TR 2018/2 - Income tax: record keeping and access - electronic records

This cover sheet is provided for information only. It does not form part of *TR 2018/2 - Income tax: record keeping and access - electronic records*

Taxation Ruling TR 2018/2 consolidates a number of previous public advice and guidance products, list at the **References section** . This has been done as part of a project to review public rulings. The ATO view has **not** changed as a result of this update.

Taxation Ruling

Income tax: record keeping and access – electronic records

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This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Summary – what this ruling is about

Class of person/arrangement

1. This Ruling explains our (the ATO's) view on record keeping in electronic form for the purposes of section 262A of the *Income Tax Assessment Act 1936* (ITAA 1936). It discusses how you must retain and, when required, provide access to electronic records[1], including encrypted records, records created from e-commerce and records stored in the cloud.[2] It applies to individuals and companies carrying on a business.

Ruling

Electronic records

2. Records stored or recorded by means of a computer are recognised as documents for the purposes of Commonwealth

[1] Under Division 353 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

[2] In this Ruling, 'the cloud' means the provision of information technology resources as a service through the Internet to store, manage and process data (as opposed to using a local server or a personal computer).

legislation[3], including the record keeping requirements[4] and access powers[5] in the taxation legislation.

3. Computer-generated documents are admissible evidence in taxation matters (subject to relevance and, where necessary, proof of the competence of the computer device).[6]

Storage of electronic records

4. If you are carrying on a business, you must keep records that record and explain all transactions and other acts you engage in that are relevant for any purpose of the income tax legislation.[7] Electronic records must be in a form that we can access and understand in order to ascertain your income tax liability when required.[8]

e-commerce transaction records

5. For record keeping purposes, business transactions carried out electronically (for example, using either electronic data interchange (EDI) specific systems or the Internet) are no different from other forms of business transactions.[9] You are required to keep records that explain all electronic business transactions that are relevant for any income tax purpose.[10] The minimum information that must be recorded is:

- the date
- amount, and
- character of the transaction.

Storage of paper records in electronic form

6. You may keep true and clear electronic reproductions of original paper records. However, documents created through conversion processes that do not produce a complete and accurate copy of original documents[11] are not considered to be a true and clear electronic reproduction.

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[3] Section 2B of the *Acts Interpretation Act 1901* (AIA 1901).defines 'document' and extends the meaning of 'record' to include information stored or recorded by means of a computer.
[4] Subsection 262A(1) of the ITAA 1936.
[5] Sections 353-10 and 353-15 of Schedule 1 to the TAA 1953.
[6] *Evidence Act 1995* and *DFC of T v. Capron* 93 ATC 4144; (1993) 25 ATR 142.
[7] Subsection 262A(1) of the ITAA 1936 and definition of 'this Act' in section 6 of the ITAA 1936.
[8] Subsection 262A(2) and paragraph 262A(3)(b) of the ITAA 1936.
[9] EDI is the transmission of data and information between businesses electronically in a computer-readable format.
[10] For relevant purposes see the definitions of 'this Act' in section 6 of the ITAA 1936 and section 995-1 of the ITAA 1997.
[11] Such as some Optical Character Recognition processes.

Record keeping requirements for electronic records

7. Any electronic records are subject to the same record keeping requirements as paper records.[12] This includes encrypted records, e-commerce records and records stored in the cloud.

8. Your record keeping must meet all four of these requirements:

- Records must not be altered or manipulated, and must be stored in a way that restricts the information from being altered or manipulated.
  - We may ask you to demonstrate that you have appropriate safeguards in place to protect your records from alteration, manipulation or inadvertent destruction.
  - If your system changes over time, the original data must still be capable of being reconstructed.
- Generally, they must be retained for five years after the records are prepared or obtained, or the transactions are completed, whichever occurs later.
  - Keep all information about any routine procedures you have for destroying electronic records.
- They must be capable of being retrieved and read by us when required.[13]
  - Keep system documentation that explains the basic aspects of the system, including structure, programs, inputs and outputs so we can ascertain that the system is doing what it is claimed to do if required.
  - Keep encryption keys for encrypted records and a means of accessing records in any record keeping system you use.
  - Data should be capable of being extracted and converted into a standard data format, and appropriately identifiable, labelled or indexed to enable retrieval and manipulation through some form of indexing or text search system.
- They must be in English, or in a form that we can access and easily convert to English.

[12] Definitions of 'document' and 'record' in section 2B of the AIA 1901; *Electronic Transactions Act 1999* (ETA 1999).
[13] Paragraphs 9(1)(a), 11(1)(b) and 12(1)(a) of the ETA 1999.

