attend to the following matters for the Group, as applicable:

- Prepare and lodge Business Activity Statements (BASs);
- Prepare the annual financial statements;
- Prepare and lodge annual income tax returns;
- Prepare and lodge annual FBT returns;
- Lodge Single Touch Payroll reports; and
- Prepare and lodge annual returns for your superannuation fund.

Unless otherwise agreed, we will prepare the above returns and statements on an ongoing basis, in relation to the period following that for which the returns and statements have most recently been finalised, and for each subsequent period.

Each member of the Group engages us on the terms set out in this letter and is bound by those terms. Those persons are jointly and severally liable to pay our accounts, regardless of which Group member those accounts are addressed to, and regardless of which Group member received the benefit of the work performed.

If we are asked to act for a new or additional member of your family group, we may forward to you an updated *Schedule of Clients* which each existing Group member agrees will apply in place of any previous *Schedule of Clients*. We will also require the new Group member to sign an acknowledgement of these terms of engagement.

Our services will be provided to you on a fee for service basis.

This letter relates only to the abovementioned services and details the basis and terms of this engagement. Unless otherwise agreed, our engagement will be limited to the matters described in this letter. Work that is performed or disbursements that are incurred which are outside the scope of this letter will be the subject of additional charge.

Our engagement commences as soon as you return this engagement letter and it has been signed by you. In addition to any other rights you might have, you can terminate this engagement at any time by telling us in writing. We also reserve the right to do so by providing you with 14 days' written notice.

If either you or we terminate this engagement, the provisions of clause 2.6 will apply.

2. Basis and terms of engagement

Our engagement is to assist with the preparation of the financial accounts and the preparation and lodgment of the taxation returns for your Group. This includes the non-trading individual members of your family (**Individuals**), as well as your trading entities (including individuals), corporate entities, partnerships, trustees and superannuation entities (**Entities**).

2.1 Accounting and record-keeping

In undertaking this engagement, you must generally ensure the following:

- The bookkeeping for all Entities is maintained on a regular basis. In fact, we recommend the bookkeeping and record-keeping tasks be attended to each week.
- Reconciliations for the bank accounts, debtors and creditors are performed at the end of each month for each of the Entities.
- A stocktake will be performed during the last weekend in June for each entity that deals in trading stock.
- It is expected that the trial balance of each of the Entities will be completed no later than **[insert date]** each year.

In respect of the personal tax returns for Individuals, we require that all relevant information be collated and forwarded to our office by **[insert date]** each year. We shall detail more specific requirements in respect of the Individual tax returns later in this letter.

2.2 Taxation services

In engaging us to provide taxation services, it is important for you to understand the following:

- You are responsible for the accuracy and completeness of the particulars and information provided to us by you.
- Any advice we provide is only an opinion based on our knowledge of your particular circumstances.
- You have obligations under the self-assessment regime to keep full and proper records in order to facilitate the preparation of accurate returns.
- We cannot provide taxation services if we find that information on which those services are to be based contain false or misleading information, or omit material information, and you are not prepared to appropriately amend that information.

2.3 Compilation of financial statements

By engaging us to compile financial statements, you acknowledge that:

- the reliability, accuracy and completeness of the accounting records are your responsibility; and
- that you have disclosed to us all material and relevant information.

2.4 No statutory financial audits are conducted

You and your employees are responsible for the maintenance of the accounting systems and internal controls for all the Entities. That includes the keeping and maintenance of all required books of account. Our firm cannot be relied upon to disclose irregularities, including fraud, and other illegal acts and errors that may occur with regard to such matters.

Our firm is not being engaged to conduct a statutory audit of the financial records of any of your Entities and we will not express an auditor's opinion as to the truth and fairness of the financial statements.

2.5 Documentation

Before we lodge any returns on your behalf, we will forward the documents to you for approval. We will endeavour to ensure that the returns are lodged by the due dates and will advise you at the beginning of the financial year when documentation should be provided to us. If you are late in providing information, we will do our best to meet the time limits, but we will not be responsible for any late lodgment penalties or interest charges you may incur.

2.6 Ownership of documents

The financial statements, tax returns and any other documents which we are specifically engaged to prepare, together with any original documents given to us by you, shall be your property. Any other documents brought into existence by us, including general working papers, the general ledger and draft documents will remain our property at all times.

