



SELF-EMPLOYED AUSTRALIA

Tax investigations insurance: Protected Member terms and conditions

Current as of October 2017

Read this carefully. If you need to make a claim for our tax investigation insurance, the terms and conditions below apply.

Content

- a) What is covered
- b) Conditions of cover
- c) What is not covered
- d) General Conditions
- e) Definitions
- f) Enquiries, Complaints or Disputes

Tax events claimable by Protected Members

a) What is covered

Some or all of these will apply, depending on your chosen business structure; sole-trader, limited company, partnership or limited liability partnership.

1. Income Tax Audit

The **Costs** arising directly from an **ATO Investigation** in respect of a **Claim** being 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**

1a. PSI: Personal Services Income Tax Audit

Where the ATO is investigating Personal Services Income under **Income Tax Legislation**, there must be a written contract for services in respect of the liabilities which are being disputed and the actual arrangements must not significantly differ from the contractual arrangements on status relevant matters.

2. GST Audit

The **Costs** of a **Claim** 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. For the purpose of this clause, the **Claim** is first made against you on the earliest of the following:

- (a) the date on which the **ATO** requests a meeting with **you** or enters the **your** premises or expresses dissatisfaction with any of **your** GST returns in writing;
- (b) date on which you or your adviser first became aware, or could reasonably have become aware, that a **GST Audit** was likely to arise with the **ATO**; or
- (c) the date on which you are served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST.

A **Claim** is not covered where you have failed to lodge a required Business Activity Statement without reasonable justification, cause or excuse.

3. Company Tax Audit

The **Costs** arising directly from an **ATO Investigation** in respect of a **Claim** being 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. Superannuation Fund Investigations

The **Costs** of a **Claim** arising directly from an audit of **Your** Regulated Self Managed Superannuation Fund by the Australian Prudential Regulation Authority or the Federal Commissioner of Taxation.

5. Tax Compliance Meeting Cover

The loss of earnings incurred by **you** due to attendance by **you, a Partner, Director** or other member of your staff having to attend a meeting with the **ATO** if requested by a designated agent of the **ATO**.

The maximum claimable amount per day is \$500, up to a maximum of \$5,000 per **Period of Insurance**.

6. Compliance Visits

Costs associated with a compliance visit by the **ATO** in respect of a GST, PSI, Superannuation or PAYG dispute.

b) Conditions

In addition to the General Conditions, **You** must

- a. 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.
- b. contact **Us** as soon as practical when **You** first become aware of an ATO intention to conduct a discussion, Audit, claim or investigation.
- c. after the **Claim** is first made comply with the advice given by **Us**;
- d. appoint *Fresh Numbers* as your accountant for the purposes of conducting the audit and claim.
- e. 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,
- f. provide information to the **ATO** in due time and must comply with any statutory notice requesting information which is relevant to the **Claim**;
 - g. immediately notify **Us** in writing of any invitation by the **ATO** to make an offer in settlement; and
 - h. 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.

Non claimable events

c) What is not covered

1. Tax Disputes and Investigations

- 1.1. Any costs incurred in dealing with routine matters and reviews which do not fall within a **Claim** by the **ATO** in respect of a **GST Audit** or **ATO Investigation**.
- 1.2. In respect of an **ATO Investigation** only:
 - 1.2.1. **Costs** arising after the issue of a notice under **Income Tax Legislation** notifying **You** that the investigation that has been accepted as a **Claim** has been completed; and/or
 - 1.2.2. **Costs** incurred arising from an amendment which effects retrospective change to **Income Tax Legislation** leading to a **Claim**; and/or
 - 1.2.3. **Costs** incurred otherwise than wholly in connection with an **ATO Investigation** into **Your** business profits.
- 1.3. Any **Claim** where:
 - 1.3.1. deliberate mis-statements have been made by **You** with intent to deceive;
 - 1.3.2. **You** have failed to notify your business status to the relevant authorities within a statutory period;
 - 1.3.3. there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements;
 - 1.3.4. a false representation has been made either knowingly or without belief in its truth and this has resulted in a mis-statement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made.
- 1.4. Any **Claim** arising from or relating to:
 - 1.4.1. an investigation or enquiry by the Investigations and Prosecutions Division of the **ATO** or following the transfer of an enquiry to that

Division; That is, **Your Protected Member benefits does not extend to situations where litigation occurs before a court or tribunal**

1.4.2. avoidance schemes relating to tax or superannuation contributions under the Superannuation Industry (Supervision) Act 1993 (**Cwlth**); and/or

1.4.3. GST refunds in countries outside Australia or Import GST.

2. 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.**

3. Excluded Claims

3.1. Any **Claim**:

3.1.1. notified to **Us** after your Protected Membership expires;

