



Tax investigation services: Protected Member terms and conditions

Current as of November 2018

Read this carefully. If you need to access your member benefits, the terms and conditions below apply.

As a Protected Member of Self-Employed Australia, you can access 100 hours of free accountant and legal expertise related to an ATO audit, subject to the terms and conditions below.

Overview: As a Self-Employed Australia Protected Member, if you have a tax audit from the Australian Taxation Office, you can access our tax investigation services. Self-Employed Australia triages and monitors progress of your case. The professional services are supplied directly to you by the accountants/lawyers we recommend whom you appoint to represent you.

As a Protected Member you access the services as part of your membership benefits. All professional services provided by our referred lawyers and accountants are backed by their Professional Indemnity Insurance.

The provision of the member benefits is at the discretion of Self-Employed Australia given the circumstances below.

Content

- a) What services are accessible
- b) Services conditions
- c) What services are not available
- d) General Conditions
- e) Definitions

Tax events member services accessible by Protected Members

a) What is accessible?

Accessing these professional services are subject to Self-Employed Australia's discretion under the following parameters.

1. Income Tax Audit

Issues arising directly from an ATO Investigation, including a notification from the ATO that it is taking action, carrying out an audit or an investigation, or making an enquiry under the provisions of Income Tax legislation.

2. GST Audit

Issues arising directly from a GST Audit related to a previously lodged GST declaration (Business Activity Statement) with the ATO where the ATO is seeking additional amounts of GST.

3. Company Tax Audit

Issues where there is a notification from the ATO that it is taking action, carrying out an audit or an investigation, or making an enquiry under the provisions of Company Tax Legislation.

4. Australian Business Number

Issues where you have your Australian Business Number cancelled or refused by the Australian Business Register (A division of the Australian Taxation Office).

Member services supplied are at the absolute discretion of Self-Employed Australia and in addition may not be available where you have failed to lodge a required Business Activity Statement or Tax Return without reasonable justification, cause or excuse.

b) Conditions

In addition to the General Conditions, You must:

1. be a fully financial *Protected Member of SEA* at the time of or when You first become aware of an ATO intention to conduct a discussion, Audit, claim or investigation;
2. contact Us as soon as practical when You first become aware of an ATO intention to conduct a discussion, Audit, claim or investigation;
3. appoint a legal or accountant professional from our list of professional advisers.
4. appoint *Fresh Numbers* as your accountant for the purposes of the conduct of the audit and claim;
5. have maintained and must continue to maintain accurate, truthful and up to date records and make returns in due time in accordance with statute and accounting conventions acceptable to the ATO where applicable and have made all returns and all payments except those which are disputed;
6. provide information to the ATO in due time and comply with any statutory notice requesting information which is relevant to the Member Services provided;
7. immediately notify Us in writing of any invitation by the ATO to make an offer in settlement; and
8. provide copies of relevant correspondence to Us between the ATO and You

(including the notice of investigation) together with copies of the accounts, tax computations and returns giving rise to the investigation.

c) What is not accessible

1. Issues relating to Tax Disputes and Investigations

1. Issues relating to Tax Disputes and Investigations.

1.1. Any issues dealing with routine matters and reviews that do not fall within an issue in respect of a GST Audit or an ATO Investigation.

In respect of an ATO investigation only:

1.1.1. Where the ATO advises you that the investigation has been completed; or

1.1.2. Issues arising from retrospective changes to Income Tax.

1.2. Any issue where you cannot demonstrate to SEA that:

1.2.1. You did not make a deliberate mis-statement with the intention to deceive, or

1.2.2. You have not failed to notify your business status as required and within a specified period, or

1.2.3. You have not failed to maintain or submit an accurate, truthful and up-to date records and returns nor failed to comply with statutory time limits or requirements, or

1.2.4. You have not made a false statement or representation either knowingly or without a belief in its truth where this statement or representation would result in a mis-statement of amounts payable, expenses claimed, income or profits or losses.

1.3. Any issue relating to:

1.3.1. Litigation in a Court or Tribunal except where that access is approved by SEA in its absolute discretion.

1.3.2. Any action or investigation arising from participation or alleged participation in a tax avoidance scheme, or

1.3.3. Any action relating to contributions obligations under the relevant superannuation acts, for example, Superannuation Industry (Supervision) Act 1993 (Cwlth)

1.3.4. GST refunds or payment obligations arising from any offshore transaction or import or export activity.

2. Any Issue not related to Your own obligations to the ATO

Your Protected Member benefits do not cover any issue or scenario whereby an audit arises out of payment obligations under PAYG withholding of employees and superannuation remittance obligations except where We, Self-Employed Australia at our absolute discretion agree to do so.

3. Various Liabilities

Your Protected Member benefits do not cover compensation, damages, interest, penalties or taxes which You or your Partners or Directors are ordered or agree to pay.