If our services are terminated (by either party), each client separately agrees that we shall be entitled to retain all documents owned by that client (including all tax refund cheques of that client which come into our possession) until payment in full of all outstanding fees outstanding from all members of the Group on any account. Where copies of any documents released to you are required for our records, you will be charged for the cost of photocopying at our normal rates.

2.7 Additional services

The scope of our engagement is the preparation and lodgment of the accounting and taxation matters detailed above. Any agreed fee applies only to services and advice provided within the scope of our engagement. This fee includes checking and forwarding original assessments and payment notices that are received from the ATO and the Australian Securities & Investments Commission (ASIC).

However, any additional services or advice that you request are outside the scope of this letter and are not included in this agreed fee. We will separately advise you of the fee for these services, including any direct out of pocket expenses. Please note in particular that any correspondence from the ATO or ASIC that does not relate to initial assessments or original payment notices, will be charged as additional services.

2.8 Fees and charges

Our services will be provided to you on a fee for service basis.

Unless otherwise stated in writing, any estimates which we provide to you of our anticipated fees, disbursements and charges for any work are only indicative of the amounts you can expect to be charged. Estimates are not quotes or caps, and are not binding on us.

Where an estimate is given and the scope of the work changes, or if it becomes apparent that the work involves matters which were not taken into account in the estimate, we will endeavour to advise you and provide an amended estimate as soon as it is practicable to do so.

We may require you to deposit money into our trust account in anticipation of our fees and charges. If you fail to make a required trust deposit, we may suspend work or terminate this engagement. Each client in the Group authorises us to apply trust moneys held on their behalf towards payment of fees and disbursements, and to meet our bill of costs which have been rendered and which have not been paid or disputed within 14 days after issue of the bill of costs.

Each client in the Group is jointly and severally liable to pay our fees in respect of all work performed for all members of the Group. We may require that payment of our fees be guaranteed by one or more persons who are associated with the Group but are not themselves our clients (for example, company directors). If you fail to provide a required guarantee, we may suspend work or terminate this engagement.

If we suspend work or terminate this engagement by reason of your failure to make a trust deposit or provide a guarantee as required, we will not be liable for any loss or damage suffered by any client in the Group as a result of the suspension or termination.

2.8.1 Goods and Services Tax (GST) – Professional fees

Our professional fees are inclusive of GST. If our services are provided to Individuals or Entities that are registered for GST, then those Individuals or Entities may be able to claim a GST input tax credit for the GST they pay on our services. However, this will not be the case if the services we provide are used by the recipient in making an input taxed supply or otherwise for a non-creditable purpose. In this situation the GST associated with our professional fees cannot be claimed as an input tax credit.

If your matter involves a mixture of taxable, GST-free and input taxed supplies, we will not apportion our professional fees between these categories of supply unless you have expressly requested us to do so.

Please note that if you make such a request after the commencement of any particular matter it may not be possible for us to subsequently apportion professional fees that were incurred prior to receiving your request. If you need separate advice on whether you will receive the benefit of a GST input tax credit for the GST paid to us then please contact us.

2.8.2 GST – Disbursements

In addition to our professional fees, you will be responsible for payment of expenses which we incur on your behalf (together with the GST that we pay in relation to such expenses), as set out below.

Certain government charges and fees included in some matters undertaken in the scope of our engagement are effectively GST-free to the applicant, but will attract the 10% GST if paid by this firm and then passed on to you as part of our services.

Accordingly, for certain disbursements in this category, namely:

- ASIC fees;
- new company and trust deed orders; and
- other specific disbursements notified from time to time,

we will act as your agents in incurring those disbursements. You will therefore technically be primarily liable to pay the account to the supplier. Under this agency relationship, you will receive the benefit of any concessional GST treatment of any part of the disbursement.

Where GST is payable on some or all of a supply acquired by us as your agent, we will forward you the Tax Invoice and you will be entitled to claim the input tax credits directly if you have an ABN and are entitled to claim input tax credits.

For disbursements incurred in this manner, we may in some cases require that you provide us with separate cheques for the relevant amounts to be paid directly to the relevant government body or supplier.

For all other disbursements (e.g., couriers, searches, photocopying, etc.) the treatment will be the same as for professional fees – i.e., we will incur the costs at first instance and invoice them on to you after making allowance for any GST input tax credits received by us on the acquisition. These invoices will include GST for which you may be entitled to claim an input tax credit.

