

Terms of Business

This document together with a Terms of Engagement (ToE) letter and, where applicable, any Authority to Proceed (ATP) letter, forms the **agreement** between Joseph Solano Tax Accountants ((referred to as '**JS Tax**', 'We', 'Us' and 'Our') delivering the services and our client (referred to as "you" or "your"). The terms defined in the ToE and ATP letters have the same meaning in these Terms of Business.

1. SERVICES

Basis of providing our Services

We will provide the Services described in the ToE and/or ATP. Engaging or continuing to engage **JS Tax** to provide the Services, will evidence your acceptance of the Services **agreement**. It is not incumbent on **JS Tax** to continually reissue ToE letters with a new scope of services nor advise you that such a new scope of services exists. If you instruct us to undertake any Services, these Terms will apply, regardless of whether or not you have signed the client acknowledgement in the ToE letter or ATP letter. The Terms displayed on our website as amended from time to time (without notice to you) will apply to all Services provided to you.

Our work will be based solely on the information provided, the circumstances made known to us and the assumptions set out in our correspondence. We rely on you bringing to our attention as soon as possible any changes in the information as originally presented as it may impact on our advice.

The scope of our services is limited to the work specified in our proposal or ToE letter. Unless expressly stated otherwise in the ToE letter, the Services provided do not constitute tax advice nor financial advice nor legal advice.

The preparation of your income tax return or BAS does not constitute a tax review nor tax audit, and cannot be relied upon as such. The onus is on you, the taxpayer, to self-assess and there are substantial penalties for incorrect returns. You should carefully review the income tax return or BAS to ensure that items shown are accurately stated and inform us of any amendments that are required.

While we shall endeavour to identify potential issues to the best of our ability, we shall not accept responsibility for matters not reasonably identifiable from the information provided to us as part of our engagement with you.

Where we are engaged to compile financial information in respect of general purpose or special purpose financial statements, you are responsible for the reliability, accuracy and completeness of the accounting records and disclosure to us of all material and relevant information.

Changes in the law and in interpretations may take place before our advice is acted upon or may be retrospective in effect. Unless specifically stated in the engagement letter we accept no responsibility to inform you of changes in the law or interpretations affecting advice previously given by us.

Some of the matters on which we may be asked to advise on (eg employee share schemes, superannuation funds) may have tax implications for directors, employees or other related entities for which we are not responsible, unless specifically instructed to address these issues. Any advice in respect of persons or entities not specifically engaged will be general in nature, unless specifically provided for in the engagement.

Any advice provided by us during this assignment is only our opinion based on our understanding of the current law, administrative practice and our knowledge of your particular circumstances. Thus, any advice and any income tax returns themselves will not necessarily be beyond challenge by the taxation authorities.

During the course of the assignment and subsequent to it, we may give oral advice in meetings and over the telephone. After a more detailed consideration of the matters discussed, we may amend the view we expressed, but are under no obligation to inform you of this. Accordingly, if we provide any oral advice, we suggest you should seek from us written confirmation of the same.

Unless specifically provided for in the engagement, the scope of our work does not include reviewing transactions in light of the application of Part IVA of the Income Tax Assessment Act 1936 and other tax anti-avoidance legislation.

Generally, where Part IVA is found to apply, any tax benefits such as a tax deduction and/or deferral of income may be denied.

Limitations to the tax compliance services we provide

When completing tax returns, unless otherwise agreed in the ToE letter, our Services in respect of the following schedules and disclosures are limited as follows:

Tax asset register

The Capital Allowance Schedule contains information regarding depreciating assets. This schedule is completed based on the summarised information provided by you. Our engagement excludes any work in relation to a detailed analysis of any tax depreciation schedules.

Capital Gains Tax

This engagement excludes any detailed analysis of the disclosures made in the Capital Gains Tax schedules. Unless it is separately and specifically agreed that we will perform additional work in relation to these schedules, we will complete them (if required) based solely on information provided by you.

Generally

The *Tax Agents Services Act 2009* requires us to advise you of your rights and obligations where we are acting for you on taxation matters. In relation to the taxation services provided:

You are subject to the self-assessment system in relation to any of your income tax returns. The Commissioner is entitled to rely on any statements made in your income tax returns. Where those statements are later found to be incorrect, the Commissioner may amend your income tax assessments and, in addition to any tax assessed, you may also be liable for penalties and interest charges.

You have an obligation to keep proper records that will substantiate the taxation returns prepared and which will satisfy the substantiation requirements of the *Income Tax Assessment Act*. Failure to keep such records could result in claims being disallowed, additional tax being imposed, and the imposition of penalty or general interest charges. You are responsible for the accuracy and completeness of the particulars and information required to comply with the various taxation laws. We will use this information supplied in the preparation of your returns.

