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Tax Avoidance Taskforce

In the 2016–17 Budget, the ATO was provided with $679 million over four years from 1 July 2016 to enhance its compliance activities through the establishment and operation of the Tax Avoidance Taskforce.

The funding was intended to increase the resources available to the ATO for compliance activities focused on multinational companies, large private groups and high-wealth individuals.

In the 2019–20 Federal Budget, a further $1 billion extended the operation of the Tax Avoidance Taskforce to 2022–23. Subsequently, the ATO has announced the expansion of the Taskforce, adding three programs specifically focused on tax risks associated with **private groups and high wealth individuals**.

Outline of the new programs

The introduction of these new programs follows increased engagement by the ATO with high wealth private groups and individuals over the past few years and the move away from specific issue reviews to whole of group reviews with increased expectations regarding corporate and tax governance in the private market. The new programs include:

- Top 500 Program
- Next 5000 Program
- Medium and Emerging Private Groups Program

Outline of the programs

Top 500 Program

The Top 500 program is an extension of the ATO's previous program and will impact private companies with turnover greater than $350m, have net assets in excess of $500m, have a turnover greater than $100m and net assets greater than $250m or are market leaders in their field.

Next 5,000 Program

The Next 5,000 program involves streamlined assurance reviews with the 'next' 5,000 top private groups in Australia and entities linked to a resident individual with associated entity wealth in excess of $50m. This review period will generally cover the two most recent income years.

Medium & Emerging Private Groups Program

The Medium and Emerging private groups program supports medium and emerging private groups to meet their tax obligations. This program will focus on individuals who control wealth of between $5m and $50m or have a turnover of greater than $10m, are not public or foreign owned and not linked to a high wealth individual.

What does the Top 500 Program look like?

The Top 500 Program is an extension of the ATO's prior program. This program is completed on the basis of a one on one engagement where each Top 500 group is provided with the opportunity to demonstrate that they have been paying and will continue to pay, the correct amount of tax.

The Top 500 program is underpinned by the concept of 'justified trust', which is based on four key areas namely (i) the effectiveness of tax governance, (ii) tax risks flagged to the market, (iii) significant and new transactions and (iv) why accounting and tax results may vary.

Groups will be placed in one of the following engagement experiences:

- *Partner (high-levels of assurance)* – the ATO partners with the group to maintain good compliance. The ATO has confidence that all entities within the group have paid the correct amount of tax in the years the subject of the assurance review and will continue to pay the correct amount of tax.
- *Encourage (partial assurance)* – the ATO encourages the group to address identified concerns. The ATO has confidence that specific entities within the group paid the correct amount of tax in the years subject of the assurance review.
- *Influence (no or low assurance)* – the ATO takes action to improve the group's compliance. The ATO usually has little or no confidence that any entity within the group has paid the correct amount of tax in the years subject of the assurance review.

A Top 500 private group in the 'Partner' category will benefit from a maximum of three years of monitoring and maintenance. During this three-year period, the ATO will only seek to verify significant new transactions that may have occurred and discuss any other material changes to the group. Groups in the 'encourage' and 'influence' categories can expect a higher level of interaction. This may include comprehensive reviews and audits where tax risks remain unresolved.

The Top 500 program allows the ATO to obtain a holistic picture of the group's business, transactional and income producing activities and to evaluate whether the group's tax governance is effective.

Timeframe of a review?

The Top 500 assurance engagements are approximately 12 months in duration and the Top 500 private groups should expect their engagements with the ATO to cover all tax and superannuation obligations, including income tax, GST and excise.

How can you prepare for this?

Review your tax governance framework including the roles and responsibilities of board, management, tax and financial personnel (including internal audit) and external advisers, as well as control systems and testing.

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- If there is no formally documented tax risk management and governance framework, then ensure one is implemented.
- Ensure that all contemporaneous documentation and advice has been retained and collated that supports the tax treatment of significant or new transactions.
- Prepare or update group structure diagrams and organisational charts.
- Collate all trust deeds, trustee distribution resolutions, company constitutions and other constituent documents.
- Collate financial accounts, materials, tax and accounting reconciliations and real property records.
- Review any recent significant transactions, related party transactions and restructures.

The risk of not preparing properly the above is that you will not be in a position to provide the ATO with the requisite assurance to place you into the low risk category. This could result in the review transitioning to an audit and becoming a costly and drawn out process.

The things attracting the Commissioner's attention?

General concerns

- Wealth extraction (Division 7A, misuse of SMSFs).
- Inter-generational family wealth transfers or the transfer of control of businesses from one generation to another, including partial and complete business exits.
- Poor tax governance and record-keeping.
- International movements of money and foreign assets, repatriation of assets to Australia, and tax residency.