2.9 Confidentiality

We will keep information acquired as a result of this engagement confidential and will not disclose confidential information relating to clients in the Group without permission, unless there is a legal duty to do so. We will also not use any information acquired as a result of this engagement for our own personal advantage or for the advantage of a third party.

We may also need to disclose information relating to one client's affairs to other clients in the Group to assist in performing our work, to persons responsible for the governance of an entity to comply with accounting standards, to the relevant parties in order to protect our professional interests in legal proceedings, to a professional or regulatory body in response to an inquiry or investigation, to the relevant parties in order to comply with technical and professional standards (including ethics requirements), or to a professional body of which we are a member, in relation to a quality review program undertaken by that body. Each client in the Group hereby authorises us to do so when we consider it appropriate to further our performance of work for the Group, or when requested by the relevant party.

2.10 Utilising outsourced services

From time to time, our firm may use "outsourced services" (which may include "Cloud Computing") to perform some of the services we are engaged to perform for you.

The list of third party service providers currently used by our firm, to whom client information will or may be disclosed, are as follows:

- *[List the particulars of each existing "outsourced service provider" to whom client information will or may be disclosed, including the details of the provider, the geographical location of where the services will be performed and the nature and extent of the outsourced services to be used. If there is no such service provider, insert "Not applicable"]*

We will notify you of any change to this list from time to time.

Each client in the Group hereby authorises us to disclose information relating to that client's affairs to such third party service providers as we may choose to engage to perform such work.

Where we outsource services to third party providers, we are nevertheless responsible for the conduct and activities of those providers and for the delivery of the services we are engaged to perform for you.

2.11 Use of "Cloud Computing" (that is *not* an outsourced service)

From time to time, our firm may utilise "Cloud Computing" in the performance of services under this engagement which is **not** an "outsourced service".

The list of "cloud computing" service provider(s) currently used by our firm in the provision of services which is not an outsourced service, to whom client information will or may be disclosed, is as follows:

- *[List the particulars of each existing "Cloud Computing" provider to whom client information will or may be disclosed, including the details of the provider, the geographical location of where the Cloud Computing will be provided and how the client's confidential information will be stored. If there is no such provider, insert "Not applicable"]*

We will notify you of any change to this list from time to time.

Each client in the Group hereby authorises us to disclose information relating to those clients' affairs to such "Cloud Computing" service providers as we may choose to engage.

2.12 Non-compliance with Laws and Regulations (NOCLAR)

During the performance of our work under this engagement, we may detect conduct or a transaction that is considered to constitute NOCLAR, which has a material effect on any documents or information that might be required to be provided to a regulatory authority (**RA**), such as the ATO.

If we detect any NOCLAR, we may have an ethical requirement to make a disclosure to a RA. We will follow a formal process which will include advising you of our concerns, and if necessary, seeking legal advice. If we do seek legal advice we reserve the right to ask you to pay or reimburse us for our reasonable costs.

If we are required to make a disclosure to a RA, you agree to forever release us from any claim for costs or losses you incur in responding to or dealing with anything that arises from our disclosure.

2.13 Losses from unauthorised cyber-activity

We will take all reasonable precautions to ensure that any electronic data that contains your private information is securely stored and that any email transmissions are protected and are not able to be intercepted by third parties. However, we cannot be held liable for any loss that you might incur as a consequence of any third party intervention that accesses, procures or copies any data that contains your private information from any medium or device we use to store or transmit such information.

In the event that, despite our firm having taken reasonable precautions to securely store your private information, you suffer any losses arising from unauthorised cyber-activity, you agree to forever release us from any claim for your losses.

2.14 Limitation of liability

Our firm's liability may be limited by a scheme approved under Professional Standards legislation and applicable regulations of the Professional Body.

3. Details of services to be provided

We shall now outline the basis of our engagement in the context of the specific services to be provided.

It should be noted at the outset that, as a general proposition, we rely upon our clients to provide us with accurate and timely information to enable us to properly perform our engagement obligations. Consequently, any rectifying work performed by us on the basis of incorrect or late information will be work which is outside the scope of this letter and will be charged as additional services.

