

Helping LPRs find certainty

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Introduction

Whoever subscribes to the theory about the certainty of death and tax, probably hasn't stood in the shoes of a legal personal representative (LPR) attempting to administer the estate of a deceased person in a modern taxation system. An LPR is personally exposed to liability for income tax in relation to the affairs of the deceased and of their estate, although the liability may be limited to the value of the assets that come into their hands.

But there can be much to be uncertain about, for example, how is the LPR to know whether the deceased's returns were accurate; how do they work out the amount of any capital gain or loss from an asset if they cannot locate the deceased's cost base records and how do they deal with general uncertainties in the operation of the income tax law.

This paper considers the various ways that an LPR might obtain a level of comfort regarding their tax exposure to match their appetite for risk.

The paper also considers ways in which you, as practitioners, can assist STEP to advocate for changes to the law to create certainty for taxpayers in general.

Obtain data about deceased's tax affairs

The first thing that an LPR should do is to obtain details about the deceased's lodgment/assessment history. Without wanting to scare people in respect of estates that have been finalized in the past, we are aware that recent changes to ATO systems have brought to light details of unlodged returns that were previously not 'discoverable'.

There is no limitation period that applies in respect of the making of an original assessment in the way that there is for the amendment of assessments. For each return that the deceased has failed to lodge there is a potential tax exposure (as well as interest and penalties).

Voluntary disclosures

Having identified that there are returns outstanding, an LPR might start to question their decision to take up the role when they find that there are no records to accurately identify the amount of the deceased's taxable income.

The following facts are based on a real case that we were involved with:

The Deceased was a retired gentleman who owned his own home in a luxury suburb that was his main residence when he died. He had been an Australian resident for many years. Prima facie, he owned some Australian securities which combined with the full aged pension, appeared to be supporting his retirement.

His solicitor was appointed as his Executor. During the administration of the estate and it was discovered that:

- *The Deceased held a substantial Australian investment portfolio valued at over \$1 million but never quoted his personal TFN to the investment bodies.*
- *The Deceased changed investment advisors several times over the years and the asset cost base histories were never been provided to the new advisors.*
- *The Deceased held a foreign credit card which he had been using to pay for living expenses.*

- *This card was being repaid in full, monthly from a foreign bank account into which it was discovered that a regular monthly annuity payment was being deposited. The Deceased had acquired this bank account some years earlier.*
- *Significant dividends from three different jurisdictions were also being deposited into this foreign bank account.*
- *No Income Tax Return had been lodged for over 20 years.*
- *There were two foreign beneficiaries in the estate.*

The Executor had an obligation to prepare and lodge 20 years of income tax returns in Australia. They had to reconstruct the global revenue for all 20 years. This involved the restamping of Probate in three different jurisdictions to realise foreign assets and months of work to reconstruct the domestic and overseas income.

We will tell you how it ended after we've told you a bit more about voluntary disclosures.

We have found voluntary disclosures to the ATO to be particularly useful in bringing about some LPR certainty. In our experience, the ATO looks favourably upon an LPR who can demonstrate that they have gone to great lengths to try and address their tax obligations.

In a broad sense, you make a voluntary disclosure if you tell the ATO you should have lodged a tax return or that you have not paid enough tax or have claimed too much credit.¹ If you make a voluntary disclosure, penalties and interest charges may be reduced.

The ATO has published information on its website about how to make a voluntary disclosure.² Basically, you must:

- give the ATO the information it requires to work out what the error or correct position is
- provide the information in the required manner, such as by letter, through an approved ATO electronic channel, or (in limited circumstances) by phone or face-to-face
- provide a declaration signed by you or an authorised person.

Penalties and interest charges

To ensure the system is fair for everyone,

- penalty provisions are intended to encourage taxpayers to take reasonable care in complying with their tax obligations in a timely manner – they can apply if you fail to lodge a document³ or take reasonable care in claiming a deduction to which you are not entitled or making a false or misleading statement.⁴
- interest charges are intended to ensure that taxpayers who underpay their tax for a period don't receive an advantage over those who have paid their tax on time. The interest charges also compensate the community for the impact of late payments.

¹ Although the expression is used more narrowly, for example in the context of provisions relating to false and misleading statements.

