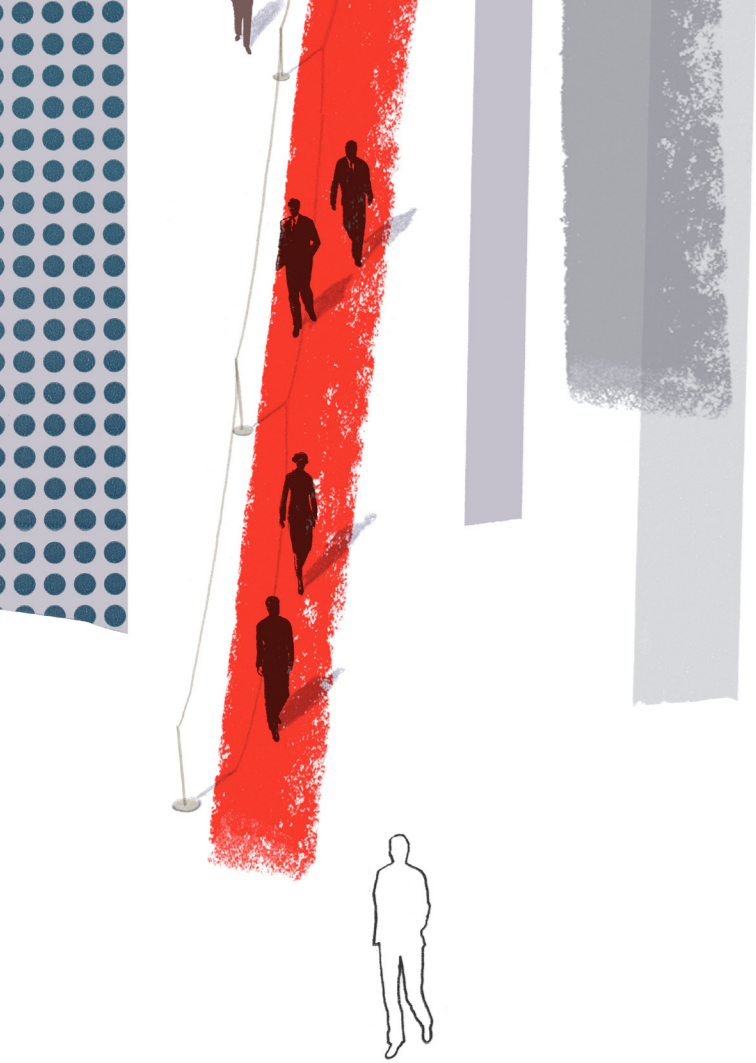


ATO Compliance Program – An Executive Summary for Privately Held Businesses and their Owners

2009 - 2010





Introduction

The Commissioner of Taxation has recently released his Compliance Program, which, in his words, “provides strategies that straddle help and support and ease of compliance as well as those that deter and detect and deal with non-compliance.” In other words it sets out the issues where ATO activity can be expected over the next 12 months.

We recommend that you review the issues below, and contact us if there are any aspects of concern to you. We can then discuss the nature of the issue, and where appropriate, develop and implement a strategy to mitigate the risks.

It is important to note that the contents of this executive summary does not represent all the issues contained in the Compliance Program. Furthermore, if there are issues not noted in the program, you should not assume that the ATO will simply ignore them. Therefore you should not rely on this summary as a complete analysis of all ATO Policies.

Small to medium sized enterprises (turnover \$2m - \$250m) and high net worth individuals

Given the breadth of this sector, there is a wide range of important issues that the ATO are proposing to examine. The key issues are summarised below.

Loans and payments made by companies to owners and the use of trusts

The ATO advise that companies are now addressing this issue more effectively than in prior years. Notwithstanding this improvement, they will continue to review the use of loans, payments and debt forgiveness to distribute private company profits to shareholders or their associates without paying the correct amount of tax.

In addition, they propose to review transactions between trusts and private companies, particularly in relation to distributions by trusts.

This is now becoming a critical planning issue, and in the event that your structure includes a corporate beneficiary, please contact us to discuss an appropriate strategy.

The ATO have also advised that they will seek to review companies that hold “lifestyle assets” to determine how those assets have been used and recorded in the financial statements. It will include situations where assets such as holiday homes are being used by shareholders or beneficiaries on non-commercial terms.

