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TAX AGENTS

What is the status of a tax agent?

A tax agent is not an agent of the Tax Office. A tax agent is not a law enforcement officer.

A tax agent's primary duty is carry out his client's instructions, provided those instructions are not plainly unlawful.

If a tax agent becomes aware beyond a reasonable doubt that a Tax Return is incorrect, he cannot lodge it. If he does so, he is complicit in a crime. However if he is aware only on the balance of probabilities that a Tax Return is incorrect, informed opinion is that he would be able to lodge the Return. In such a case, the circumstances would not support a criminal charge against the tax agent. It should be evident that it is knowledge of a proposed crime that makes an accomplice liable. For example, a customer goes into a hardware store and buys a blowtorch. Another customer comes into the hardware store and tells the shop assistant that he wants a blowtorch to assist in carrying out a burglary. The assistant cannot sell it to him.

A tax agent has no power to disallow an expense claimed by his client. All he can do in such circumstances is to put his livelihood on the line and refuse to carry out his client's instructions.

The accuracy of a Tax Return or financial statement is only as good as the accuracy of the information received from the client by the tax agent. A tax agent cannot assume responsibility for work over which he has no control.

A tax agent who starts advising his clients on "how much they can get away with" is engaging in illegal activity.

A tax agent cannot investigate his client without his client's consent. If he examines his client's records without his consent, he can be sued for trespass.

The agency tasked with the enforcement of taxation law is the Australian Taxation Office. They have the responsibility and the associated power to amend any incorrect Tax Returns received by them.

Tax agents should ensure that they are not made the scapegoat for the criminal activity of clients. On the other hand, if a tax agent counsels or knowingly aids and abets the creation and lodging of false Tax Returns, he should be subject to the full force of the law. When taxpayers are aware that the Tax Office will accept almost any claim without question, the result is that they will apply intense pressure to tax agents to make false claims on their behalf.

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