Specific concerns

- Inappropriate access to concessions (depreciation rules, R&D).
- Capital v revenue (property development).
- Business v Hobby (Animals, Aviation, Chartering).
- CGT (Internal restructures, atypical transactions).

What does the Next 5000 program look like?

The program involves streamlined assurance reviews with the 'next' 5,000 top private groups in Australia. The review period will generally cover the two most recent income years.

These groups should start to consider their tax governance practices now and, if necessary, develop and implement appropriate procedures. Where your tax governance relies heavily on external advisers, you should be prepared to explain the nature of the relationship and engagement, and why it is justified and appropriate.

Private groups will need to formalise their engagement with external advisers so that they can show the ATO that a formal process is in place.

Timeframe of a review?

The Next 5,000 program runs for four years from 2019–20 and the focus in on the last 2 years lodged. It is expected that each streamlined assurance engagement will last approximately 6 months if not longer.

The ATO has advised that all groups subject to the Next 5,000 program will be provided with three months advanced notice before commencement of the review, with the first round of request for information (RFI) generally required within 28 days after commencement.

What should you do?

Private groups within the Next 5000 program should engage with their accountants and legal advisers to undertake the following preparatory activities:

- Review their tax governance framework including the roles and responsibilities of board management, tax and financial personnel (including internal audit) and external advisers, as well as control systems and testing.
- If there is no formally documented tax risk management and governance framework, then ensure one is implemented.
- Ensure that all contemporaneous documentation and advice has been retained and collated that supports the tax treatment of your significant or new transactions.
- Prepare or update group structure diagrams and organisational charts.
- Collate all trust deeds, trustee distribution resolutions, company constitutions and other constituent documents.
- Collate financial accounts, materials, tax and accounting reconciliations and real property records.
- Review any recent significant transactions, related party transactions and restructures.

The things attracting the Commissioner's attention?

General

- Inter-generational family wealth transfers or the transfer of control of businesses from one generation to another, including partial and complete business exits.
- Poor tax governance and record-keeping.
- Market valuation exercises and non-arm's length dealings.
- Private company loans and use of property within company or trust structures.

What does the Medium and Emerging private groups program look like?

The Medium and Emerging private groups program supports medium and emerging private groups to meet their tax obligations. With this program, the ATO is improving its understanding of a private group's business and the environment that the private group operates in. This is achieved by using improved data and analytics to identify trends and priority risks specific to medium and emerging private groups.

With this increased understanding, the ATO can better tailor its approach and develop strategies to help the group address and mitigate tax risks. The ATO will work with you by:

- letting you know about issues that attract its attention
- publishing public advice and guidance on issues relevant to medium and emerging private groups
- partnering through early engagement and pre-lodgement agreements for commercial deals to provide certainty on significant transactions and events
- conducting risk-based reviews and audits, where appropriate.

The Medium and Emerging private groups program will not be as intensive nor as involved as the ATO's approach to the Top 500 or Next 5000 group of taxpayers.

The ATO is likely to focus its attention on engaging with:

- larger or higher risk private groups and entities
- Private company and trust loans
- Use of assets within company and trust structures
- private groups experiencing rapid growth, looking to expand offshore or where controlling individuals are transitioning to retirement.

Timeframe of a review?

The timeframe of any review will depend on the type of engagement with the ATO. For example, an early engagement on a specific transaction may be completed within three months, whereas a risk review or audit may take longer than 12 months.

What should you do?

Private groups within the Medium and Emerging private groups program should:

- prepare or update group structure diagrams and organisational charts
- ensure that all contemporaneous documentation and advice has been retained and collated that supports the tax treatment of your significant or new transactions
- collate all trust deeds, trustee distribution resolutions, company constitutions and other constituent documents
- collate financial accounts, materials, tax and accounting reconciliations and real property records

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- review any recent significant transactions, related party transactions and restructures.

What's attracting the Commissioner's attention?

General

- Inter-generational family wealth transfers, or the transfer of control of businesses from one generation to another, including partial and complete business exits.
- Poor tax governance and record-keeping.
- Lifestyle not supported by after-tax income.
- Accessing business assets for tax free use.
- Aggressive tax planning, non-compliance, or controversial interpretations of tax laws.

How can Generation Private assist?

Given our vast experience in both the Australian Taxation Office High Net Worth Program and working with many private businesses and high wealth families over a 30 year period, we can assist your as follows:

- Undertake a prudential review to apply the ATO methodologies with a view to identifying the areas that may arise in an ATO review.
- Prepare relevant tax governance frameworks to fully document how tax related matters are dealt with and the governance structure in place.
- Collate all requisite documentation in preparation for an ATO enquiry such as corporate structures, trust deeds, trust minutes, company dividend statements, loan agreements, property details etc.
- Undertake a private company loan review to ascertain compliance with the private company loan rules.
- Ascertain areas of tax risk within the group.
- Manage on your behalf the review process being conducted by the ATO