3.1.2. where any delay in notifying **Us** has prejudiced **Our** position;

3.1.3. where, before the commencement of **Your Protected Membership of SEA** **You** were aware, or should have been aware, that a **Claim** was likely to be made;

3.1.4. where, before the commencement of **Your Protected Membership of SEA** **You** were aware of facts or circumstances that might give rise to a **Claim**;

3.1.5. which arises or where facts and circumstances become known to **You** prior to **You** becoming a *Protected Member of SEA*;

3.1.6. arising after **Your Protected membership of SEA** ceases;

3.1.7. more specifically insured or any amount that **You** cannot recover from a more specific insurance because the insurer refuses the claim for indemnity under the other insurance;

3.1.8. 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**.

3.2. Any claim for indemnity under the **Policy** which is false, fraudulent or exaggerated.

3.3. Any **Claim** concerning or arising from:

3.3.1. a dispute between the **You**, **SEA**, and/or the **Insurer** about this **Policy**;

3.3.2. an application for judicial review.

3.4. Any civil claim against **You** arising from:

3.4.1. the death or injury to any person including (without limitation) any sickness, disease or any naturally occurring condition or degenerative process;

3.4.2. the loss destruction or damage to property owned or occupied by or under the control of a third party.

4. Excluded Costs

- 4.1. All costs associated with an appeal involving tax litigation heard before a Court or Tribunal.
- 4.2. All costs that **You** pay or agree to pay before the **We** have accepted **Your** claim for indemnity in writing.
- 4.3. All costs greater than agreed by the **Insurers Claims Administrator**.
- 4.4. All costs arising from **Your** unreasonable behaviour or failing.
- 4.5. All costs arising from breach of **Your** duties under this **Policy** or acts of **Your** that cause prejudice to the **Insurer**.
- 4.6. All costs arising from **You** acting against or differently from the advice of **Us** where **We** have notified **You** of the advice and **You** have been afforded a reasonable period to consider the advice
- 4.7. All costs incurred in unnecessary correspondence.
- 4.8. All costs incurred by any party other than those approved by the **Us**.

5. Claims not arising from Normal Business Activities

This **Policy** does not provide cover in relation to **Claims** not arising out of **Normal Business Activities**.

6. Professional Negligence Claims

This **Policy** does not provide cover in relation to **Claims** against **You** or any **Partner** or **Director** for alleged negligent act, error or omission of a type covered under professional indemnity, directors and officers,

e) General Conditions

1. Financial Membership

You must pay and retain your financial *Protected Membership of Self Employed Australia*

2. Reporting of Claims

- 2.1 **Claims** are only covered if **You** notify **Us** of the **Claim** 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 **Claim** or facts and circumstances, as relevant. Delay may prejudice **Your** position. If **You** are in any doubt about the need to notify a **Claim** or the eligibility to make a claim in respect of such a **Claim**, then **You** should contact **Us**.
- 2.3 **You** will be sent a claim form. **You** must fill this in fully and truthfully and return it to the **Us** and give **Us**, at **Your** own cost, any documentation, evidence, or other information that the **We** may reasonably need in order to assess the **Claim**.

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 any liability of **Us** to make any payment under this **Policy**.

4. Acceptance of claim

- 4.1 **We** will pay the **Costs** incurred after **We** accept the **Claim** in writing.
- 4.2 **We** will only meet the **Costs** of the **Claim** which have been agreed in advance by **Us** as to both amount and purpose.
- 4.3 If **You** disagree with the **Our** decision, **You** can refer the matter under the ENQUIRIES, COMPLAINTS OR DISPUTES procedure.

5. Conduct of Claims

5.1 **You** will:

5.1.1 provide the **Us**, as soon as reasonably possible, with any information, document or file relating to the **Claim**, that the **We** may ask for.

5.1.2 keep **Us** fully updated during the **Claim** on the progress of the **Claim**, including any offers to settle;

5.2 **You** will co-operate at all times with:

5.2.1 **Us** and reply promptly to any correspondence about the **Claim**; and

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

5.3 In the event that **We** consider it appropriate to refer an issue for expert determination, **We** will nominate the expert to be appointed for that purpose.

5.4 **You** must immediately advise **Us** of any offer made to settle the **Claim** including offers relating to costs. **You** must not accept any offers without getting the permission of **Us** first. **We** will not withhold consent in relation to an offer that a reasonable accountant or solicitor would recommend to **You** if they were paying his or her own fees. If **You** do not accept an offer that the **We** consider reasonable, **We** will not pay any further costs.

