

**ATO update on wealthy and private groups**

*Just 10 per cent of Australia's largest 500 privately owned groups are guaranteed to be paying the correct amount of tax, says the ATO, as questions hang over the ATO's engagement approach.*

The ATO recently released its interim report on its Top 500 tax performance program, which aims to ensure that Australia's largest private groups and high wealth individuals are paying the right amount of tax.

The Top 500 is any Australian owned private group where:

- Turnover is greater than \$350m; or
- Net assets greater than \$500m; or
- Turnover greater than \$100m and net assets greater than \$250m; or
- Business income greater than \$500m and included as part of the tax gap population; or
- Market leader or specific interest.

Of the 500, just 52 groups have obtained the highest transparency rating of justified trust, which gives the ATO assurance that tax issues are treated correctly which earns the group the benefit of a scaled-down "monitoring and maintenance" period of three years from the ATO.

To achieve justified trust, the ATO must be satisfied that a group has effective tax governance, that flagged risks are not present in the group, that tax outcomes from both ongoing and atypical transactions are understood, and that differences in accounting and tax results are complete and can be explained in context. From our meetings to date with the ATO, the existence of a documented tax governance strategy has come up in every meeting.

Common tax risks which have been identified during the ATO's engagements with the Top 500 are the following:

- Revenue versus capital income
- Wealth extraction – Division 7A
- Wealth extraction – SMSFs
- Research and development
- Misuse of tax concessions
- Related party international dealings

The largest portion of 213 groups have engaged with the ATO but have either not supplied evidence or are uncertain about committing to attaining justified trust. A further six are unwilling to work with the ATO (a strategy that this author would not recommend).

“We have observed that large private groups tend to have lower levels of corporate governance and invest less in tax governance than public groups,” said ATO assistant commissioner Kasey Macfarlane.

“Large private groups also face less stringent regulatory reporting requirements and our ability to obtain certainty is frequently complicated by opaque group structures and related-party dealings that occur outside of tax consolidation, further emphasising the importance of the ATO’s focus and ongoing engagement of this important group of taxpayers.”

The ATO’s interest in these groups comes as a result of recent tax gap reports, which highlighted a 7.7 per cent tax gap in the sector worth \$772 million.

The Tax Office believes its one-to-one approach with wealthy groups has paid dividends, with engagement with the Top 320 groups seeing tax payable jump by 40 per cent from \$3.2 billion to \$4.5 billion between 2015 and 2018.

However, the ATO’s engagement process has been less than well received by taxpayers, with some being overwhelmed by the ATO’s deep dive into all tax and superannuation issues within the group.

We are aware of numerous taxpayer complaints in relation to the high compliance costs stemming from lengthy and poorly targeted ATO information-gathering requests, and the time taken to complete the reviews.

“Right from the get-go, CA ANZ has been saying to the ATO that private groups rely heavily on their tax advisers to provide much of the tax governance the ATO seeks,” said Mr Croker. “These companies generally don’t have in-house tax functions like the listed companies do.”

Shaun Cartoon, partner at law firm Arnold Bloch Leibler, stated “These reviews might initially feel like you’re getting a big, warm hug from the ATO, who wants to know everything about your group and how it works,” Mr Cartoon said. “Clients mustn’t be fooled, because that hug can quickly turn into a tight squeeze.”

“There will be taxpayer groups that are not familiar with this kind of engagement; it will be new to them.”

We will have more to say on the program as matters progress.