² QC 33800

³ See Division 286 of Schedule 1 to the TAA

⁴ See for example Subdivision 284-B of Schedule 1 to the TAA

- shortfall interest charge is applied where an additional amount of tax is payable because of an amended assessment – the SIC rate for September - December 2020 is 3.1%⁵
- general interest charge is applied to an unpaid liability from the date it was due to be paid until it and any accrued interest charges are paid – the SIC rate for September - December 2020 is 7.1%.

The Commissioner has a discretion to remit penalties imposed for failing to lodge documents (including tax returns) on time. Law Administration Practice Statement PS LA 2011/19 provides that the discretion should be exercised if a taxpayer can demonstrate that:

- the failure to lodge was caused by circumstances beyond their control
- those circumstances could not be predicted, and
- they or their agent were not in a position to request a further time to lodge.

It explains that remission would ordinarily be appropriate in these cases:

- taxpayer or their agent was sick with a severe life-threatening illness such as battling cancer
- taxpayer was caring for another person who was sick with a severe life-threatening illness
- taxpayer could not lodge as they had not received information from other parties such as employers (a payment summary for example) that would enable them to lodge (. Ideally, the taxpayer should be able to demonstrate they have persistently tried to get this information
- taxpayer was struck with a natural disaster such as fire or flood which took their complete attention and perhaps meant that some records were lost.

The Commissioner has a discretion to reduce penalties where a voluntary disclosure is made in relation to a prior statement.⁶ Miscellaneous Taxation Ruling MT 2012/3 outlines the way in which this discretion is likely to be exercised. Broadly, the penalty may be reduced by 20%, 80%, or, in limited cases, to nil. There is a useful Flowchart in Appendix 2 of the Ruling that demonstrates how the legislation applies. It is included in **Attachment A**.

Generally, the amount of the reduction will depend on whether the taxpayer made the voluntary disclosure before, or after, it is notified by the Commissioner that an examination is to be conducted of its affairs.

Remission of shortfall interest charge

The ATO practice in respect of the remission of shortfall interest charges is set out in Law Administration Practice Statement PS LA 2006/8. It explains:

⁵ The shortfall interest charge applies to the 2004-05 and later income years. Before then the general interest charge applied from the due date of the original assessment up to the time the amount was paid. The general interest charge is set at a high rate compared to commercial borrowings. The rationale behind this high rate is to encourage prompt payment of tax liabilities.

In the case of non-payment of an established and quantified tax debt, this higher rate (or premium) can be managed or avoided by arranging to use alternative low-cost finance. However, taxpayers are usually unaware of a tax shortfall until they are issued with an amended assessment. They may not be in a position to respond to the incentive premium that is built into the general interest charge.

For this reason, the government created a new, lower interest charge specifically for the shortfall period while maintaining the general interest charge for late payments of unpaid tax and shortfall interest charge.

⁶ section 284-225 of Schedule 1 to the TAA

Where a taxpayer makes a voluntary disclosure of a shortfall amount, the disclosure itself is not a ground for remission of SIC. However, there may be cases where the circumstances surrounding the voluntary disclosure will make it fair and reasonable to remit interest charges.

When considering any remission of SIC on the basis of a voluntary disclosure, regard is had to the following:

- the timeliness of the disclosure after the error was first detected
- whether the disclosure was made before being told of the commencement of an examination, or publication of a ATO initiative which may have led to the discovery of the shortfall by the Commissioner (remission is more unlikely if such notification or publication had occurred)
- whether the Commonwealth in any way contributed to the taxpayer taking their original position
- the size of the shortfall, either in monetary terms or in relation to the whole of the taxpayer's affairs, and
- the taxpayer's compliance history, including the number of times a taxpayer has had to disclose shortfalls following an initial self-assessment of liability.

Remission of general interest charge

The ATO practice in respect of the remission of general interest charges is set out in Law Administration Practice Statement PS LA 2011/12. It explains that GIC may be remitted for example if:

- the circumstances contributing to the delayed payment are not the taxpayer's fault, and
- the taxpayer has taken reasonable steps to mitigate, or mitigate the effects of, those circumstances

In the context of deceased estates, the Practice Statement indicates that where payment cannot be made because probate has not been granted, the ATO recognises that this is often outside the control of the legal personal representative (LPR) of the deceased estate. In these situations, the GIC that has accrued on the account for the period from the date of death until 28 days after probate is granted will generally be granted.

