



ATO FOCUS AREAS: EARLY ENGAGEMENT IS THE BEST POLICY

I recently attended an ATO "Expo" where a number of senior ATO officers were introduced and invited to comment on their particular practice areas.

Engagement encouraged

The message seemed to be one of "engagement". The ATO is encouraging people to contact them to talk through issues, either with a view to avoiding future problems or to put in place plans to deal with current problems.

ATO areas of concern

Aggressive tax planning, the "black economy", Phoenix companies, misuse of superannuation funds and failing to respond to ATO information gathering exercises were all areas of concern for the ATO.

Statement of Tax Record required for Government Tender Responses

One measure which is to be implemented over the next couple of years is the "Statement of Tax Record". This will be required for any business tendering for government work. If a taxpayer has been involved in Phoenix or other illegal activities or has failed to pay tax or superannuation, it will be difficult to get such a statement and accordingly unlikely to be awarded any government work.

Focus on Shadow Directors

The ATO is also intending to focus on shadow or straw directors and to closely monitor promoters and facilitators of Phoenix arrangements or aggressive tax planning schemes.

Company Directors' personal liabilities - GST, PAYG & Superannuation

Legislation has been introduced to allow GST, in addition to PAYG and superannuation, to be collected from company directors personally where there is a failure to remit these amounts to the ATO by the company.



Self-managed Superannuation Funds - SMSF

Self-managed superannuation funds are also seen as a problem area. The most common issues for the ATO include:

- loans to members;
- failure of the in-house asset rules;
- separating trust assets from other assets owned by the trustee;
- poor administration and accounting standards; and
- superannuation borrowings.

Concessionary Measures

The enforcement measures outlined above have been coupled with some concessionary measures. A superannuation guarantee amnesty has been announced (but not yet legislated). This is intended to encourage employers to voluntarily disclose historical non-compliance. Employers will be allowed to claim deductions for payments of the charge as well as have penalties and interest reduced to nil. The ATO also confirmed that they would be providing additional resources to facilitate the review of commercial transactions before they are implemented so as to provide certainty in relation the tax implications.

How to best engage with the ATO

Disclosure and voluntary engagement is always the best policy when dealing with the ATO. Where there are unpaid tax liabilities, a rectification plan should be determined prior to contacting the ATO.

It is important to show that you have a viable business so that your payment plan can be maintained in a manner which will also allow current liabilities to be satisfied.

In our experience, the ATO will be willing to accept reasonable proposals if the taxpayer is upfront and shows a genuine attempt to sort out their tax affairs.

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

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