3.1 BAS returns

As the BAS returns are prepared monthly/quarterly ~~[delete whichever is not applicable]~~ and lodged during the financial year, it is not possible for this firm to review the correctness of the underlying financial information as part of the preparation of the BAS return. This is because we are engaged to prepare the annual accounts and these are prepared after the conclusion of the financial year.

Therefore, for the BAS returns, we will rely on and process the financial information provided to us without any review of the primary source documents. In doing that, we will make the following specific assumptions:

- The financial information provided to us is accurate.
- The financial information correctly states the GST position. For example, all input tax credits and GST payable amounts have been correctly recorded in the general ledger. If you are unsure of the correct position or require advice regarding this, we are able to provide this as work which is outside the scope of this letter and charged as additional services.
- You have the necessary supporting documentation to satisfy the ATO for GST purposes. Again, if you are unsure of the ATO requirements or require advice regarding these documents, we are able to provide this as work which is outside the scope of this letter and charged as additional services.
- You hold valid tax invoices and adjustment notes for all expenditure incurred by you in respect of which an input tax credit is being claimed. Substantial penalties apply for an incorrectly prepared BAS. If you have any queries in respect to this, please contact our office for assistance.

However, it is possible that, when the financial accounts are prepared, some discrepancies will exist between the information disclosed in the BAS returns and in the annual financial statements.

Should any discrepancies arise, we will discuss the need to correct either the BAS returns and/or financial accounts. Those services will involve work which is outside the scope of this letter and will be charged as additional services.

3.2 Financial accounts

This firm has been engaged to prepare the annual financial accounts of the Entities in your Group. This service includes the preparation of:

- a profit and loss statement;
- a balance sheet; and
- notes for the above accounts.

This service includes maintenance of the chart of accounts for the general ledgers of your Entities, and telephone support should you require any assistance as to how to record specific transactions in the general ledger. This service also includes the preparation and lodgment of any standard reports that are required to be furnished to ASIC.

However, this service does not include the preparation of one-off accounts for presentation to your financiers for additional finance and the like.

3.3 Income tax returns

This firm has been engaged to prepare and lodge income tax returns for your Group.

This firm will not be responsible for reviewing or verifying any financial records or statements provided to it either via manual cashbooks or prepared on accounting software such as MYOB or Quickbooks. Correct coding or classification of accounts is outside the scope of this engagement. If assistance is required on how to correctly code, or to review how you currently do so, please discuss this with us. This will entail work which is outside the scope of this engagement and will be charged as additional services.

Also please ensure that you have all source documentation available to allow this firm to analyse the income tax implications of any transaction, if we request to see it. Whilst we will not as a matter of course be looking at these documents, the ATO will expect you (and you are required) to have them available before any claim is made in your income tax return. We may in some circumstances also request to see source documents if a tax issue is particularly contentious.

It is also expected that, in respect of individual income tax returns, each person will have the necessary documents so as to comply with the substantiation provisions of the *Income Tax Assessment Act 1997*.

We will specifically advise as to the requirements of the substantiation provisions relating to your income tax return and of the necessity to obtain acceptable receipts as specifically required by the legislation. We will not, however, be checking that the requirements of the substantiation provisions have been satisfied.

This specifically means that we will not be reviewing your log book or any calculations or information you provide us, such as a rental property schedule either prepared by you on a spreadsheet or by a property manager. If you require assistance in completing a log book or preparing any calculations, or you would like us to review such work, please discuss this with us. This will entail work which is outside the scope of this letter and will be charged as additional services.

From time to time, this firm prepares templates and schedules to assist with the collation of information to complete income tax returns. These will be provided free of charge.

The fee for this service does not cover any inquiries made to us, or investigations involving us, conducted by the ATO. Substantial penalties apply for an incorrectly prepared income tax return. If you have any queries in respect to this, please contact our office for assistance.

Each client in the Group agrees that we can bank into our trust account tax refund amounts received on behalf of that client, and can deduct from those amounts any fees owed to us either by that client or by any other member of the Group.

3.4 Fringe Benefits Tax (FBT) returns

This firm has also been engaged to prepare and lodge the FBT returns for your Entities. Please note, because of the impact of GST, it is not impossible to prepare an FBT return from the information contained in the general ledger. It is necessary to revert to the source documentation to allow our firm to analyse the FBT implications of any transaction.

