

TAX BULLETIN

An update publication for our clients

5 July 2011

2011/12 ATO Compliance Program

Each year the ATO releases a compliance program which identifies matters of concern to it and highlights what it intends to do so that taxpayers can make informed choices regarding their taxation affairs. The compliance program covers individuals, micro businesses, small-to-medium enterprises, large businesses, tax practitioners, superannuation and non-profit organisations.

This year the ATO has announced that it will:

- enhance its tax fraud detection and management;
- concentrate on sham contracting arrangements where individuals are incorrectly set up as contractors, instead of as employees of a business;
- reduce phoenix arrangements through a coordinated program of reviews and audits of directors;
- focus on those who fail to report some or all cash transactions to ensure a level playing field;
- protect employee rights by ensuring employers are meeting their superannuation guarantee obligations;
- use data matching and risk profiling to identify those who are using non-lodgment or partial lodgment to circumvent their taxation responsibilities;
- identify businesses who have received government payments and review those suspected of not correctly reporting income or not meeting their pay as you go withholding and superannuation obligations;
- examine businesses operating outside its small business benchmarks;
- extend its focus on lodgment compliance within private groups, including wealthy Australians;
- continue to deal with the abusive use of tax 'havens' and other tax preferred/secretcy regimes;
- strengthen its involvement in multi-agency task forces that target the tax implications of organised crime;
- consider tax exploitation schemes and apply promoter penalty legislation;
- implement strategies to deal with concerns it has with trustees of self-managed superannuation funds;
- regulate self-managed superannuation funds and act against the illegal access or release of superannuation;
- engage the very largest taxpayers in cooperative compliance approaches;
- examine large business corporate governance processes for managing income and indirect tax risks;
- develop strategies to optimise the role of the Tax Practitioners Board, including the referral of tax practitioners who breach their responsibilities;
- develop a framework to tailor information, products and services for registered agents that enable it to differentiate and target its approaches; and
- focus on tax returns and/or activity statements lodged by unregistered preparers.

Small-to-medium enterprise (“SME”) focus areas

The areas that the ATO has indicated that it will focus on in the SME sector for 2011/12 include:

- **Private groups.** The ATO is concerned about the tax compliance of the individuals controlling private groups and the entities within them. The ATO says it will use sophisticated data mining techniques to automatically detect and link private groups and the individuals controlling them;
- **Highly wealthy and wealthy Australians.** The ATO will take steps to promote voluntary compliance by Australian resident individuals with a net wealth of over \$30m (“highly wealthy”) and \$5m-\$30m (“wealthy”). The ATO says where it detects complex tax planning arrangements relating to CGT, Division 7A, international operations and/or trusts it will move to more intensive ‘interaction’ with the relevant individuals;
- **Businesses with turnover of between \$100m-\$250m.** The ATO says it will complete 400 risk assessments and 40 audits of businesses with a turnover within this range;
- **CGT.** This year the ATO says it will match share transactions - including intra-group transfers - using third-party data and identify the non-reporting of disposals by non-residents and corporate trustees;
- **FBT.** The main areas of concern to the ATO here are: failing to identify taxable fringe benefits; failing to correctly value fringe benefits; failing to lodge FBT returns; inappropriately accessing concessions and exemptions; and the increasing use of living-away-from-home allowances;
- **Phoenix activities.** The ATO will continue to focus on evasion of tax and superannuation guarantee obligations through what it describes as the deliberate, systematic and sometimes cyclic liquidation of related corporate trading entities;
- **International.** The target areas here include: foreign source income derived by Australian residents; international shipping companies operating in Australian waters; payments of interest, dividends and royalties to non-residents (with a specific focus on franchising payments); thin capitalisation; and the use of ‘tax havens’ to evade income tax obligations;
- **Division 7A.** The ATO is concerned that private company owners do not fully understand their obligations regarding shareholder loans and, in particular, the application of Division 7A to unpaid present entitlements. The ATO says it will be contacting the owners and shareholders of private companies to verify their compliance with these obligations and will issue around 350 pre-lodgment letters to remind taxpayers to put appropriate loan agreements in place prior to the lodgment of their tax returns;
- **Trusts.** This year, the ATO says it will contact around 2,000 trustees and beneficiaries regarding lodgement of returns, trust distributions and the private use of trust assets;
- **Taxation of financial arrangements (“TOFA”) rules.** The ATO is concerned that some SME taxpayers are either not aware they may be subject to the TOFA rules or may not have access to the resources or expertise to appropriately adopt these rules. To address these concerns the ATO has announced that it will continue its TOFA support and compliance activities for SME taxpayers;
- **Professional firms.** The ATO says it has noticed a considerable number of restructures among professional firms (particularly in the accounting and legal professions) and has commenced several reviews where discretionary trusts are being added or substituted as partners;
- **GST.** This continues to be a major area of focus by the ATO and a number of specific initiatives are planned including:
 - The ATO will continue its focus on businesses making sales of property and is keen to ensure these transactions are correctly reported. The ATO says it will increase its focus on taxpayers selling property and disengaging from the GST system by not lodging their BAS statements;

- Refund integrity checks will continue to be a major source of activity by the ATO with 12,000 reviews expected to be undertaken during the next financial year. Third party data and data-modelling techniques will be used to target and to monitor high risk entities and transactions;
- Entities that do not comply with their obligations will be subjected to audits and reviews with 300 audits expected of entities that are involved in serious GST non-compliance including deliberate non registration for GST purposes, not reporting or under reporting transactions, evasion, phoenix activities and off shore transactions;
- The correct treatment of financial supplies and the availability of input tax credits in respect of related acquisitions will be a primary area of focus;
- The ATO will focus on international transactions including the correct treatment of supplies to overseas entities and also the treatment of imports into Australia with a particular focus on shipments of low value goods to ensure that GST obligations are correctly satisfied;
- The integrity of business systems will be high on the ATO's agenda as poor systems represent a risk to good compliance. This year the ATO will focus its audits on retail, construction, financial and insurance services, mining industries and mergers and acquisitions.

Other areas of ATO focus

Other areas which the ATO has announced that it will focus on during 2011/12 include:

- Good tax corporate governance;
- Corporate restructures mergers and acquisitions;
- Capital gains tax planning by foreign residents;
- Inappropriate outcomes involving consolidation;
- Profit shifting between Australia and offshore affiliates;
- Private equity exiting Australia without paying the correct amount of tax;
- GST and cross-border transactions;
- Non-resident withholding tax;
- Stapled group financing;
- Financial supplies and GST;
- Black-hole expenditure claims;
- Exploration expenditure deductions;
- Tax and capital losses; and
- Research and development claims.

For larger taxpayers who are clearly within TOFA, the ATO will monitor income tax returns and undertake profiling activities to ensure these taxpayers are applying the TOFA rules appropriately. In particular, the ATO will undertake targeted compliance activities for these taxpayers which will look at:

- restructuring prior to entry into TOFA;
- calculating the balancing adjustment for TOFA taxpayers who have made the transitional election to bring in their existing financial arrangements;
- the validity of elections made under the TOFA rules; and
- the appropriate application of the TOFA tax-timing methods, including compliance with the hedging method recording requirements.

Further Information

Please ask either your regular Pitcher Partners tax contact or any of the contacts in the Pitcher Partners firms below for further details on the issues raised in this Tax Bulletin:

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