

TAX TALKS

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

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7 | Risk Reviews & Tax Audits

A risk review or tax audit can easily escalate to a lengthy appeal. King Tan of [King & Wood Mallesons](#) shows you how to avoid the most common traps. And prevent a risk review or audit to progress into a long dispute.

How to communicate with the ATO? How to handle a risk review or tax audit? What to do about a position paper? How to manage a tax debt? What is a 50/50 arrangement? And what is a garnishee order? King Tan freely shares his knowledge and expertise in this episode and digs deep into risk reviews and tax audits.

Risk Reviews & Tax Audits

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Risk Review

You receive a letter from the ATO. They want to look into specific issues and transactions or just have a general look around. And so you are asked to answer a questionnaire or attend an interview. Make sure you,

- Understand the ATO's powers and your rights.
- Control the information flow.
- Don't disclose too much.
- Check whether you volunteer information or views and opinions
- Clarify ambiguous questions.
- Consider making a voluntary disclosure to reduce penalties
- Consider challenging the notice to deny ATO's penalty tactic

In recent ATO initiatives, the ATO has undertaken pre-lodgement reviews and published risk profiles of tax payers.

Tax Audit

So now the risk review has escalated to a tax audit. The ATO identified areas of concern and requires a closer examination. The audit will most likely target specific tax issues and tax years.

- Consider challenging the Notice to deny ATO's penalty tactic.
- Remember that the ATO has an audit checklist to tick off
- And as always control the information flow.

The ATO will generally, but not always provide a "position paper" which explains its understanding of the facts, its position, the issues identified and proposed assessments.

When you get this position paper, be realistic and consider whether it is worth the fight. Can you present something new and different that will change their mind? Or will you just simply strengthen their case? Once someone has made up their mind, it is very difficult to change it. Should you keep trying or just wait for the audit

to end and then go for an objection with a new officer to look at your case?

Assessment

And then the audit finally comes to an end. Maybe it ends well. You convince the ATO that you were right all along. The ATO concedes defeat. No additional tax to pay. Rarely happens but it does.

Or maybe it ends badly. You argued and explained as much as you could but the audit results in an adverse assessment nevertheless. And now the ATO is asking you to pay the shortfall.

There are a range of assessments the Commissioner can issue:

- Original assessments where you haven't lodged a return before
- Amended assessments where you have lodged a return
- Default assessments where the ATO sees a lack of cooperation
- Special assessments re penalties, interest etc

The Commissioner can issue a default assessment based just on a reasonable belief (s167 ITAA 1936). This can feel like they are plugging numbers out of the air. The Commissioner can also cancel a tax benefit if suspecting a tax scheme primarily targeted this tax benefit (Part IVA ITAA 1936) – usually in connection with suspected fraud or evasion. And there is no time limit if there is fraud or evasion involved (s170 ITAA 1936).

When you receive the assessment, consider the following:

- Is the assessment a valid assessment? Has it been issued correctly?
- Is the Commissioner out of time in amending an assessment?
- Is there fraud or evasion?
- Has the ATO issued a position paper?
- Never forget tax debt management. This is vital.
- Challenge the assessment

The hard part is that once raised, the ATO treats an assessment as correct in all aspects. The assessment is binding, whether right or wrong. You are guilty until proven otherwise. It is you who has the burden of showing that the assessment is incorrect or excessive, not the ATO. It is you who needs to show what the assessment should have been or why the decision is wrong or should be made differently (s14ZZO & ZZK TAA 1953). This can be really tough to take.

Tax Debt Management

As soon as the Commissioner issues an assessment, the ATO can commence debt recovery irrespective of your efforts to challenge the assessment.

So tax debt management is crucial from that moment onwards. If you don't, general interest charges (GIC) will hit you hard fast. To halt debt recovery and garnishee orders, you have a few options.

- a) Pay your full tax debt now: Pay Now. Argue Later. Get Refund.
- b) Seek a payment arrangement where you pay a certain amount each week, fortnight or month.
- c) Seek a 50/50 payment arrangement where you pay 50% now and the rest at a later point in time.

In episode 10 we will talk about objections and appeals. See you in the next episode.

MORE

[The Life Cycle of a Tax Dispute](#)

[Objections & Appeals](#)

[Payroll Tax Contractor Provisions](#)

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