Our fee for this service includes the following:

- Advice on how to collate the information necessary to prepare the annual FBT return;
- An annual review of the methods available to reduce the FBT expense on the annual FBT return;
- Telephone advice on basic FBT issues; and
- The calculation of Reportable Fringe Benefits Tax Amounts that may be required to be included on the annual income statements or payment summaries for your employees (including family members employed in the business of any Entity).

3.5 Single Touch Payroll (STP) reports

We will prepare and lodge **[insert frequency – e.g., weekly, fortnightly, monthly or quarterly]** STP reports with the ATO for the Group, based on the information provided to us by you, your employees or any third party authorised by you, without reviewing or verifying the payroll calculations, any relevant wage rates or the source documents relied upon to process each STP pay event.

We will only provide a lodgment service. We make no representations about the accuracy of the information submitted, the due date or whether it is received by the ATO. Our firm is not being engaged to perform, or check the accuracy of, payroll calculations associated with the STP reports. You and your employees are responsible for correctly preparing and processing each pay event, and for maintaining the necessary supporting documentation.

You and your employees are also responsible for calculating and remitting your PAYG withholding and Superannuation Guarantee liabilities with respect to each employee, for each relevant pay event.

3.6 Superannuation

This firm has also been engaged to attend to the income tax compliance work for your self-managed superannuation fund (SMSF). This assignment will involve the following:

- Preparation of the SMSF's accounts for the purposes of the *Superannuation Industry Supervision Act 1993* (the SIS Act).
- Preparation and lodgement of the SMSF annual return. It is important to note as part of the regulatory framework for SMSFs, an annual audit of the fund must be undertaken and provided to the trustees of the fund before the SMSF annual return is lodged. Therefore, trustees of the fund must ensure that they provide the fund accounting records no later than **[insert date]** to allow these tasks to be completed.
- With respect to the annual audit of the SMSF referred to above:
 - (a) this office will make arrangements for the audit to be undertaken by an external party whereby you will be billed directly and liable for all costs associated with the completion of the audit*; or
 - (b) you will make your own arrangements entirely at your own expense*.

* *delete whichever of the listed items is inapplicable.*

In addition to the basic financial information required to complete these requirements, it is expected that the source documentation will be available to allow this firm to analyse the implications of any superannuation related transaction.

You should also note that the deeds of the fund should be annually reviewed by a superannuation specialist to ensure they continue to comply with the requirements of the SIS Act. Our engagement does not extend to the provision of such legal advice and our fee does not include this service. We are happy to recommend the services of a superannuation specialist for this task.

This service does not cover any inquiries or investigations by the ATO.

3.7 Superannuation advice **[delete this item if the firm is licensed to provide financial advice]**

We do not hold an Australian Financial Services Licence and are not an authorised representative of such a licence holder.

As a result, we are generally prohibited from providing you with any advice, recommendation or opinion that is intended to influence you in making any decision in relation to superannuation (including whether to establish, contribute to or draw benefits from a superannuation fund, or any investment decision by an superannuation trustee), or that could reasonably be regarded as being intended to have such an influence (**Financial Advice**). However, we are able to provide you with superannuation advice that is of a factual nature only (e.g., to explain how superannuation rules would apply to you and what options are available to you).

Where you request us to undertake superannuation-related work (e.g., to arrange for the establishment of a self-managed superannuation fund), we will be obliged to perform that work in accordance with your instructions, even if we believe those instructions may not be in your best interest.

Where you request Financial Advice concerning superannuation, we will endeavour to assist you in obtaining that advice from an appropriately licensed advisor. Depending on the circumstances, this may involve us outsourcing the provision of the Financial Advice (in which case we would seek your prior authorisation), or referring you to a licenced provider directly.

3.7 Superannuation advice *[delete this item if the firm is not licensed to provide financial advice]*

We are required to hold an Australian Financial Services Licence (AFSL), or be an authorised representative of the holder of an AFSL, in order to provide you with certain types of advice in relation to superannuation. This includes any advice, recommendation or opinion that is intended to influence you in making any decision in relation to superannuation (including whether to establish, contribute to or draw benefits from a superannuation fund, or any investment decision by an superannuation trustee), or that could reasonably be regarded as being intended to have such an influence (**Financial Advice**).