For GIC accrued during the period of administration, remission may be granted if the LPR of a deceased estate under administration can show that assets were realised promptly and funds were not available at an earlier date to enable payment.

Tax Ombudsman

If the circumstances warrant it, an executor who has not been able to find satisfaction from the ATO in terms of penalty/ interest remission may, as a last resort, complain to the Tax Ombudsman.

The Ombudsman can help you to address complaints about administrative actions (or inaction) of the ATO. 'Administrative action' generally covers the fairness and reasonableness of the ATO's approach in dealings or interactions with you.

We have had a successful outcome through the office of the Ombudsman in respect of interest charges imposed in respect of a mysterious unlogged return the details of which only became apparent with the release of new ATO systems.

Now, you're all wondering how the case we mentioned before ended.

- *The executors approached the ATO by way of a voluntary disclosure, declaring all the information they had and demonstrating the extent of the work they had undertaken*

to collate it.

- The ATO undertook their own due diligence.
- A six-figure payment of tax was made to the ATO with significant reduction in general interest charges.
- A release from the ATO for the executors.

Public advice and guidance

In the administration of many estates, questions often arise as to how the law applies to the particular facts. Sometimes the ATO may have published information on its website. Can this be relied on to avoid a tax exposure?

The answer depends on whether the information is categorized as 'advice' or 'guidance'.

Taxpayers who rely on documents that the ATO categorizes as 'advice' are protected from any tax shortfall, penalties and interest even if the 'advice' is later found to be wrong. 'Guidance' on the other hand does not protect taxpayers from payment of any tax shortfall but they may be protected from penalties and interest.

The table in **Attachment B, is** from the ATO website. It explains in more detail the level of protection that various ATO products afford.⁷

Advice

So, what is 'advice'? Advice consists of public and private rulings or at least parts thereof.

When self-assessment was introduced in the late 1980s, it was argued that it put greater responsibility on taxpayers to ensure their income tax returns were correct prior to lodgement. This led to demands for greater certainty about the ATO's views on the application of the tax law. In 1992, legislation was introduced to make public and private rulings 'binding' on the ATO.

Public rulings

Public rulings explain the application of the tax law to taxpayers generally (for example Taxation Rulings and Determinations), a class of taxpayers (Class Rulings) or a particular arrangement (Product Rulings).⁸

A public ruling provides protection to taxpayers where it is favourable to them until it is withdrawn at the time specified by notice of the withdrawal or when it specifies that it ceases to apply.

A public ruling may be relied on by anyone to whom it properly applies. You don't need to know of the existence of a public ruling to rely on it. You are taken to have relied on it if you self-assessed in the same way as the ruling provides.

You are not obliged to act in accordance with a public ruling that applies to you, although you can expect the ATO to amend your assessment if it is examined later.

⁷ See Practice Statement PSLA 2008/3 for more information about the distinction between 'advice' and 'guidance'

⁸ Legislation about public rulings is contained in Subdivision 357-B and Division 359 of Schedule 1 to the *Taxation Administration Act 1953*.

What are not public rulings?

The Income Tax (IT) and Capital Gains Tax (CGT) Determination series which were published prior to 1 July 1992 when the legislative framework for public rulings was established are not legally binding on the Commissioner. Income Tax Ruling IT 2622 (about present entitlement during the stages of administration of deceased estates) springs to mind in this regard. However, the Commissioner will treat himself as being administratively bound by those rulings.

Draft public rulings are not public rulings for the purposes of the relevant provisions. A draft public ruling is a consultative document that sets out the Commissioner's preliminary view about the way in which a relevant provision applies. This means that reliance on a statement in a draft ruling provides the same level of protection as 'guidance' (penalty and interest protection).

In the context of deceased estate/trust work, rulings within this category include TR 2004/D25 (about absolute entitlement) and TR 2010/D1 about the meaning of income of a trust estate.

Private rulings

In the absence of a binding ATO position, an LPR might choose to obtain a private ruling from the ATO. Private rulings⁹ provide certainty to taxpayers about the way in which the tax law applies to their specific circumstances, whether these have happened or are expected to happen.

