

ABA-ATO information request protocol

Arrangements between the Australian Taxation Office (ATO) and the Australian Banker's Association (ABA) for the issuing of third party information notices on banks under section 264 of the Income Tax Assessment Act 1936 (ITAA).

The following arrangements apply to third party information notices served by the ATO on member banks of the ABA, under section 264 of the ITAA.

1. Where appropriate the required information will be obtained from the taxpayer.
2. If a formal third party notice is required, it will be a notice approved by the Commissioner, his delegate or an authorised officer after ensuring the notice is valid.
3. Within a reasonable period of time prior to issue of a notice, consultations between the ATO and the bank should occur in relation to all complex and /or large scale information requests (i.e. those relating to multiple taxpayers). This will enable the most efficient process to be determined or alternative approaches discussed for the benefit of all parties. Examples that may fall under one or both categories include requests that:
 - relate to offshore customer(s) and the data requested may not be held in Australia. This is because it raises the issue as to whether the bank has custody or control of the documents pursuant to s.264(1)(b). Whether this is the case could differ depending on whether the data is held by its offshore branch, its offshore company or by an offshore services company (under an outsourcing arrangement).
 - involve more than one level of filtering and/or extensive information gathering across the bank's operations. Such information is normally not capable of being produced within the normal 28 day timeframe.
4. To enable the bank to comply with its obligations under the notice, the ATO agrees to address any questions or clarifications the bank may have in respect of the notice.
5. The bank will be given a reasonable period of not less than 28 calendar days within which to respond to the notice. A notice can be issued for a shorter period however this is usually after consultation with the bank.
6. Provided that it does not prejudice any of its statutory rights and gives effect to the purpose for which the notice was issued, the ATO **may** be able to accept abstracts of financial data where this can be provided more conveniently and/or expeditiously than specific documents. The bank & the ATO would endeavour to discuss what information is required & agree on what format is acceptable.
7. The ATO will normally accept copies of documents and information from banks in either electronic or paper form. Where electronic copies are provided, the bank will ensure that they can be decrypted and read by the ATO.
8. In all cases, the ATO should seek an explanation from the bank as to why the notice cannot be complied with and where appropriate, work with the bank to seek alternative solutions for obtaining the relevant information or other data from different sources which would be relevant for their inquiry, before considering prosecution. If all other options have been exhausted, the ATO officer would advise the bank of their intention before referring the case to the ATO in-house prosecution department.

9. Notices must identify the banking entity from which the documents or information are sought.
10. Except in cases where a notice may relate to a class of persons, entities or transactions, it should where possible, identify the bank's customer by name, BSB and account number. However, it is noted that the information requested in the notice need not be restricted to the identified account. Where the BSB and account number is not known, the postal address and date of birth of the customer should be quoted in the notice.
11. The ABA and ATO may request that these arrangements be reviewed from time to time. The ATO agrees to advise the ABA in a timely manner of any changes to its internal procedures that may impact these arrangements.

ENDS

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