We are authorised under an AFSL to provide Financial Advice. Our authorisation particulars are as follows:

- *[Name of AFSL holder]* – Licence Number *[insert]*
- Corporate authorised representative – *[insert name]* – ASIC registration number *[insert]*
- Associate authorised representative – *[insert name]* – ASIC registration number *[insert]*

Where we provide Financial Advice to you, we will be required to follow additional procedures. This will include:

- providing you with a Financial Services Guide as soon as practicable after it becomes apparent that we may be required to provide Financial Advice to you, and in any event before that advice is provided;
- fully-documenting your personal circumstances upon which our advice is based;
- providing you with a written Statement of Advice; and
- depending on the circumstances, we may be required to provide you with a separate Fee Disclosure Statement in relation to the Financial Advice.

4. Confirmation of engagement

Obviously, there are many issues to consider in this engagement and we ask that you consider all aspects of this letter to ensure that you are satisfied with the scope of our engagement. Please contact us if you have any queries about this letter.

Once you are satisfied with the terms of this letter, would you please have all persons sign and date both copies of this letter in the places indicated.

One copy should be forwarded to us as evidence of your acceptance of the terms of our engagement. You should retain the other copy as your evidence of our engagement.

We note again that we are unable to perform any work for you until we receive the signed letter.

We thank you for the opportunity to provide accounting and taxation services to your Group and we look forward to developing a close accounting relationship with you for many years to come.

Yours sincerely,

Schedule of Clients

Acknowledgment of terms of engagement

We, the parties named in the Schedule, confirm that we understand and agree to your terms of engagement, and acknowledge our responsibilities as set out in the terms of engagement.

Dated the _____ day of _____, 20_____.

Individuals:

Name	Signed
[insert name] (Individual signs)

(duplicate as required)

Companies:

Name	Signed
[insert company name and ACN or ABN] (Director signs)

(duplicate as required)

Partnerships/Joint Ventures:

Names	Partnership/JV	Signed
[insert name of each partner or joint venturer]	[insert name of partnership or joint venture and ABN] (Individual partner/venturer or director of corporate partner/venturer signs)

Individuals who act as trustees or nominees:

Name	Trust or superannuation fund	Signed
[insert name]	[insert name of trust or superannuation fund and ABN] (Individual signs)

(duplicate as required)

Companies which act as trustees or nominees:

Name	Trust or superannuation fund	Signed
[insert company name and ACN or ABN]	[insert name of trust or superannuation fund and ABN] (Director signs)

(duplicate as required)

Clients' rights and obligations under the taxation laws

Dear Client,

As a client of this practice, we are obliged to advise you of your rights and obligations under the taxation laws in relation to the services we provide to you. Set out below is a brief explanation of the main areas of the taxation system you should be aware of. If you have any concerns or issues with any of matters discussed below, please feel free to contact us.

The self-assessment system

The Australian tax system operates as a self-assessment system. This means that when your tax return, Fringe Benefits Tax (FBT) return or Business Activity Statement (BAS) is lodged, the Australian Taxation Office (ATO) accepts the information in the return at face-value and issues you with an assessment notice based on that information. It is important to understand that this does not mean the assessment is final as the ATO can conduct a review or audit of the information provided in the return at a later time, subject to the time limits discussed in the topic below.

The Commissioner's ability to amend an assessment

As explained above, the ATO accepts the information lodged in your return at face value. However, the ATO also has the power to amend the assessment if they find it to be incorrect. The following rules generally apply:

Individuals

- For most individuals, the ATO can amend an assessment within two years after you receive your notice of assessment. If the individual carries on a business and is **not** a Small Business Entity (SBE) or Medium Business Entity (MBE), that period extends to four years.
- If the individual is a partner in a partnership or a beneficiary of a trust, the period is two years. If the partnership carries on business and is **not** an SBE or MBE, the period extends to four years. If the trust is **not** an SBE or MBE, the period extends to four years.

Companies

- The ATO can amend a company assessment within two years after the company receives a notice of assessment where the company **is** an SBE or MBE. If the company is a partner in a partnership or a beneficiary of a trust, the period is two years. If the partnership carries on business and is **not** an SBE or MBE, the period extends to four years. If the trust is **not** an SBE or MBE, the period extends to four years.
- In most other case, the period is four years.