The ATO is bound to follow a private ruling on which the rulee relies¹⁰ unless a provision, that is the subject of the ruling, is repealed or amended to have a different effect or a Court takes a view about the provision that is more favourable to the rulee.¹¹

A rulee is not bound to apply a ruling. However, failure to follow a private ruling may be taken into account, for example, in deciding whether the rulee has taken reasonable care when determining penalties.¹²

A word of caution. Many people seek to rely on views expressed in edited versions of private rulings that the ATO publishes on its Legal Database.¹³ You should be cautious in doing so.

Firstly, a private ruling generally only provides protection to the taxpayer to whom it is issued and then only for the years covered by the ruling. (There is an exception¹⁴ where a trustee obtains a private ruling in relation to a trust. In that case, the private ruling will apply to the beneficiaries of the trust (if the ruling is not an indirect tax or excise ruling) and to any trustee that replaces the applicant trustee, for as long as the ruling remains current.

Secondly, an edited version reflects the law (and the Commissioner's view of the law) at the time it was issued – either may have changed since the ruling was published.

For example, there are issues about the application of the partial main residence exemption provisions that we encounter on a not irregular basis. In our view the, ITAA 1997

⁹ Legislation about private rulings is contained in Subdivision 357-B and Division 359 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)

¹⁰ A taxpayer can rely on a ruling (whether or not they are aware of it) by acting, or omitting to act, in accordance with it – see subsection 357-60(1) of Schedule 1 to the TAA

¹¹ sections 357-60, 357-70 and 357-85 of Schedule 1 to the TAA

¹² section 357-65 of Schedule 1 to the TAA

¹³ previously they were published on the Private Ruling Register

¹⁴ section 359-30 of Schedule 1 to the TAA

provisions don't necessarily reflect the ITAA 1936 provisions nor do they produce an intended policy outcome. While a review of issued private rulings indicates that the ATO's approach has to date been favourable to taxpayers, we recognize that there is another possible argument. For executors with a low appetite for risk, we would suggest that they obtain a private ruling.

What can a ruling be about?

A private ruling can cover anything involved in the application of a relevant tax law,¹⁵ including issues relating to:

- liability
- administration
- procedure and collection
- ultimate conclusions of fact (such as residency status).

Applying for a private ruling

You can apply for a private ruling about:

- your own affairs
- the affairs of another entity (including a person) if you're their agent or legal personal representative.

Various private ruling application forms¹⁶ together with instructions are available on the ATO website (**Attachment C**). The person applying for the ruling must indicate whether or not they will include detailed reasoning to support their application. It would be expected that tax professionals would include such reasoning

The website also lists supporting information that should accompany private ruling applications on particular topics (including for example, those about death benefits, child maintenance trusts and capital gains for deceased estates). Examples are also included in **Attachment C**.

A ruling application must contain a full description of all relevant facts and circumstances. These details need to be reasonably certain as they will define the scheme that is the subject of the advice.

The ATO will not be bound by a private ruling if you do not provide all material facts or the scheme which the ATO has ruled upon is not implemented in the way set out in the ruling.

Refusal to rule

The ATO may decline to give a private ruling in some circumstances, including if:

- the making of the ruling would prejudice or unduly restrict the administration of the law¹⁷ – for example
 - the application is frivolous or vexatious
 - the arrangement is not seriously contemplated

¹⁵ Section 357-55 of Schedule 1 to the TAA sets out the provisions about which a ruling can be made.

¹⁶ In addition to the general form, there are forms specifically for non-commercial losses and UPPs.

¹⁷ paragraph 359-35 (2)(a) of Schedule 1 to the TAA

- making the ruling would not have any practical consequences– for example, the transaction in question occurred in the past and the amendment period has expired
- the issue has been, or is being, considered for the rulee¹⁸ – for example
- in an audit relating to the particular question
- the rulee has made an objection on the same matter
- information requested by the ATO was not provided in a reasonable time¹⁹
- the ATO exercises a particular power available under the law, rather than provide advice on how that power would be exercised²⁰- for example, you should normally ask the Commissioner for an extension of time to provide a required approved form under section 388-55 of Schedule 1 to the TAA rather than seeking a ruling on the issue
- the ATO considers that the correctness of a private ruling will depend on certain assumptions and it chooses not to make a ruling subject to those assumptions²¹
- you decline to pay the cost of obtaining an accurate valuation.

