

COMMISSIONER'S GUIDELINE

CG-GEN-005:

Requirement for full and true disclosure

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	2 January 2008	1 January 2008	Current

Purpose

This Guideline explains the operation of section 24 of the *Taxation Administration Act* (the Act), which imposes an obligation on taxpayers and tax advisers to fully and truly disclose relevant information for the purposes of assessing a taxpayer's tax liability.

Obligation to fully and truly disclose relevant facts and circumstances

Section 24 of the Act requires that a taxpayer or a **tax adviser** acting on behalf of a taxpayer (see below for the definition of tax adviser for this provision) must fully and truly disclose in writing all relevant facts and circumstances that affect the taxpayer's tax liability when any one of the following **relevant occasions** occurs.

- 1) They submit an instrument or return for the assessment of tax.
- 2) They submit an application for an assessment of tax.
- 3) The Commissioner of Territory Revenue issues a written notice requesting them to disclose information about a tax liability that the Commissioner proposes to assess.
- 4) Facts or circumstances become known to them, showing that the basis on which tax has been paid, or the basis on which the Commissioner has assessed or will assess a tax liability, is incorrect.¹

The obligation is to make the disclosure in writing, which means that where the relevant return, application or instrument does not set out all of the relevant facts and circumstances, additional written documents setting out those facts and circumstances must be provided.

Breach of this obligation is an offence, the maximum penalty for which is 100 penalty units (\$13 300 at July 2010).²

¹ Section 24(1), (3) and (6) of the Act.

² Section 24(1) and (3) of the Act.

A failure to make a full and true disclosure that results in the taxpayer being assessed for a lower amount of tax than they otherwise ought to have means that the Territory Revenue Office (TRO) may at any later time reassess the liability, notwithstanding the normal 5-year time limit on reassessments.³ Such an assessment will require the payment of interest and penalty tax at a rate dependent upon the culpability of the taxpayer.⁴

The disclosure is required ‘up front’

Full and true disclosure of relevant facts and circumstances is required to occur ‘up front’ when instruments, returns and applications are lodged for the assessment of tax. This is a positive obligation on taxpayers and tax advisers to disclose information relevant to the assessment of the tax liability and the obligation does not require the Commissioner to request the information, whether by formal notice or otherwise.

Extent of the disclosure obligations

Disclosure of known information – no requirement to research

Taxpayers and tax advisers are required to disclose relevant information in their knowledge or possession. However, section 24 of the Act does not oblige taxpayers and tax advisers to research or audit a matter to ensure compliance with the requirement for full and true disclosure.

If a tax adviser lodges a return or document with the Commissioner for assessment, they will meet their disclosure requirements where, relying on the taxpayer’s disclosure, they lodge all relevant information in their possession. For example, where a tax adviser simply prepares and lodges a return based on information provided by a client and that return accurately reflects all of the information provided to the tax adviser, the adviser would have met their disclosure requirements by lodging the return.

Disclosure of relevant facts and circumstances, not documents

TRO is aware that in large and complicated transactions, a considerable amount of documentation (such as during due diligence processes) may be generated in relation to the transaction. However, the obligation is simply to disclose all facts and circumstances relevant to assessing a taxpayer’s tax liability, but not necessarily all of the documentation. For example, where a due diligence process reveals information relevant to a tax assessment, the obligation is satisfied by disclosing in writing the relevant facts and circumstances that the reports revealed – it is not necessary to lodge all of the physical material to TRO in the first instance.

³ Section 21(4)(b) of the Act.

⁴ See Part 5 of the Act and Commissioner’s Guideline CG-GEN-002: *Interest and penalty tax* for further information.

Legal professional privilege

The requirement for full and true disclosure does not override legal professional privilege a taxpayer may have over communications with their lawyer. Accordingly, actual communications that are properly the subject of legal professional privilege do not have to be provided to the Commissioner. However, the taxpayer and tax adviser must still fully and truly disclose all relevant facts and circumstances affecting an assessment and the mere fact that those facts and circumstances are contained in privileged communications does not alter this obligation. In this situation, the relevant facts and circumstances can be disclosed by way of précis (for example) without providing the privileged communications. Disclosing relevant facts and circumstances in privileged communications does not result in privilege over those communications being waived.

Tax advisers to disclose information relating to matters for which they are engaged

The obligation on tax advisers is only intended to extend to those matters in respect of which the tax adviser has been engaged by a taxpayer to provide services or advice. For example, if a tax adviser has been engaged to complete payroll tax returns on behalf of a client and that same client engages another tax adviser to provide advice in relation to a stamp duty matter, it would not be expected that the tax adviser engaged to complete the payroll tax returns would be required to disclose any information in relation to the stamp duty matter and vice versa.

Furthermore, a person engaged to perform federal taxation work, bookkeeping or any other services not involving the preparation or lodgement of instruments, returns, submissions or application to TRO will not be a “tax adviser” for the purposes of the disclosure obligation.

