



FOCUS AREAS FOR ATO

On 22 and 23 August 2019 I was fortunate to attend the Tax Institute's WA State Tax Convention. It was a great opportunity to network with members of the tax profession in Perth and there were a number of excellent speakers. One of the speakers was Deputy Commissioner Tim Dyce, who focussed on problem areas and how the ATO can assist.

The Deputy Commissioner listed the following areas of concern for the ATO:

- Research and development – in particular, the substantiation of expenses and record keeping.
- Division 7A – the ATO recognises that this is a very complicated area of law and that taxpayers struggle with even the basic concepts. The government is considering amendments to this area and these amendments will be released soon. Undistributed profit entitlements involving private companies and individual beneficiaries are a constant source of problems in this area.
- Transfer pricing – the issues relate primarily to record keeping and the substantiation of expenses paid to offshore entities. These issues are more generally applicable to public company groups.
- Transfer of intellectual property – pricing of IP is a constant issue, particularly where the IP is sold by on shore entities to offshore entities.
- Residency of companies – there is insufficient care being taken when applying the central management and control rules to companies. The ATO is of the view that there are many non-resident companies that are controlled by resident shareholders/directors which are therefore subject to Australian tax.

- Section 100A of the ITAA – there seems to be a mismatch between entitlements and benefits in relation to trust distributions. The ATO is also looking at loan back arrangements and gifts within family groups.

The Deputy Commissioner acknowledged that there needs to be more transparency on the ATO's part so that taxpayers know what the ATO is concerned about. This would then give taxpayers better opportunity to get their tax affairs in order.

The ATO is not only keen to fix past problems but also wants to ensure the future is improved as well.

One of the ways of obtaining certainty, particularly with proposed transactions, is to approach the ATO before a transaction is entered into. The Deputy Commissioner is keen to see an increase in this pre-lodgement engagement. Where this is done, a pre-lodgement agreement will be signed by the ATO and, although it will not be binding, the ATO will undertake not to re-examine the deal after it has been implemented. This will however be dependent upon there being no change to the facts that were initially provided to the ATO.

The pre-engagement procedure is a useful tool. It is less formal than an application for a private ruling and while not binding will provide a useful guide as to the tax implications of the transaction.

Early engagement with the ATO is always recommended as it displays good faith on the part of the taxpayer, can avoid potential misinterpretations of the tax law and reduces the possibility of penalties if you get it wrong. It is therefore recommended that you pay particular attention to the areas identified by the Deputy Commissioner and consider whether the pre-engagement process is a good option for proposed transactions.

The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

For further information or assistance contact Murfett Legal on +61 8 9388 3100.

Author: [Mike Frampton](#) (Partner: Tax, Commercial & Estate Planning)

Email: mike.frampton@murfett.com.au

Murfett Legal is a leading law firm in WA, providing services in litigation, corporate and commercial, employment and workplace relations, insolvency, debt collection, business restructuring, Wills & estates, property, leasing, settlements, liquor licensing and intellectual property.