5.5 All accounts for **Costs** payable must be submitted to **Us** immediately upon receipt.

5.6 If any payment in respect of **Costs** is made under this **Policy** **We** will be subrogated to the **Your** rights of recovery. **You** will not enter into any agreement, arrangement or understanding which has the effect of limiting or compromising the **Our** rights of subrogation.

6. Assessment and Recovery of Costs

6.1 If **We** ask, **You** must send all of **Your** files and any bill of costs for certification by the appropriate professional body or auditing by cost consultants appointed by **Us**.

6.2 **You** must:

6.2.1 take reasonable steps to recover all costs awarded or agreed to be paid to **You**; and

6.2.2 immediately pay the Us any **Costs** recovered.

7. Insolvency

We are not obliged to indemnify if, at any time, **You** are made bankrupt or go into liquidation or file a bankruptcy petition or winding up petition or makes an arrangement with **Us** or **Your** creditors or enter into a deed of arrangement or part or all of **Your** affairs or property are in the control of a receiver or administrator.

8. Agreement

We are not bound by any agreement that **You** make without **Our** prior approval or permission.

9. Waiver

If the **Insurer** waives any right or breach of any term of this **Policy**, this will not waive any other right or later breach.

10. Transferring Your Rights

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

11. Other Parties and Interests

We will not indemnify any one that has not been accepted as a Protected Member by SEA.

f) 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 the **Your** returns of income or profit from a trade, profession or business under **Income Tax Legislation**.

3. Claim

means an enquiry, investigation or audit conducted by the **ATO** of a kind described in the Sections of Cover under “WHAT IS COVERED” that:

3.1 is first begun against **You** during the **Period of Your Protected Membership** and notified to **Us** during the **Period of Your Protected Membership**; or

3.2 first comes to the knowledge of **You** during the **Period of Your Protected Membership** and is first notified to **Us** before the end of **Your Protected Membership**;

and arises out of the **Normal Business Activities**.

4. Us/We

means Self Employed Australia, Fresh Numbers Pty Ltd, Brit Syndicate 2987 at Lloyd’s, their agents and representatives acting together or separately.

- 5. You/Your**
Means the self-employed 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**.
- 6. Company 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.
- 7. Costs**
Means the professional fees and disbursements payable in respect of the **Claim**, which have been incurred at the direction of **Us** and whose reasonable amount is determined by agreement of Brit Syndicate 2987 at Lloyd's appointed representatives but excludes any such fees and disbursements recovered by **You**. For the avoidance of doubt, this will also include the professional fees and disbursements payable in respect of any review conducted by the Inspector General of Taxation.
- 8. Court or Tribunal**
means a court, tribunal or other statutory body of competent jurisdiction within the **Territorial Limits**.
- 9. Cwlth**
denotes the legislation being referred to is a Commonwealth of Australia Consolidated Act.
- 10. Director**
means a director or other board member of **You** where **You** is a company.
- 11. 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**.
- 12. Income Tax Legislation**
means either the Income Tax Assessment Act 1936 (**Cwlth**), the Income Tax Assessment Act 1997 (**Cwlth**) or the Taxation Administration Act 1953.
- 13. Limit of Indemnity**
means \$A50,000 being the maximum sum payable in connection with the one event or series of events attributable to a single source or cause or to a single set of circumstances,
- 14. Normal Business Activities**
means the normal business activities as declared by **You**, including reasonable associated and related activities.
- 15. Partner**
means where **You** are a partnership, any of the partners within that partnership.

16. Member benefits

means the undertakings between **Us** and **You** as set out in this document.

17. SEA

Means *Self Employed Australia* the business name of Independent Contractors of Australia Inc (ABN: 54 403 453 626) a not for profit association

18. 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.

g) Enquiries, Complaints or Disputes

SEA's Protected Member Tax Investigations benefits is covered by a group Professional Expenses (Tax Investigations) Insurance policy held by SEA with Brit Syndicate 2987 at Lloyd's (insurer). Under the insurance policy Brits determines the acceptance and cost amounts under any **Claim** by **You**. SEA does not offer or provide member benefits above that authorised by Brit under the insurance policy. If you have a dispute over the acceptance or cost of Your Claim, an independent Complaints and Disputes service is available through Lloyd's. Should you wish to lodge a Complaint or access the Dispute service of Lloyd's SEA as the policyholder will offer to jointly lodge a Complaint on your case with the Lloyd's service.

About Lloyd's

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent. Over 80 syndicates underwrite insurance at Lloyd's, covering all classes of business. Together they interact with thousands of brokers daily to create insurance solutions for businesses in over 200 countries and territories around the world.