Recoupment of prior year losses

In view of the economic environment, there is a greater likelihood that losses may be incurred and later recouped by businesses. The ATO are therefore going to review cases where losses are recouped, particularly where there has been a change of ownership in the company. Where there has been such a change, the losses are still available as long as the company continues with the same business. This test is very strict and requires significant planning and consideration prior to its use. We recommend that we discuss this issue with you if it is relevant to your business.

Succession planning

Where businesses are to be restructured as part of an exit or succession planning strategy, care needs to be taken to ensure that the primary objective is not to receive a tax advantage, including accessing the Capital Gains Tax (CGT) small business concessions. This also includes the potential disposal of pre-CGT assets when a business is sold, as in many occasions these assets have been inadvertently “freshened up” and are no longer deemed to be a pre-CGT asset.

Finally, it also will include a review of taxpayers who arrange for the voluntary liquidation of businesses as an exit strategy.

Capital gains and losses

This will include the calculation of CGT discounts, the application of rollover provisions and the pre-CGT status of certain assets.

Fringe Benefits Tax

The ATO propose to focus on ensuring correct FBT liability calculations for car fringe benefits. This includes ensuring that employers are aware of their responsibilities for record-keeping and vehicle usage for FBT purposes.

International transactions

The substantiation of transactions with international related parties has long been an area of focus and this continues to be the case.

It is interesting to note however that the ATO are developing a range of initiatives to make it easier for people to comply with their international tax obligations. This includes the design of a tool to assist people to complete “Schedule 25A” (reporting of international dealings), which forms part of the tax return. It also includes reviewing the “Advance Pricing Arrangements (APA)” program to make it easier for companies with turnovers up to \$250 million to use an APA to manage their transfer pricing obligations.

It has become evident in recent years that the various revenue authorities around the world now share information to a greater extent, to ensure that appropriate transfer pricing practices are implemented and maintained. Therefore it is highly recommended that related party transactions are well documented and reviewed by us.

Wealthy individuals (total wealth of at least \$5 million)

Those taxpayers with total net wealth of between \$5 million and \$30 million can anticipate ATO attention. This is likely to start with an initial scoping questionnaire, followed by a more detailed review, if deemed appropriate. The issues that can be expected to be examined include:

- use of trusts and corporate beneficiaries;
- use of losses. It should be noted that the rules concerning claiming “non commercial losses” have been tightened where taxpayers’ assessable income exceeds \$250,000;
- review of employee remuneration arrangements, including shares and options;
- property development activities; and
- international transactions.

During the 2010 financial year, the ATO expect to undertake at least 120 audits and 420 reviews of highly wealthy individuals.

Small businesses with turnover less than \$2 million

The issues that are to be considered by the ATO are:

- Correct disclosure of income;
- All income from the “cash economy” is disclosed;
- That sales of properties are disclosed (including reporting GST) and capital gains and losses are correctly calculated. In relation to capital losses, particular attention will be placed on situations where assets have been reorganised amongst entities within a group, with a loss being generated; and
- A review of self managed superannuation funds to ensure that they are managed in accordance with the legislative guidelines.

Individuals (not high net worth)

Work related expenses

The most common incorrect claims made by taxpayers in prior years include:

- Little or no documentation to support motor vehicle and travel expenses;
- Claiming for the living-away-from-home allowance when the claimant does not qualify for the allowance;
- Claiming motor vehicle expenses on the basis that the taxpayer is carrying bulky equipment required for work; and
- Home offices, mobile phone and internet expenses with no records. These claims are difficult to substantiate and need to be considered in depth if claims are to be made.

The ATO have advised that they will continue to focus on these issues.

Rental properties

The ATO continue to focus on claims for rental properties. Particular attention should be paid to the distinction between repairs and maintenance and capital expenditure. In addition, care is required where properties are rented to related parties, to ensure that the arrangements are calculated on an arms length basis.

Superannuation contributions

There are a number of issues within this field. Confirmation that the correct contributions are made on behalf of employees (including compulsory contributions) will be a matter of attention.

Conclusion

The ATO Compliance Program covers a number of other areas including large businesses sector (turnover in excess of \$250 million), GST, fraud and evasion, and the not for profit sector which we have not covered in this summary.

We have therefore endeavoured to draw your attention to the “highlights” as they affect privately owned businesses, their owners and high net worth individuals.

Once you have reviewed the contents of this summary, please contact us to discuss the potential impact of these issues on you, and whether there are certain actions that should be taken.



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