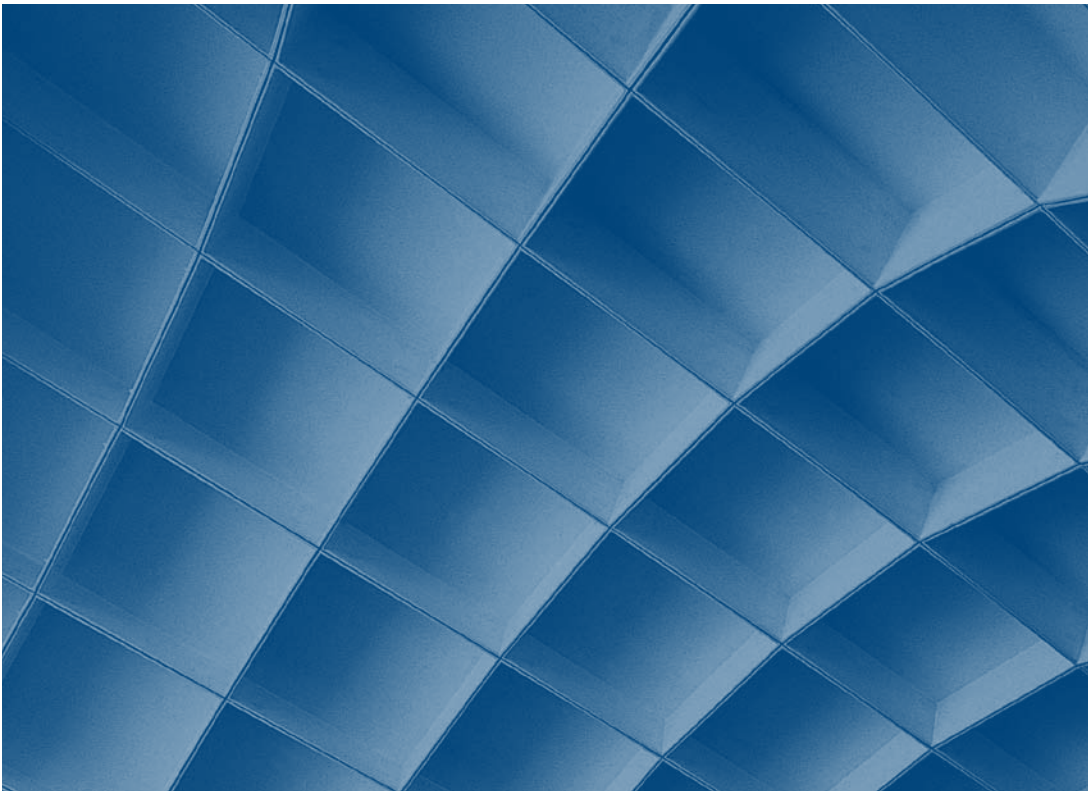




Australian Government
Australian Taxation Office

Taxpayers' charter

Fair use of our access and information gathering powers



OUR COMMITMENT TO YOU

We are committed to providing you with advice and information you can rely on.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

The information in this publication is current at January 2007. We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at **www.ato.gov.au** or contact us.

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INTRODUCTION

We have a responsibility to the government and the community to ensure that everyone pays the correct amount of tax and excise under the law.

One of the ways we do this is by checking some tax returns, activity statements and other documents.

To help us carry out these checks, the law gives us wide-ranging powers. We use these powers fairly and professionally and, as far as possible, in an open manner.

If we need to access information you hold, we prefer to consult with you and to get the information on a cooperative basis. However, in some situations we need to use our formal powers.

The charter is for everyone who deals with us on tax, including superannuation, excise and the other laws we administer.

Throughout this publication, unless we say otherwise, 'tax' means all matters dealt with by the Tax Office.

WHAT ARE OUR FORMAL POWERS?

Under the law we have the right to full and free access to premises, documents and other papers for any of the purposes of the Acts we administer.

Under the indirect tax and excise laws, this right also extends to goods.

Our access and information gathering powers allow us to:

- gain access to premises and documents
- require a person to attend an interview with us and to provide information and evidence
- require documents to be produced, and
- require information to be given.

We can only use the last three of these powers by serving you with a notice.

WHAT YOU CAN EXPECT FROM US

To ensure we take a fair, professional and, as far as possible, open approach to using our powers, we follow the principles set out below.

CONSULTING WITH YOU FIRST

We prefer to consult with you and to obtain information cooperatively. If you are reluctant to provide access or information, or do not provide it in a timely way, we may make a formal request.

Our access and information gathering powers will only be used by authorised officers.

We will tell you when we are relying on your cooperation to give access and provide information. We will also tell you when we are using our formal powers to compel you to give access to and provide information.

If we make a formal request, we recognise that it is best to continue talking to you about the best way to gain access to information.