Your rights as a taxpayer include:

- The right to seek a private ruling;
- The right to object to an assessment by the Commissioner;
- The right to appeal against an adverse decision by the Commissioner.

Certain time limitations may exist for you to exercise these rights. Should you wish to exercise these rights at any time you should contact us so that we can provide you with the relevant time frames and to discuss any additional requirements that may exist.

Time Scale

We will endeavour to carry out our obligations in accordance with the time scales set out in the Engagement or ATP Letters or as otherwise agreed. However, unless both of us specifically agree otherwise in writing, the dates contained in the Engagement or ATP letters or otherwise advised are indicative dates intended for planning and estimating purpose only and are not contractually binding.

Changes to Services

Either of us may request changes to the Services to be provided or changes to any other aspect of the Terms but no such changes take effect unless agreed in writing. Both of us agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing or any other aspect of the Services.

2. REPORTING

We will report to you in accordance with the terms set out in the Engagement or ATP letters. You may make copies of any reports for your own internal use but you must not provide the report or copies of it to any third party without first obtaining our written consent. Such consent will only be granted on the terms we deem appropriate which will include that we accept no duty or responsibility to any other party who may seek to rely on our report. In some cases appropriate releases from third parties may be required.

3. INFORMATION

You agree to provide in a timely fashion all information and documents reasonably required to enable us to provide the Services. Unless otherwise stated in the Engagement or ATP letter, we will not independently verify the accuracy of such information and documents and we will not be liable for any loss or damage arising from any inaccuracy or other defect in any information or documents supplied by you.

Generally, the responsibility for the accuracy of any tax returns rests with the taxpayer. Consequently, you will be responsible for ensuring that the particulars and information you provide to us are accurate and complete. We will not prepare any tax returns based on estimates you provide, unless the use of estimates is generally accepted for a particular item or calculation, or where under the circumstances it is impracticable to obtain exact data.

You will ensure that information supplied by you or on your behalf, to the best of your knowledge and belief, is not false or misleading and does not omit material particulars.

In the course of providing the Services we, at our discretion, may use the resources, knowledge and information of other firms within the **JS Tax** network or third-party service providers. Information, which may include personal information, may be required to be transferred to such parties. You consent to such transfer.

4. FEES AND PAYMENT

How fees will be calculated

Fees for the Services will be charged on the basis set out in the Engagement or ATP letter. Where these letters do not state the basis on which our fees will be charged, our fees will reflect time spent and such other factors as complexity, monetary values involved, specialist input required and the urgency of the matter. Goods and services tax (**GST**) at the prevailing rate will be added to and forms part of our fees.

Our total fees or hourly rates and, where applicable, out of pocket expenses (**Billings**) are based on the currently applicable GST rate (except where we have assessed that the Services to be provided GST free). If this GST rate changes, our Billings will be adjusted to reflect the change.

You acknowledge that any fee estimate is given in good faith but is subject to change.

Expenses

All charges are exclusive of expenses unless the Engagement or ATP letter states otherwise. We will charge you out of pocket expenses such as reasonable travel, subsistence and document handling costs (photocopying, printing, fax and courier, etc) incurred by us (net of any applicable GST input tax credit to which we are entitled) plus GST as applicable. Any special expense arrangements will be agreed and set out in the Engagement or ATP letter.

Hourly rates

We may revise our fee scale from time to time. Rates quoted to you remain in force until next 31 December or 30 June, as appropriate. We may increase our fees for any work performed after those dates. We reserve the right to change our rates outside these dates and will communicate any such change directly to you

Payment of Invoices

Unless specifically agreed otherwise, your obligation to pay us fees and expenses to which we are entitled, will not arise until we have issued a ToE letter to you that you have signed and/or when a fee account is issued to you. Where you have not signed the ToE letter, but continue to instruct us, then you will be taken to have accepted the terms and conditions of the ToE letter issued to you and these Terms.

Where an amount for GST is stated to be a component of the fees and expenses, our fee account will comply with the law specifying what is a “tax invoice” for GST purposes. Our invoices will be issued on a regular basis or as set out in the ToE or ATP letter. Where not specifically set out in the Engagement or ATP letter, all invoices will be due for payment on engagement or on completion of the assignment, and, at our discretion, we may invoice you on an interim basis, prior to the completion of any assignment. Title to work will remain with **JS Tax** until full payment for the assignment is received. **JS Tax** does not provide credit and will may deliver work on assignments until full payment is settled. Payment of invoices can be made by cheque, EFT, direct debit, or credit card. Payments by credit card may attract a service fee equivalent to the effective merchant fee levied by the card issuer.