Trustees

- The ATO can amend an assessment within two years after the trustee receives the notice of assessment if the trust **is** an SBE or MBE.
- If the trustee is a partner in a partnership or a beneficiary of a trust, the period is two years. If the partnership carries on business and is **not** an SBE or MBE, the period extends to four years. If the trust is **not** an SBE or MBE, the period extends to four years.
- In most other case, the period is four years.

If the ATO amends an assessment, this will potentially involve, apart from increased taxes, penalties and interest. If you discover an error in the information declared in the return, lower penalties generally apply for making a voluntary disclosure.

Note that there are no time limits on the ATO amending an assessment where they believe there has been fraud or evasion.

Obligation to keep records

The tax laws specifically require taxpayers to keep records that properly explain the transactions they have entered into.

Individuals

Individuals claiming deductions for work-related expenses are subject to the substantiation rules in the tax laws. This requires taxpayers to keep receipts, invoices etc., of the expenses they incur. Where the expenses relate to a taxpayer travelling interstate or overseas, a travel diary may also need to be kept. Where the expense relates to a motor vehicle, a record of the journeys taken such as a log book may need to be kept.

A failure to keep the appropriate records can lead to the ATO denying a particular deduction which may involve the imposition of penalties and interest. Substantiation records must be retained for five years.

Businesses

The tax laws specifically require a taxpayer that carries on business to keep records that record and explain all the transactions they have entered into. This includes all the documents that explain how the income and expenditure of the taxpayer was determined.

Where the tax laws allow or require a taxpayer to make a choice, election, estimate or calculation, documents containing particulars of these matters must be kept.

All these records must be retained for a period of five years. There are penalties for taxpayers who fail to do so.

Obligation to provide complete and accurate records

In order for our practice to be able to lodge returns on your behalf, it is your responsibility to provide us with complete and accurate records. Further, in order to lodge your return on time, we will require you to provide us the relevant information as and when requested.

Where you are unable to provide us with complete and accurate records, we may be unable to prepare and lodge your return. Tax agents are subject to a Professional Code of Conduct contained in the *Tax Agent Services Act 2009*, which prevents them from acting for a client where insufficient records or information exists so as to be able to determine the amount of the client's income or deductions.

We also reserve the right to question any claims for deductions or credits that in our reasonable judgment might be considered as being excessive, and we may ask for more substantiation or records to prove that such a claim is allowable under the law. If we believe that a claim is excessive and cannot be substantiated we reserve the right not to include such a claim in your income tax returns or BAS, but you will have the right to lodge an objection after receiving your notice of assessment. There may be further costs in doing so, and we will advise you accordingly.

Records for clients operating in the cash economy

Because of the ATO's concerns with dealings in the cash economy, there are particular recording imperatives for clients who operate in that sector. In particular, the ATO has a program of "benchmarking" standardised revenue returns for a wide range of cash businesses.

In circumstances where it is dissatisfied with a taxpayer's records or recording systems, the ATO will often assess income tax and/or GST on what it considers to be an appropriate "benchmark" amount (plus penalties and interest) and then put the taxpayer to the task of disproving that assessment.

Where that occurs, the taxpayer is at a serious disadvantage and can be put to a great deal of cost and effort in disputing the assessment.

Taxpayers who operate in the cash economy are therefore urged to have a robust and reliable system for recording and reporting all cash transactions and to ensure that the recorded figures are accurate.

If you need assistance in setting up or reviewing your recording and reporting systems, we will be happy to do so and will advise you of our rates for doing so on request.

Right to seek a Private Binding Ruling

When preparing your return, we may identify one or more issues that are not clear under the tax laws. Where we have pointed out such issues to you, you have a right to request a Private Binding Ruling from the ATO. Upon providing the ATO with all the relevant facts, they will provide you with a ruling setting out their view on the proper tax treatment of the issue requested to be ruled upon.

Objecting against an assessment

If the ATO issues you with an assessment that you do not agree with, you have the right to lodge an objection against that assessment. The objection must be lodged with the ATO within either two or four years. As to which period applies, this is determined in the same way as the discussion above under the heading '*The Commissioner's ability to amend an assessment*'.

Where the ATO issues an amended assessment, the period for objecting is the greater of:

- 60 days from the time the amended assessment is received; or
- two or four years (whichever is applicable) from the time the original assessment was received.

If you remain dissatisfied with the outcome of the objection, you have the right to have the matter reviewed by the Administrative Appeals Tribunal or to appeal the matter to the Federal Court.