For similar reasons, an accountant or other adviser that is still considered to be “engaged” under the terms of a letter of engagement when not actually performing work for a client is not a tax adviser, other than when actually performing work in relation to a Territory taxation law.

Unsubstantiated allegations

There is no obligation on a tax adviser to pass on unsubstantiated rumours or allegations about a taxpayer in circumstances where the tax adviser is unable to determine whether the client has underpaid tax. The definition of “relevant occasion” only requires disclosure where facts or circumstances become known to the taxpayer or tax adviser showing that the basis on which tax has been paid, or the basis on which the Commissioner has assessed or will assess a tax liability, is incorrect. It is considered that there is no obligation to pass on mere suspicions or unsubstantiated allegations where the tax adviser does not know that the relevant facts or circumstances exist.

Examples of breach of disclosure requirement

The following example is a situation where taxpayers and tax advisers have failed to fully and truly disclose facts relevant to a tax assessment on a relevant occasion.

In relation to a conveyance of land from a related party, a taxpayer has obtained a valuation of the land and is aware that the consideration being paid is less than the value of the land. If the taxpayer lodges the instrument for assessment without disclosing the fact that the land has been valued at greater than the consideration being paid, the disclosure obligation will have been breached.

Stamp Duty Lodgement Guide

The *Stamp Duty Lodgement Guide* (I-SD-001) (the Guide) provides guidance to taxpayers of the type of information and documents usually required by TRO to assess stamp duty on a wide range of instruments. It does this by listing documents and information relevant for certain types of transactions, applications for exemptions or concessions or in certain cases where evidence of value may be required.

The Guide does not (and does not purport to) provide an exhaustive list of the information required to assess any particular instrument or transaction. It is designed to assist taxpayers to provide the usual information needed by TRO to assess a tax liability, but it does not replace the obligation to fully and truly disclose all relevant facts and circumstances that affect a taxpayer's tax liability. That is, the obligation to disclose may not be fulfilled merely by providing the information and documents listed in the Guide.

Where the taxpayer or tax adviser is aware of facts or circumstances relevant to assessing the taxpayer's tax liability that are not listed in the documents and information set out in the Guide in relation to that type of transaction, it is an offence not to disclose that information in writing on the relevant occasion (such as when lodging the instrument).

Correcting information

The focus of the obligation for taxpayers and tax advisers to disclose information is to enable the Commissioner to make an efficient and timely assessment of a taxpayer's tax liability. Accordingly, a taxpayer or tax adviser may be allowed to correct an error in any instrument, return or information submitted to the Commissioner in order to fulfil the disclosure obligations.⁵

Confidentiality of information disclosed to the Commissioner

Information obtained under the taxation laws about the identity or the personal or financial affairs of a person is confidential and may not be disclosed by a tax officer except in limited circumstances relating to the administration or enforcement of a taxation law.⁶

⁵ Section 24(5) of the Act.

⁶ Section 102 of the Act.

Defences

For a taxpayer, it is a defence to a charge of not fully and truly disclosing relevant information if the taxpayer relied on either:

- 1) another person also liable to pay the same tax liability (such as a payroll tax group member) to ensure that the requirement to disclose was met; or
- 2) their tax adviser to comply with the disclosure requirements and in doing so made a full disclosure to the adviser of all facts and circumstances affecting their tax liability that was in the taxpayer's knowledge or possession.⁷

For a tax adviser, it is a defence to a charge of not fully and truly disclosing relevant information if the tax adviser:

- 1) relied on the taxpayer's apparent full and true disclosure of all facts and circumstances affecting the taxpayer's tax liability; and
- 2) made a full and true disclosure of all the facts and circumstances the adviser was aware of.⁸

Relevant Definitions

Tax

References to "tax" means any stamp duty, tax (including penalty tax and interest) or other amount payable under the Act, the *Stamp Duty Act* or the *Pay-roll Tax Act* (or regulations under those Acts).⁹

Tax advisers

A tax adviser is a person engaged in a professional capacity by a taxpayer for fee or reward (but not as an employee of the taxpayer) in business to perform services specifically relating to Northern Territory taxation matters. That is, a tax adviser is a person engaged by a taxpayer to:

- 1) prepare a return or instrument that will be used to assess the taxpayer's payroll tax or stamp duty liability;
- 2) submit such an instrument or return to the Commissioner; or
- 3) provide information or make submissions about the taxpayer's payroll tax or stamp duty liability, including penalty tax and interest in relation to those liabilities.¹⁰

⁷ Section 24(2) of the Act.

⁸ Section 24(4) of the Act.

⁹ Section 3(1) of the Act ("tax" and "taxation law").

¹⁰ Section 24(6) of the Act ("tax adviser").

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Guidelines are available from TRO's website.

Date of effect

This Guideline takes effect from 1 January 2008.



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Date of issue: 2 January 2008

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