Other ATO products

More recently the ATO has begun to issue Practical Compliance Guidelines including some which are directed to deceased estates. How do these fit into an anxious executor's armoury?

While they don't provide complete protection, they may suit those who can tolerate some risk.

PCG 2016/1 explains that compliance guidance is intended to provide useful insights into the practical implications of tax laws and ATO administrative approaches, going beyond views on how particular provisions apply and the matters ancillary to that interpretation.

For example, guidance that conveys the ATO's assessment of relative levels of tax compliance risk across a spectrum of behaviours or arrangements enables taxpayers to position themselves within a range of behaviours that the ATO describes as low risk and unlikely to require scrutiny - to safely 'swim between the flags'.

Advocacy

Now, we would like to turn from 'executor self-help strategies' to ways in which we as practitioners might bring about certainty through more systemic change; for example, clearer laws and more ATO 'advice' which would have the added bonus of compliance cost reduction for executors.

There are various avenues available.

Our firm has raised some minor law change issues with the Board of Taxation via its 'Sounding Board' (issues raised 21 November 2019). The Board is charged with contributing a broader community perspective to improving the design of taxation laws and their operation. The Sounding Board is a way for tax system improvement ideas (for example, ideas that reduce red-tape and/or compliance burdens without a great deal of cost to tax

¹⁸ paragraph 359-35 (2)(b) of Schedule 1 to the TAA

¹⁹ subsection 357-105(2) of Schedule 1 to the TAA

²⁰ subsection 359-35 of Schedule 1 to the TAA

²¹ subsection 357-110(1) of Schedule 1 to the TAA

revenue) to be identified. It is not designed to consider new policy ideas or changes to existing policy (for example, adding or removing taxes or changing tax rates).

While we got more than the usual number of votes, we've not had any further response. If you haven't looked at them, maybe go online and vote. [<https://taxboard.ideascale.com/>]

But we can achieve more together. Strong advocacy from STEP and other professional bodies helped us bring about the exercise of the Commissioner's remedial power to enable practitioners to directly access the tax records of deceased taxpayers, following the change in the ATOs approach to the interpretation of section 355-25 of the *Taxation Administration Act 1953*.

Now is a good time to be advocating for change in relation to the tax treatment of deceased estates. The Inspector General of Taxation has recently made a number of recommendations in this regard²² including:

- Review, refresh and consolidate advice and guidance for deceased taxpayers, including binding guidance for lodgement of returns and Tax File Numbers (TFNs)
- Explore any challenges associated with applying general taxation of trusts principles to deceased estates with stakeholders and any need for legislative change

STEP Australia has an Advocacy Subcommittee and are keen to take on a greater advocacy role in relation to tax and other matters. STEP is engaged in consultation that the ATO is undertaking on the implementation of the Inspector General's recommendations. Mercia Chapman is a member of the Subcommittee from Victoria. If you've got any ideas that you want advanced, please let her or one of the other members know.

We also note that the Board of Taxation plans to look at the death CGT roll-over as part of its review into CGT rollovers.

To start the ball rolling in a tax context, we've outlined some candidates for law change and ATO advice below.

Law Change

A starting point for law change might be to revisit the proposed CGT amendments for deceased estates that were announced in the 2011-12 and 2012-13.

These are discussed in Treasury *Minor amendments – proposals paper May 2011* and *Minor amendments to the capital gains tax law Proposals Paper June 2012* with the later document meant to focus on certain aspects of the changes canvassed in the earlier paper (especially new changes) without moving away from other issues contained in that paper.

In a Press Release by the then Assistant Treasurer on 14 December 2014 curiously (some might say bizarrely) entitled 'Integrity Restored to Australia's Tax System' it was decided not to provide a level of integrity (or certainty) for these measures by not proceeding with them. See Item 63(a) and (b) of that Release.

Significantly, by identifying these issues (and then not progressing them) the effect has been both to increase uncertainty and to confirm (in a sense) that the law does not work,

²² *Death and Taxes: An Investigation Into Australian Taxation Office Systems And Processes For Dealing With Deceased Estates.*

making it difficult for the ATO to come up with a solution. There is also an increased compliance cost if private rulings are sought by trustees trying to do the right thing but unsure of the ATO's approach.