Onus of proof falls on the taxpayer

It is important to be aware that in any disputed assessment before the court or the Administrative Appeals Tribunal, the onus of proof is placed on the *taxpayer*. In other words, if the Commissioner asserts that your income should include a certain amount or that a deduction claimed in a return is not allowed, it will be up to you to establish that the Commissioner's view is incorrect.

Your protections under TASA

The *Tax Agent Services Act 2009* (TASA) and complementary amendments to the applicable taxation administration legislation provide statutory protections for taxpayers who engage registered tax agents.

In particular, as your tax agent, we are bound by a statutory Code of Conduct which is administered by the Tax Practitioners Board. That Code requires us, amongst other things, to act lawfully in your best interests and with honesty and integrity in the performance of our duties.

In addition, as the client of a registered tax agent, you have statutory "safe harbour" exemptions from penalties in certain circumstances.

When did the safe harbour provisions commence?

The safe harbour can only apply for returns lodged on or after 1 March 2010.

How does the safe harbour work?

In order to benefit from the safe harbour should the need arise, it is a requirement for you to ensure that you provide us with all of the relevant tax information. This includes any records, or documents we request from you plus any other information relevant to the preparation of your tax return. The information provided must be complete and accurate.

It is equally important that you provide us with this information by the time it is requested so as to allow the return to be lodged by its due date. The safe harbour from late lodgment penalties can also apply where a Business Activity Statement, Instalment Activity Statement, or Fringe Benefits Tax return is lodged late.

What does the safe harbour apply to?

Whilst the safe harbour can apply to exempt the penalty for an error made in a tax return, it is important to note that the tax and interest will be still be payable.

What if the safe harbour does not apply?

Even if you are not eligible for the safe harbour, it is still possible to request the ATO remit or reduce the penalty.

Precedent guarantee for fees

[Date]

[Insert name]

[Address line 1]

[Address line 2]

Dear [insert name],

We refer to our engagement letter in relation to the provision of our services to the following entities and individuals (**the Group**):

- [list each client in the Group]

As a requirement of our engagement, we require each of the following persons (**Guarantors**) to guarantee our fees and disbursements payable by the Group:

- [list each person (not being a client in the Group) who is required to provide a guarantee]

Accordingly would you please arrange for each Guarantor to sign, date and return a separate copy of the attached Deed of Guarantee.

Yours sincerely,

Deed of Guarantee

This deed poll is made on ____ / ____ / ____

By

<i>[Insert name of Guarantor]</i>	
of	(Guarantor)
<i>[Insert address of Guarantor]</i>	

in favour of *[insert name and address of the firm]* (Firm).

Whereas the Firm has been engaged to provide professional services to each person named in the Schedule (each being a **Client**), the Guarantor **hereby covenants and agrees**:

1. Guarantee

The Guarantor **guarantees** to the Firm payment of all fees, charges, disbursements, interest and all other moneys payable to the Firm by each Client from time to time (**Guaranteed Obligations**).

2. Indemnity

If any of the Guaranteed Obligations are not enforceable against any Client, this deed poll is to be construed as an indemnity and the Guarantor **indemnifies** the Firm in respect of any failure by that Client to perform any Guaranteed Obligations and **hereby agrees** that the Guarantor will not be released from their obligations under this deed poll until the Firm has received all moneys which would have been payable had those Guaranteed Obligations been enforceable against that Client.

3. Continuing obligations

This guarantee under this deed poll is a continuing guarantee. The indemnity under this deed poll is a continuing indemnity. This guarantee under this deed poll will not be deemed void or nullified in the event of the death of the Guarantor and will bind its legal personal representatives and assigns, administrators and executors and will endure for the benefit of the Firm and its successors and assigns.

Schedule:

- *[list the full name and address of each client in the Group]*

Executed as a deed poll

Individual guarantor:

Signed and sealed by)

)

_____)

[insert Guarantor name] in the presence)

of:)

[Guarantor signature]

[Witness signature]

[Insert Witness name]

Corporate guarantor:

Executed as a deed poll by)

)

)

)

)

)

_____)

[insert Guarantor name] in accordance)

with Section 127 of the Corporations Act)

2001:)

[Director signature]

[Director / Secretary signature] (delete
whichever is inapplicable)

[Insert Director name]

[Insert Director / Secretary name]