

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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These insights of a tax lawyer will give you hands-on advice how to handle a tax dispute with the ATO.

Insights of a Tax Lawyer

In this episode Andrew Henshaw of [Velocity Legal](#) in Sydney will share some of his experiences as a tax lawyer. Here is what we learned. But please also listen to the episode itself since Andrew explains all this much better than we ever could.

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1 Is there specialisation among tax lawyers?

It depends where you look. At the top end of town you definitely see specialisation among tax lawyers. You will see teams just working on a certain aspect of tax law for large corporate clients – for example indirect tax, transfer pricing, TOFA, tax consolidation or thin cap. These areas are very weighty and very complex and they typically impact public companies. So in these areas you can find further specialisation within the broader umbrella of being a tax lawyer or a tax advisor.

In the private space it is different. The entities are smaller. They typically expect a greater range of services. And they don't have to deal with things like TOFA which is a complex regime. In the private space you typically expect an advisor to be across a range of tax matters including duty and state taxes.

2 Among SME, which areas see the most in dispute?

There are six areas that seem to attract most of the disputes – Small Business CGT concessions, Div 7A, tax residency of individuals, property investors, pre-CGT assets and state levies.

1 – Small Business CGT Concessions

They are generous concessions and usually involve a lot of money, but are also incredibly complex.

2 – DIV 7A

Div 7A is a complex issue. And the issue of unfranked and deemed dividends can involve a lot of money.

3 – Tax Residency of Individuals

This is an ongoing issue since our tax residency rules are fuzzy.

4 – Property Investors

A recurrent issue is whether a property transaction is revenue or capital. Whether an investor was truly a passive investor or were they carrying on a business.

5 – Pre-CGT Assets

Did the asset preserve its pre-CGT asset? Is goodwill still pre-1985?

6 – Land Tax / State Taxes

The rules are really complex, especially with respect to land and the sale or transfer of interests in land-holding entities..

So these six areas see a lot of disputes because the dollars at stake are high and the laws are grey.

3 When does a tax lawyer usually join the dispute?

The transaction has usually already happened. So it is usually about assessing the problem and finding a solution. The challenge is often getting evidence and applying that evidence to the law. The dispute is often not about the law, but about the evidence.

For instance, was this property acquired as a passive investment or was it a business transaction? Let's look at the bank record or loan applications. It often comes down to evidence.

Sometimes there are genuine questions about the law itself since the law is grey in particular scenarios, but usually it is about the evidence.

4 Who do you deal with at the ATO?

It is almost always a new person – somebody you haven't dealt with before, usually from a different office and state as well. The ATO is a large organisation and quite well resourced.

At NSW Revenue you have a higher chance of running into the same person again, since this is a much smaller office.

5 What is it like dealing with the ATO?

You definitely get very different experiences. A lot of it is about first impressions. From the ATO's perspective it often comes down to which channel the dispute comes through. Did the taxpayer approach the ATO? Or did the ATO track them down?

The best way is to just be open, honest, truthful, transparent and upfront. There is no point running around and playing games.

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