An example that springs to mind in this regard is how the CGT rollover that applies on death applies where a deceased person was a beneficiary in an unadministered estate at the time of their death. It appears that when assets of the first estate flow from the second estate to the beneficiaries of that estate that relevant capital gains and losses cannot be disregarded. This is because those assets were not owned by the second deceased at the time of their death.

This issue has been raised as a candidate for the exercise of the remedial power but rejected on the basis that the amendment was considered to be inconsistent with the intended purpose of object of the provisions.

Many people would not even be aware that there is an issue in these cases resulting in those that are better advised ending up in a worse tax position. So much for a level playing field!

ATO advice/guidance

These are issues that we see frequently and where we know people are taking different views. Again, it would be helpful if the ATO could create a level playing field by publishing a view on these matters rather than put executors to the expense of applying for a private ruling.

- *the approach that people should take to Division 128 roll-over where a beneficiary contributes funds to acquire an estate asset.*

Say a legacy of \$100,000 is left to a particular beneficiary and the residue (including a house) is left to another. There are no funds to pay the legacy apart from those that would come from the sale of the house (it is worth \$1m).

The residuary beneficiary actually wants to keep the house so they provide \$100,000 to the LPR to pay the legacy.

As we understand it, some stamp duty regimes regard this as a part disposal of the house (10%) – that is, it is not passing in accordance with the Will. So, some taxpayers have adopted that approach for CGT. Others seem to treat the house as passing under the Will, (with or without a cost base up-lift for the additional amount paid). The rest probably ignore the issue.

- *the circumstances where the Commissioner will not exercise the discretion in section 99A of the ITAA 1936 to assess the trustee under section 99*

A search of edited versions of private rulings indicates that one of the most common questions asked in the context of deceased estate is whether the Commissioner will exercise the discretion to assess the LPR under section 99 of the ITAA 1936. If the discretion is not exercised, the trustee will be assessed at the highest marginal tax rate and perhaps more significantly, will be denied the benefit of the CGT discount by section 115-222 of the ITAA 1997.

It would be useful if the Commissioner could publish some practical compliance guidance about the circumstances in which he might refuse to exercise the

discretion (similar for example to PCG 2019/5 about the discretion to extend the two year period in section 118-195 of the ITAA 1997).

- **Legal expenses**

A number of edited private rulings have been published about the sorts of legal expenses incurred by an LPR or beneficiary that can be deducted or included in the cost base of an estate asset (and those which cannot). Perhaps these could be compiled into an advice product.

- **Refresh IT 2622**

IT 2622 was published many years ago to outline when a beneficiary might be regarded as presently entitled to the income of an estate (this affects how the estate's net (or taxable) income is assessed). There have been changes to the law since then – most importantly, the notion of specific entitlement to franked dividends and capital gains has been introduced. A refresh would be useful – particularly as it would bring the ruling within the scope of the public ruling provisions of the Tax Administration Act 1953.

In this regard, we also note that we have seen a growing trend of beneficiaries who are deductible gift recipients looking to maximise the extent of their testamentary gifts and threatening legal action against LPR's (and their advisors) who diminish the estate by paying tax unnecessarily. Refreshing the ruling might usefully address this issue by reminding LPR's to consider whether the stage has been reached during the estate administration when the charity can be made presently entitled to some of the trust income (or specifically

- **Right to occupy a dwelling**

Section 118-195 of the ITAA 1997 provides a main residence exemption for a dwelling owned by a deceased person. One of the conditions relevant to the exemption is that the dwelling is occupied by someone with a right to occupy it under the deceased's Will.

