

# ATO Compliance Program 2011/2012

The ATO has released an annual compliance program that highlights its risk assessment and audit focus for the 2011/12 financial year. This includes GST, FBT, R&D, TOFA and international tax for small to medium sized enterprises and large businesses. Taxpayers should self-assess whether they have any exposures to these areas.

Alternatively, your local RSM Bird Cameron tax advisor can:

- Meet you to explain the ATO's compliance program target areas in further detail;
- Undertake a compliance 'health-check'; and/or
- Prepare voluntary disclosures or seek amendments for understated tax positions.

## Small to medium sized enterprises

For SME's the ATO focus will be on the following:

### General

- Private groups with turnover between \$100-250m.
- Documentation of loans between companies and shareholders.
- Documentation of Unpaid Present Entitlements ("UPE") between a trust and company.
- Private use of trust assets.
- Real estate and share transactions, with a particular focus on intra-group transfers and disposals by non-residents and corporate trustees.
- Capital and revenue losses, specifically incorrect classification and application of the continuity of ownership and same business tests.
- Restructuring of professional practices.
- Excise and fuel tax credit claims.
- Entities importing excise-equivalent goods (such as tobacco and alcohol).
- Taxation of Financial Arrangements (TOFA) provisions.
- Sham contracting arrangements allowing employers to avoid their super and PAYG obligations.

- Investigation of all complaints made by employees regarding employers not paying required super contributions.
- 'Phoenix activity' where tax and super liabilities are avoided through deliberate and cyclic liquidation of corporate trading entities.

### GST

- Integrity audits of the retail, construction, financial, insurance services, and mining industries.
- Reporting of credits relating to merger and acquisition activity and financial supplies (including capital raisings).
- Property transactions, including one-off or unusual transactions.
- Property developers claiming GST credits during construction without fully reporting sales, then entering liquidation.
- Importers/exporters where transactions under \$1,000 regularly occur.

### FBT

- Failure to identify and correctly value benefits.
- Failure to lodge FBT returns when required.
- Inappropriate accessing of concessions.
- Claims for exempt motor vehicles.

- Claims for living away from home allowances.

#### International

- Taxpayers with performance continually below industry average will be targeted for profit shifting.
- Taxpayers applying for exemptions from CGT for Taxable Australian property (real property, mining, quarrying or prospecting rights, or land rich company shares).
- Thin capitalisation reporting including non-lodgement and calculation of safe-harbour limits.
- The use of preferential tax regimes.

## Large businesses

For large businesses, the ATO focus will be on the following:

#### General

- Corporate transactions including complex or novel financial arrangements, unnecessary steps, deferral of the taxation point and arrangements seeking indirect benefits.
- Application of the "rights to future income" tax consolidation rules.
- Consolidations where tax outcomes don't reflect economic substance.

- Taxation of Financial Arrangements (TOFA) including restructures prior to entry into the TOFA regime, balancing adjustments, validity of elections and tax-timing methods.
- Black hole expenditure such as business start-up costs.
- Failure to depreciate assets over their effective life.
- Apportionment of capital expenses across assessable and non assessable income where relevant.
- Exploration expenditure claims, particularly those entities involved in M&A activity.
- Losses and the continuity of ownership and same business tests.
- Development of the Reportable Tax Position Schedule for large business reporting of tax positions.

#### International

- CGT planning by foreign residents regarding disposal of land rich property interests.
- Arrangements between Australian and foreign affiliates seeking to shelter and shift profits offshore.
- Private equity groups seeking to exit Australia.
- Payments liable to withholding tax, particularly transfers of Australian IP to non-residents.

- Misclassification of payments subject to withholding tax.
- Structured arrangements where the payment is classified to avoid withholding tax provisions.

#### GST

- Capital raising activities and claiming of GST credits.
- Incorrect reporting of GST in the property industry.
- Operators of retirement villages.
- Obtaining non-complying margin scheme valuations.
- Those outside the property sector occasionally engaging in property transactions.

#### Research and development

- Claims that involve normal business activities being classified as R&D.
- Claims calculated after the event rather than contemporaneously.
- Failure to apply specific provisions such as the feedstock and "on own behalf" rules.
- Non-capitalisation of labour involved in the construction of R&D assets.

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