A debt collection cost will be payable by you where the account is not paid within the trading terms. Our terms are payment in advance or upon receipt of invoice and/or as stated on the invoice. We may, at our discretion, also charge you a commercial rate of interest on accounts which are overdue by more than a month.

5. TERM AND TERMINATION

Duration of this Agreement

This **agreement** will apply from the commencement date stated in the Engagement or ATP letter, if any, or where no commencement date is specified from the date of acceptance of the **agreement** as specified in the Engagement or ATP letter.

Termination

This **agreement** may be terminated by either party at any time by written notice.

Rights on Termination

Any termination of this **agreement** is without prejudice to the rights of one party against the other party in respect of any acts or omissions under this agreement prior to termination, or in respect of any sums that remain outstanding at the time of termination. For the avoidance of doubt, **JS Tax** reserves the right to invoice you and you are obliged to pay for any Services performed prior to the termination of this agreement.

6. CONFIDENTIALITY

Both parties agree to take reasonable steps to maintain (within their respective organisations or otherwise) the confidentiality of any proprietary or confidential information of the other party. If you wish to provide third parties with copies of our reports, letters, information or advice, you must first obtain written permission from us to disclose the document(s) or information noting our copyright on all work that we produce.

7. LIABILITY

JS Tax will use reasonable skill and care in the provision of the Services to you as set out in the Engagement or ATP letter. The liability of **JS Tax**, its employees, associates and contractors is limited by a scheme approved under Professional Standards Legislation.

8. INDEMNITY AGAINST THIRD PARTY LIABILITY

You shall indemnify and hold harmless **JS Tax**, its employees, associates and contractors from and against any loss, expense, damage or liabilities (or actions that may be asserted by any third party) that may result from any third party claims arising out of or in relation to the provision of the Services or any use by you of any deliverable item under this engagement and will reimburse **JS Tax** for all costs and expenses (including legal fees on a solicitor client basis) incurred by **JS Tax** in connection with any such action or claim.

9. DOCUMENTS AND INFORMATION

Ownership of documents

In this clause 9:

- **Information** means any information, whether contained in documents or other materials, provided to us by you or by your agent, representative, officer, employee or anyone else at your request;
- **Work** means any advice or materials in any form, including documents, that we produce for the purpose of providing the Services, but excludes our Working Papers; and
- **Working Papers** means any files or working papers created by us as our record of providing the Services, in any form, and whether or not incorporating directly or indirectly the Information. Our Working Papers include, but are not limited to, the following items: internal memos; file notes; reconciliations; summaries, reviews and analyses of your Information prepared by us which do not form part of the deliverables under the engagement; records of our calculations, accounting, projections and other workings; records of progress checks; progress and status reports; records of any discussions, including minutes of meetings; and any other record or document which is ancillary to our Work.

All Information provided to **JS Tax** will remain your property, however you consent to us making copies, including electronic copies, of the Information for our own purposes. We are entitled to retain any copies of the Information you provide to us or which forms part of Work or Working Papers.

Provision of the Services may result in the production of Work, including documents such as financial statements, income tax returns and audit reports, which will be supplied to you. Ownership of our Work, including documents, provided to you in respect of the provision of the Services will vest in you. To the extent permitted by law, all other documents produced by **JS Tax** in respect of the provision of the Services, including Working Papers, will remain our property.

It is our practice to destroy documents belonging to us after they are more than seven years old. Your acceptance of these Terms includes your consent for us to destroy any documents that strictly belong to you which have been filed amongst our own papers.

JS Tax uses forms of electronic document management system. Most documents received from clients are scanned and stored electronically. In most cases we endeavour to return to you any original documents provided however your acceptance of these Terms includes your consent for **JS Tax** to destroy any hard copy documents received from you.

Lien over documents

You agree that **JS Tax** reserves the right to exercise a lien over all files, papers and documents including Information and Work relating to the Engagement agreement or ATP letter which are in **JS Tax**' possession or control as security for all outstanding amounts owed by you to **JS Tax** including without limitation unpaid tax invoices, interest, default costs and enforcement expenses (**Outstanding Amounts**) until all Outstanding Amounts are paid in full to **JS Tax**.

Where an Outstanding Amount remains unpaid beyond the due date, we also reserve the right to suspend provision of the Services until such time as the Outstanding Amount is paid. Suspension of the Services will not affect your obligation to pay us for Services outstanding at the date of the suspension.

10. DISPUTE RESOLUTION

If there is a dispute relating to the Services or an Outstanding Amount, the parties agree to resolve the dispute in good faith. If the dispute is not resolved by the parties within 30 days, the parties agree to enter into mediation or another form of dispute resolution before commencing legal proceedings.