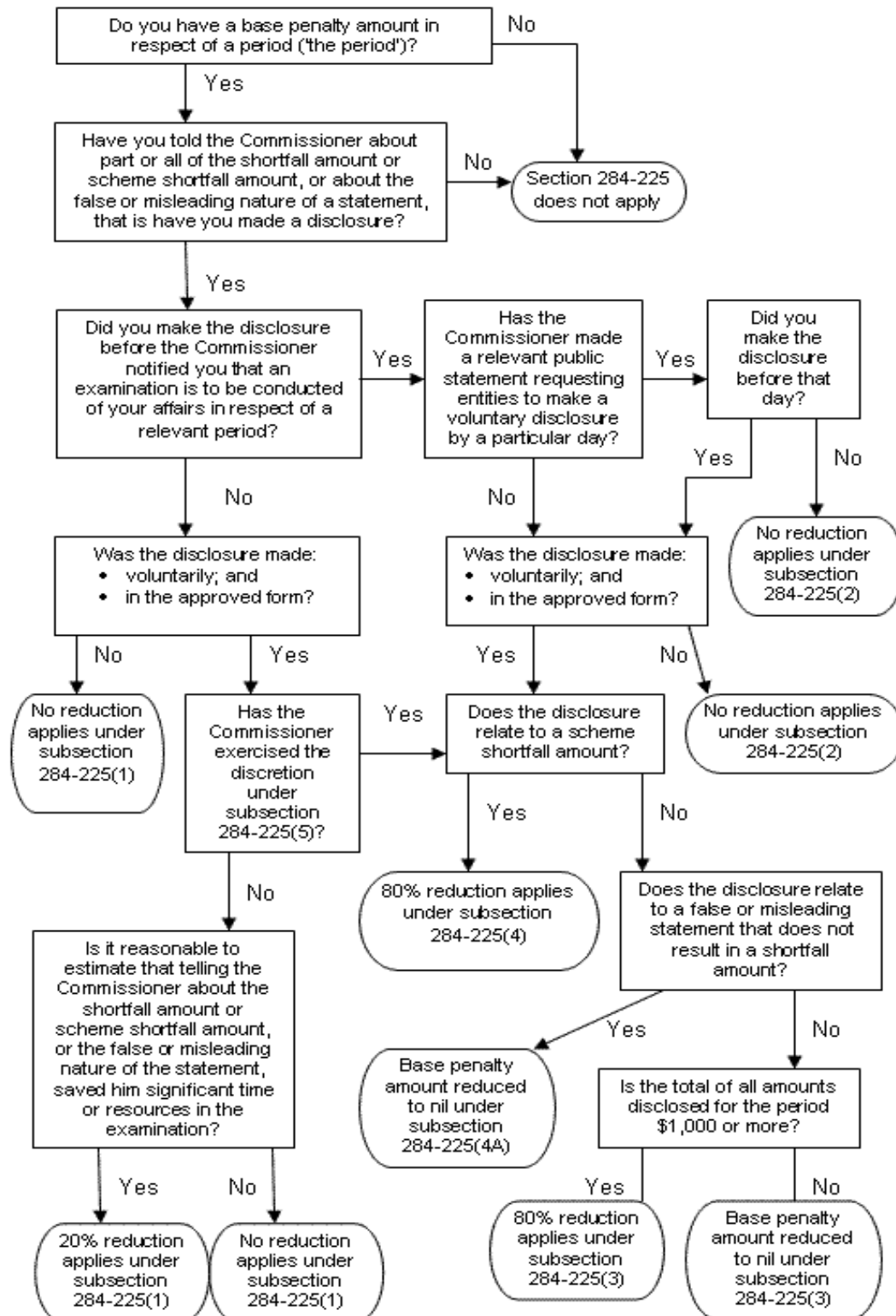
There is an issue whether this requires the person to be identified in the Will, or whether it would include anyone who a trustee allows to reside in the property under the terms of a widely-drawn testamentary discretionary trust. Does it include a third party who rents the dwelling where the trustee is given a power to rent the dwelling? Does it include a relative of the deceased who pays less than market value rental?

Conclusion

There are many ways that you can assist today's LPRs and those of the future to obtain certainty about their personal exposure to tax risk in relation to an estate that they are administering:

- private rulings and voluntary disclosures are great tools and we would encourage practitioners to use these to obtain certainty and protection on matters for their clients
- assist with advocacy! Many voices can make a difference.
- The Tax Ombudsman office may be able to assist if you have been unable to resolve an issue with the ATO. It is however strongly recommended that you fully explore your options directly with the ATO and proceed to the TO as a last resort.