4. Excluded Issues

- 4.1. Any Issue:
 - 4.1.1. notified to Us after your Protected Membership expires;
 - 4.1.2. where, before the commencement of Your *Protected Membership of SEA* You were aware, or should have been aware, that an Issue was likely to arise;
 - 4.1.3. where, before the commencement of Your *Protected Membership of SEA* You were aware of facts or circumstances that might give rise to an Issue;
 - 4.1.4. which arises or where facts and circumstances become known to You prior to You becoming a *Protected Member of SEA*;
 - 4.1.5. arising after Your *Protected membership of SEA* ceases;
 - 4.1.6. where no Court or Tribunal will or would entertain a hearing on the substantive merits of the dispute or which is otherwise not within the jurisdiction of a Court or Tribunal.
- 4.2. Any Issue raised by You which is false, fraudulent or exaggerated.
- 4.3. Any Issue concerning or arising from:
 - 4.3.1. a dispute between You and SEA concerning the member benefit;
 - 4.3.2. an application for judicial review except where We, Self Employed Australia at our absolute discretion agree to do so.
- 4.4. Any civil claim against You arising from:
 - 4.4.1. the death or injury to any person including (without limitation) any sickness, disease or any naturally occurring condition or degenerative process;
 - 4.4.2. the loss destruction or damage to property owned or occupied by or under the control of a third party.
- 4.5. All Issues associated with an appeal involving tax litigation heard before a Court or Tribunal except where We, Self-Employed Australia at our absolute discretion agree to do so.
- 4.6. All Issues arising from You acting against or differently from the advice provided by our outsourced professional service providers engaged by You where You have been afforded a reasonable period to consider the advice.
- 4.7. All Issues not arising out of Normal Business Activities.

5. Professional Negligence Claims

Self-Employed Australia does not provide professional services. The professional services are supplied directly to you by the accountants/lawyers from our list of providers whom you appoint to represent you. You have no claims against Self-Employed Australia for Professional Negligence.

d) General Conditions

1. Financial Membership

To access the services You must pay and retain your financial *Protected Membership of Self-Employed Australia*.

2. Reporting of Issues to access Services

2.1 You can only access the services if You notify Us of the Issue before the expiration of your Protected Membership.

2.2 You must notify Us by e-mail or post to the address stated in the Schedule immediately upon becoming aware of the Issue or facts and circumstances, as relevant. Delay may prejudice Your access to Services. If You are in any doubt about the need to notify an Issue or the eligibility to make access to Services, then You should contact Us.

3. Observance

The due observance and fulfilment of the terms, conditions and endorsements of this Membership Benefit insofar as they relate to anything to be done or complied with by Us or You and the truth of any statements in Your declaration shall be conditions of access to Services.

4. You will co-operate at all times:

4.1 reply promptly to any correspondence about the Issue and

4.2 cooperate with the appointed provider of professional services and provide them with all information that they need and attend meetings and hearings whenever asked to.

4.3 You must immediately advise Us of any offer made to settle the Issue.

All services provided to members are at the absolute discretion of SEA.

5. Transferring Your Rights

You cannot transfer your rights under this *Protected Membership of SEA*.

e) Definitions

Unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

- 1. ATO:** means the Australian Taxation Office or appropriate government authority or agency authorised to conduct the relevant activity.
- 2. ATO Investigation:** means an exercise by the ATO of the powers granted to it by means of the Taxation Administration Act 1953 to investigate Your returns of income or profit from a trade, profession or business under Income Tax Legislation.
- 3. Us/We:** means Self-Employed Australia and Fresh Numbers Pty Ltd, their agents, lawyers and representatives acting together or separately.
- 4. You/Your:** means the person operating a small business either as an individual, sole trader, partnership, company or trust, who has applied to and been accepted by *Self-Employed Australia* as a Protected Member and who has paid the required fees such that the membership is current and financial and whose trading address is within the Territorial Limits.

5. **Tax Legislation:** means Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Taxation Administration Act 1953; A New Tax System (Goods and Services Tax) Act 1999, Fringe Benefits Assessments Act 1986, Superannuation Guarantee (administration) Act 1992 and associated Acts and Regulations.
6. **Court or Tribunal:** means a court, tribunal or other statutory body of competent jurisdiction within the Territorial Limits.
7. **Cwlth:** denotes the legislation being referred to is a Commonwealth of Australia Consolidated Act.
8. **Director:** means a director or other board member of You where You is a company.
9. **GST Audit:** means an audit or investigation by the ATO exercising its powers under the A New Tax System (Goods and Services Tax) Act 1999 regarding the amount of GST payable by the You.
10. **Normal Business Activities:** means those activities You declared to SEA with your application to become a Protected Member, or amended from time to time by you and approved by SEA. All of your amendment proposals and the SEA approvals must be in writing.
11. **Partner:** means where You are a partnership, any of the partners within that partnership.
12. **Member benefits:** means the undertakings between Us and You as set out in this document.
13. **SEA:** means *Self-Employed Australia* the business name of Independent Contractors of Australia Inc (ABN: 54 403 453 626) a not-for-profit association.
14. **Territorial Limits:** means the Commonwealth of Australia and its external territories and an Australian State or Territory.

Please Note:

Reference to any statute or statutory provision and orders or regulations there under shall include a reference to that statute, provision, order or regulation as amended, re-enacted or replaced from time to time.

Unless the context otherwise requires, reference to the singular includes the plural and the plural includes the singular.

Headings are for convenience only and do not affect the interpretation or form part of this member benefits policy.