Written notice of the dispute must be given to the other party for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree on a mediator, then as selected by the Australian Disputes Centre (**ADC**). The mediation will be conducted in accordance with the ADC Guidelines to the extent they do not conflict with these Terms.

If the dispute is not resolved within 60 days after notice of the dispute is first made or such further period as agreed between the parties then the mediation will terminate.

10. RECORD KEEPING

All records relevant to the preparation of an income tax return must be retained by a taxpayer for a period of five years from the relevant date and these must be available for examination by the Commissioner of Taxation upon request.

Taxpayers must satisfy minimum standards of reasonable care and demonstrate “reasonably arguable positions” in relation to contentious issues in order to minimise penalty exposures. The Australian Taxation Office does not require documents to be lodged with an income tax return, any work papers and research papers prepared to support amounts documented in the return must be sufficiently documented.

In the case of capital gains tax (**CGT**), you are required to retain records not only until the end of five years after a CGT event happens, but also five years after any further relevant CGT event can happen which would be relevant to determining whether you have made a capital gain or capital loss from the event. Additionally, you will also need to keep those records to substantiate any carry-forward capital loss which is intended to be applied to a future capital gain.

Where you are required to maintain records and fail to do so, penalties may be imposed under the taxation law.

11. COMMUNICATIONS

During our performance of the Services we may wish to send messages and/or documents to each other by e-mail. As e-mail carries with it the possibility of inadvertent misdirection, or non-delivery of confidential material, unless you notify us otherwise you consent to the use of e-mail in accordance with this clause.

Where messages are sent by e-mail, we will adopt the following procedures and require you to do likewise:

- a) If sending a confidential e-mail message, the sender will indicate if a response is not wanted in an electronic form. All risks connected with sending by e-mail commercially sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.
- b) Both parties will carry out procedures to protect integrity of data, in particular, it is the recipient's responsibility to carry out a virus check on any attachments before launching any documents, whether received on disk or otherwise.

12. EXCLUSIVITY

JS Tax will not be prevented or restricted by anything in this agreement from providing services for other clients.

13. PRIVACY OF PERSONAL INFORMATION

Privacy Act

We do not need to comply with the Privacy Act 1988 (Cth) but we will act in a responsible and professional manner taking into consideration the following matters:

Collection and use of personal information

The type of personal information we may collect includes your name, address, date of birth, place of birth, telephone number, email address, financial information, and details of superannuation arrangements, where relevant for the provision of the Services to you.

Disclosure of personal information

To provide the Services, we may disclose your personal information to our business partners and associates and to third parties engaged to perform administrative or other services. Any disclosure is always on a confidential basis. We may also disclose your personal information if required or authorised by law. By accepting these Terms, you consent to us disclosing your personal information to our business partners and associates and to third parties when required by us to complete the Services.

If the performance of the Services requires a third party to supply personal information to us on your request, it is your obligation to ensure that the third party complies with clauses Privacy Act that may apply and you will indemnify us against any claim, loss or expense resulting from that party's failure to do so, or to otherwise comply with the Privacy Act.

15. UNFORCEABLE EVENTS

Neither of us will be liable to the other for any delay or failure to fulfil their obligations under this agreement to the extent that any such delay or failure arises from causes beyond their control, including but not limited to fire, floods, acts of God, acts of regulations of any governmental or supranational authority, war, riot, terrorist activities, strikes, lockouts and industrial disputes.

17. GENERAL

Entire Agreement

The **agreement**, ToE and/or ATP letters sets out the entire **agreement** and understanding between you and us relating to the Services. Without affecting **JS Tax** responsibilities for other services it is engaged to perform on terms agreed separately in writing, the **agreement** replaces and supersedes any previous agreements, proposals, correspondence, understandings or other arrangements, statements or representations whether written or oral as to any facts or matters relating to you or to **JS Tax** or the Services.

Terms of Engagement letter to take Precedence

In the event of any inconsistency between the ToE letter and any other elements of the **agreement**, the ToE letter will prevail. If there is any inconsistency between any ToE letter or ATP letter, the ATP letter will prevail.

Assignment

Neither party may, nor have the power to, assign or otherwise deal with its rights or obligations under this **agreement** without the prior written consent of the other party, except that **JS Tax** may without consent assign or novate this **agreement** to a successor of the business of **JS Tax** to which this agreement relates.

Notices to produce documents

If we receive any legally enforceable notice or demand issued by a third party, including the Australian Securities & Investment Commission, Australian Taxation Office, any government statutory body or instrumentality, or any court or tribunal in relation to or in connection with the Services you agree to pay our reasonable professional costs and expenses (including solicitor client expenses) in complying with or challenging any such notice or demand to the extent that our costs and expenses are not recovered or recoverable from the party issuing the notice or demand.