Attachment A



Attachment B

Product	Protection from tax shortfall?	Protection from interest on the shortfall?*	Protection from false or misleading statement penalty?
Legally binding advice			
Public ruling These include: Taxation ruling (TR series) Taxation determination (TD series) GST ruling (GSTR series) GST determination (GSTD series) Law companion ruling (LCR) Class ruling Product ruling	Yes	Yes	Yes
Private ruling	Yes	Yes	Yes
Oral ruling	Yes	Yes	Yes
Administratively binding advice			
Income tax series (IT series) These are rulings published before 1 July 1992.	Yes	Yes	Yes
Capital gains tax (Determination series) These are rulings published before 1 July 1992.	Yes	Yes	Yes
Administratively binding advice	Yes	Yes	Yes
Guidance			
ATO interpretative decision	No	Yes	Yes
Practical compliance guideline	No	Yes	Yes
Draft public ruling	No	Yes	Yes
Draft law companion ruling	No	Yes	Yes
Law administration practice statement	No	Yes	Yes

Website material or publication Content on our website and in our downloadable or paper publications provide general assistance. This information is often simply expressed and may provide step-by-step guidance.	No	Yes	Yes
Oral and written guidance	No	Yes	Yes
Decision impact statement	No	Yes	Yes
Media release	No	Yes	Yes
Tools and calculators These are available on our website to help work out an amount or status when self-assessing a liability or entitlement.	No	Yes	Yes
Other			
Edited version of a private ruling	No	No	No
Public speeches and minutes of consultative forums	No	Yes	Yes
Superannuation Guarantee Ruling and Superannuation Contributions Ruling	Some protection against penalties may be offered		
Superannuation specific advice This is written advice relating to certain obligations required by the Superannuation Industry (Supervision) Act 1993 (SISA) for identified self-managed super funds.	Tax, penalties and interest cannot be raised under the SISA, but some protection may be offered (see PS LA 2009/5)		
Discussion paper	No	No	No

Attachment C

CGT and Deceased Estates – supporting information

Here's a list of the documents and information we usually need to process a private ruling request or objection about assets you inherit from a deceased estate. If you provide supporting information this will reduce the time it takes us to process your request.

The information we need for a private ruling or objection about assets you inherit from a deceased estate includes:

- the date and cost of the asset acquired by the deceased
- a copy of the will and any resulting trust deed
- the date of death
- whether the estate has been fully administered
- if the asset is a dwelling
 - whether it was the main residence of the deceased at the date of death
 - whether the executor/trustee or beneficiaries sold the residence
 - whether the property, if it was sold more than two years after the date of death, was the main residence of either the spouse of the deceased or a beneficiary under the will, or someone under the will who had a right to occupy the property.

Death Benefits – supporting information

The information we need for a private ruling or objection about a death benefit includes:

- the dates that
 - the deceased died
 - the payment was made
- the identity of the payer
- the source of the payment
- whether the payment was made directly to you or to the estate of the deceased
- copies of any payment summaries
- a copy of the deceased's last will or testament
- details of the relationship between you and the deceased
- details of where you resided prior to, and at, the date of the deceased's death
- details of financial support received by you from the deceased prior to, or at, the time of their death
- details of financial support received by the deceased from you prior to, or at, the time of their death
- details of domestic support and personal care you and the deceased provided each other prior to their death
- any other documents that would support the statements made in your application.

Links

The tax obligations of a legal personal representative
<https://bnrpartners.com.au/wp-content/uploads/2018/12/ebook-17.12.18.pdf>

For more information about how to apply for a private ruling
[https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-\(rulings\)/private-rulings/](https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-(rulings)/private-rulings/)

Commissioner of Taxation v Hacon Pty Ltd

Decision Impact statement Hacon Pty Ltd

PS LA 1998/1 *Law administration practice statements*

TR 2006/11 - *Private rulings*

PS LA 2008/3 - *Provision of advice and guidance by the ATO*

PS LA 2009/5 - *Provision of advice and guidance by the ATO in relation to the application of the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations 1994 to Self Managed Superannuation Funds*

PS LA 2006/8 - *Remission of shortfall interest charge and general interest charge for shortfall periods.*

PS LA 2011/12 – *Remission of general interest charge*

PS LA 2011/19 - *Administration of the penalty for failure to lodge*

MT 2012/3 – *Administrative penalties: voluntary disclosures*

PCG 2016/1 *Practical compliance guidelines: purpose, nature and role in ATO's public advice and guidance*

Shortfall interest charge background
<https://www.ato.gov.au/assets/0/104/2474/2574/1d120e60-bdb7-43ef-a966-908c0942021e.pdf>