Other general requirements

9. Additional requirements may apply in specific circumstances (for example, some taxpayers may be required to retain records for different periods of time).[14]

10. It is generally not necessary to retain a hard copy of the information contained in an electronic record unless a particular law or regulation requires you to retain a paper copy.

11. It is your responsibility to ensure that your electronic records are secure, accurate and maintained in accordance with the record keeping requirements.

12. If you do not keep or retain records as required you may be liable to a penalty.[15]

ATO access powers and electronic records

13. If we need to access electronic records you hold, we prefer to seek your cooperation in making it available to us. However, the laws we administer give us wide-ranging powers to obtain information, and in some situations we need to use these powers.

14. Under our powers to obtain information and evidence we can, by notice in writing, require you to produce any electronic document in your custody or under your control for the purposes of a taxation law.[16] We also have the right to full and free access to any electronic document and to make copies when required for the purposes of a taxation law.[17]

15. Similarly, our access powers permit us to access any printed copies of electronic records, as well as allowing us to read system and software manuals.

16. If we require access to, or for you to produce, a document or information that is stored electronically, you may provide it in either electronic form or a hard copy form unless we direct you otherwise.[18]

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[14] Subsections 262A(4) and (5) of the ITAA 1936.

[15] Section 262A of the ITAA 1936, sections 8L, 8Q and 8T of the TAA 1953 and section 288-25 of Schedule 1 to the TAA 1953.

[16] Paragraph 353-10(1)(c) of Schedule 1 to the TAA 1953 and definitions of 'document' and 'record' in section 2B of the AIA 1901 and 'taxation law' in section 2 of the TAA 1953.

[17] Section 353-15 of Schedule 1 to the TAA 1953. Our approach to exercising these powers and the safeguards protecting legal professional privilege and administrative concessions in respect of professional papers are detailed in *Our approach to information gathering* and other ATO material, available online at ato.gov.au

[18] A direction may be given under section 25A of the AIA 1901 or the exclusory provisions of section 11 of the ETA 1999, being paragraphs 11(1)(a), (b) and (c) and paragraphs 11(2)(a), (b) and (c) which deal with the integrity, usability and accessibility of the electronic records.

17. As the occupier of land, premises, or a place being accessed, you must provide us with reasonable use of your facilities and assistance to extract information you have stored electronically if we require it. What is considered 'reasonable' may vary on a case-by-case basis.

18. In the context of electronically stored records, reasonable facilities and assistance extends, where necessary, to the provision of login codes, keys (including encryption keys) and passwords.

19. There is an administrative penalty if you do not provide us with all reasonable facilities and assistance as required.[19]

20. If your electronic records are stored in the cloud and are immediately accessible to you, we can use our access powers to obtain them. We may also seek the records under a double tax agreement or under our offshore information notice power if the cloud service provider is offshore.[20]

Date of effect

21. This Ruling applies to years of income commencing both before and after its date of issue. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
14 February 2018

[19] Subsection 353-15(3) of Schedule 1 to the TAA 1953.
[20] Section 264A of the ITAA 1936.

Appendix 1 – Detailed contents list

22. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 96/7; TR 2006/10

Previous Rulings/Determinations:

TR 2005/9; TD 2002/16

Legislative references:

- ITAA 1936
- ITAA 1936 6
- ITAA 1936 262A
- ITAA 1936 262A(1)
- ITAA 1936 262A(2)
- ITAA 1936 262A(3)(b)
- ITAA 1936 262A(4)
- ITAA 1936 262A(5)
- ITAA 1997
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 2
- TAA 1953 8L
- TAA 1953 8Q
- TAA 1953 8T
- TAA 1953 Sch 1 288-25
- TAA 1953 Sch 1 Div 353
- TAA 1953 Sch 1 353-10
- TAA 1953 Sch 1 353-10(1)(c)
- TAA 1953 Sch 1 353-15
- TAA 1953 Sch 1 353-15(3)
- Acts Interpretation Act 1901
- Acts Interpretation Act 1901 2B
- Acts Interpretation Act 1901 25A
- Electronic Transactions Act 1999
- Electronic Transactions Act 1999 9(1)(a)
- Electronic Transactions Act 1999 11
- Electronic Transactions Act 1999 11(1)(a)
- Electronic Transactions Act 1999 11(1)(b)
- Electronic Transactions Act 1999 11(1)(c)
- Electronic Transactions Act 1999 11(2)(a)
- Electronic Transactions Act 1999 11(2)(b)
- Electronic Transactions Act 1999 11(2)(c)
- Electronic Transactions Act 1999 12(1)(a)
- Evidence Act 1995

Cases relied on:

- Federal Commissioner of Taxation v. Capron (1993) 25 ATR 142; 93 ATC 4144

Other references:

- Our approach to information gathering (ato.gov.au)

ATO references

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