Significant expansion of ATO review activities

By Fordham
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Following a significant $1 billion funding allocation from the 2019-20 Federal Budget to extend its operations through until the 2023 financial year, on 11 November 2019, the Australian

Taxation Office announced that its Tax Avoidance Taskforce will be expanded with the hiring of at least 200 new employees, and provision of other resources.

The Tax Avoidance Taskforce will also now oversee three new programs that specifically monitor and address tax risks relating to private groups, private businesses and high wealth individuals. All three programs are intended to involve ongoing and direct engagement with the ATO.

"*We believe in lower taxes but we also believe in everyone paying their fair share"* said Treasurer Josh Frydenberg at the 2019-20 Federal Budget.

The three new programs are as follows:

1. **Top 500 private groups program** (expanded from the existing Top 320 program), which will involve regular direct engagement between the ATO and Australia's largest private groups. This program is focussed on prevention, rather than correction, and is designed to provide assurance to the community that Australia's largest private groups are paying the right amount of tax. Similar to the ATO's Top 100 and Top 1000 programs (for public groups and international taxpayers), the program will involve the review of:

    - the effectiveness of the group's tax compliance and governance framework
    - the tax risks already flagged to the market in relation to private groups (including unit trust arrangements, private company benefits, Division 7A and commercial debt forgiveness)
    - the group's significant and new transactions, and
    - any differences between the taxpayer's accounting income and taxable income.
2. **High wealth private groups program**, which will involve regular one-to-one engagements between the ATO and Australia's high wealth individuals (who, together with their associates, control wealth of more than $50 million). The program will involve either a streamlined or targeted approach and does not cover taxpayers who are already part of the Top 500 program.
3. **Medium and emerging private groups program**, which will use enhanced data and analytics to identify trends and priority tax risks associated with "medium and emerging private groups". These groups include the following (not covering taxpayers who are already part of the Top 500 program):

- private groups linked to individuals who, together with their associates, control wealth between $5 and $50 million, or
- businesses with an annual turnover of more than $10 million.

Taxpayers who fall within these programs can expect to receive notification letters from the ATO stating they have been identified as part of these programs and taxpayers should start preparing for the process. For the Top 500 program, agents and advisors should expect to

receive notifications letters. These notification letters will include a sample Request for Information, which the ATO will then subsequently tailor to suit each taxpayer's unique business circumstances.

The programs are not intended to cover private groups and high-net-worth individuals who have recently been through compliance activities, or who are currently involved in investigations and audit programs with the ATO.

This new expansion has been the subject of a number of articles in the press recently, and of particular note, an article in the Australian Financial Review on Monday 2nd December 2019 titled "*Rich Listers targeted in ATO cash grab*" notes that by 2024, Australia's entire high-net-worth population, including the biggest companies and the people that control them, will face additional and detailed examination.

The article also quotes Tim Dyce, Deputy Tax Office Commissioner for private wealth, as saying "*There will be revenue delivered from our program. Get your house in order if you want to and you can make the process a bit less painful*".

Whilst this expansion of the ATO's activities should not be cause for alarm, it is a timely reminder to ensure that if you believe you fall into one of the new programs outlined above that you have considered the tax risks in your private group, or contact us for a discussion in that regard.

Further, it may also be appropriate to review your tax review/audit risk insurance arrangements, as whilst an ATO investigation may not reveal any additional tax liabilities, the costs in professional accounting fees and possibly legal fees to you as the taxpayer in responding to such enquiries by the ATO can be significant.

This is because, as a general proposition, Tax legislation is drafted in a way that ensures the burden of proof falls upon the Taxpayer. An appropriate insurance policy can help to mitigate that cost.

Fordham have access to insurance product offerings that provide costs protection to taxpayers undergoing investigations by the ATO – on a no commissions basis received by Fordham for the referral. Should you wish to discuss options available please contact your Fordham Partner.

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