ⓘ We can only use our access powers for the purposes of the tax laws. We treat claims of possible abuse of these powers seriously and investigate them thoroughly. Any allegations of abuse should be made in writing to us.

TELLING YOU YOUR RIGHTS AND OBLIGATIONS

If you are asking for information or documents, we will tell you about your rights and obligations under the law as early as possible. We will be as open as circumstances allow. We will tell you why we are seeking access or information, unless this may affect the enquiry or audit, or breach the secrecy provisions and privacy laws.

We will also tell you which law gives us the authority to collect the information and who will be given the information.

GIVING YOU PRIOR NOTICE

In most cases we will let you know in advance that we are intending to access your premises and/or documents. In exceptional circumstances we may not give you prior notice, for example, if we have a reasonable belief that documents may be destroyed.

Access without prior notice requires the approval of a senior tax officer.

TAKING INTO ACCOUNT ANY POSSIBLE COSTS TO YOU

When we decide what information we will ask for access to, we take into account what it may cost you to meet our request.

GIVING YOU TIME TO COMPLY

We will give you a reasonable time to comply with our notice asking you to produce information or documents. This is usually 28 days.

RESPECTING YOUR LEGAL RIGHTS

If you are required to attend a formal interview, before the interview we will give you an explanation of your obligation to answer questions yourself.

You may choose to have your representative or advisers present during the interview. However they can only advise on the meaning of a question. They cannot tell you the answer you should give.

In some limited circumstances, you may not be able to have your choice of representative or adviser at the meeting. This may be because they were involved in the transaction under review. In this case, we will give you a reasonable time to find alternative representation.

WHAT YOU CAN EXPECT FROM US

You will be given reasonable opportunity at any time to consult with your advisers. We will respect your right to claim legal professional privilege for certain communications between you and your barrister or solicitor.

In some circumstances, we will allow some advice given to you by a professional accounting adviser to remain in confidence between you and that adviser.

We have forms you can use to make a claim for legal professional privilege, or for advice to remain in confidence between you and a professional accounting adviser. You will need to complete a separate form for each document.

TELLING YOU WHEN WE ASK FOR THIRD PARTY INFORMATION

If we ask third parties about you, we will normally tell you about this before we make the enquiry. There are some situations where you would not normally be told. These include, but are not limited to:

- where we collect information to help decide which individuals or businesses to audit
- where we make enquiries under an international tax treaty
- transfer pricing audits
- where we decide access without notice is appropriate, and
- where we have asked you for the information but you have not given it to us.

WHAT WE EXPECT OF YOU

We expect that you will cooperate with requests for access and information. Under the tax laws you must provide all reasonable facilities and assistance when we ask for access.

PENALTIES AND OFFENCES

The law imposes penalties if a taxpayer refuses or fails to provide information when required.

There are also penalties if the occupier of premises does not provide us with all reasonable facilities and assistance to use our access powers effectively.

We can prosecute taxpayers who:

- refuse or fail to provide a tax return or information, or to produce records or documents
- refuse or fail to meet with a tax officer or answer questions, or
- hinder or obstruct us when we are using our access powers.

The penalties that can be imposed by the courts include fines and imprisonment and in some cases, both.

EXPLAINING AND REVIEWING OUR DECISIONS

We will provide you with a clear explanation of the decisions we make about gaining access and gathering information and documents.

We must use our access and information gathering powers in good faith. The law protects you from the abuse of those powers. For example, under the *Administrative Decisions (Judicial Review) Act 1977*, decisions can be reviewed by the Federal Court and the Federal Magistrates Court.

Grounds for review include – use of the power was unreasonable, the power was used in bad faith or there was an abuse of power.

The Act also gives you the right to get a free, written statement of our reasons for a decision, for example, if we have decided to issue a notice requiring you to give us information. However, even if you ask us for a statement of reasons, you will still need to give us the information we have asked for.

- Our *Access and information gathering manual* contains more information about these powers, including guidelines on their use. The manual is available at www.ato.gov.au by searching for 'access'.

MORE INFORMATION

For more information about the taxpayers' charter, visit www.ato.gov.au and search for 'charter'. To have a copy posted to you, phone **1300 720 092** and tell us the NAT number of the publication you want from the list below.

TAXPAYERS' CHARTER PUBLICATIONS

- *Taxpayers' charter – what you need to know* (NAT 2548)
- *Taxpayers' charter – expanded version* (NAT 2547)
- *Treating you fairly and reasonably* (NAT 2549)
- *Your honesty and complying with the tax laws* (NAT 2550)
- *Your privacy and the confidentiality of your tax affairs* (NAT 2552)
- *Getting advice from the Tax Office* (NAT 2553)
- *Accessing information under the Freedom of Information Act* (NAT 2554)
- *Who can help with your tax affairs* (NAT 2555)
- *If you're not satisfied* (NAT 2556)
- *If you're subject to enquiry or audit* (NAT 2558)
- *Fair use of our access and information gathering powers* (NAT 2559)

