

Executor FAQ - Executor Tax Responsibilities

What are my tax responsibilities as the executor?

One of your many responsibilities as the executor is attending to the tax affairs of the deceased and the estate, including:

- Notifying the Australian Taxation Office (ATO) of the death of the deceased;
- Attending to any outstanding lodgments of the deceased by submitting a tax return or non-lodgment advice;
- Attending to the lodgment of a final tax return or non-lodgment advice for the period from 1 July to date of death;
- Lodgment of amended tax returns if you become aware of any material errors or omissions in prior year returns;
- Lodgment of any other outstanding tax documents such as Business Activity or Instalment Activity Statements;
- Cancellation of the deceased's GST and PAYG Withholding registration and ABN where applicable;
- Applying for an Estate Tax File Number if required, as the estate is a separate taxpayer to that of the deceased;
- Applying for an ABN, GST and PAYG Withholding registration for the estate if required;
- Attending to the lodgment of any trust tax returns or non-lodgment advices for the estate (period from date of death onwards);
- Paying any tax liabilities from the estate; and
- In some instances, providing beneficiaries with the information they need to include distributions in their own personal tax returns and in certain cases paying tax on their behalf from the estate.

You need to address any tax issues before distributing the assets of the estate. Otherwise you may become personally liable for any outstanding tax debts or unidentified tax obligations if you have insufficient funds left in the estate to pay the ATO.

When is a tax return required to be lodged?

The ATO stipulates specific rules and thresholds which vary from year to year regarding when a tax return is required to be lodged. If the circumstances of the deceased or the estate are such that a tax return is not required, a non-lodgment advice may be submitted to the ATO instead.

What is a non-lodgment advice?

A non-lodgment advice is a document that informs the ATO that a tax return is not required to be lodged and avoids unnecessary compliance action by the ATO such as imposing penalties or fines for outstanding returns.

What is the difference between lodging a tax return and a non-lodgment advice?

The two main differences are cost and the time period of risk for you as the executor.

- Cost – a non-lodgment advice is quicker to prepare than a tax return and results in less accounting fees.
- Time period of risk for the executor*:
 - Non-lodgment advice – the ATO has the ability to issue an assessment indefinitely. No time limit applies.
 - Tax Return – the ATO has a two or four year period (depending on the circumstances), to issue an amended assessment.

The time limit gives taxpayers certainty, because it means the ATO cannot amend a tax assessment after the time limit has passed (except in some exceptional situations such as evasion or fraud). As the executor, you need to keep in mind that you may become personally liable for any tax debts if you have distributed all the assets of the estate to the beneficiaries and have insufficient funds left to pay the ATO.

*In limited circumstances, six months from the time the executor lodges the last tax return or non-lodgment advice for the deceased, the executor may distribute the estate assets to the beneficiaries without risk of personal liability. Please note this only applies to the deceased's tax liabilities in specific situations and not to the tax liabilities of the estate.

Current as at 1 October 2022

Disclaimer: The information contained in this document represents general comments and is provided for information purposes only. It is intended as a guide only; no warranty or representation is given in respect to its content and it is recommended that parties seek professional advice specific to their particular circumstances.