



Privately owned and wealthy groups

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/>
- Last modified: 24 Aug 2022
- QC 49033

Information and services to help privately owned and wealthy groups meet their obligations.

[What you should know](#)

We tailor our engagement according to Privately owned and wealthy groups' choices and behaviours.

[What attracts our attention](#)

The behaviours, characteristics and tax issues that attract our attention.

[Tax governance](#)

Outlines effective tax governance practices and guiding principles for privately owned groups.

What you should know

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-you-should-know/>
- Last modified: 02 Nov 2022
- QC 44376

We are continuing to transform your client experience of the tax and super systems for privately owned and wealthy groups.

As a privately owned and wealthy group you play an important role in the Australian economy as well as the tax and super systems. You pay tax as an individual and as a group are often a major employer who withholds taxes and pays super contributions on behalf of your employees.

You and your tax advisers can use our online resources to work with us and get your tax and super right.

Find out about

- [About privately owned and wealthy groups](#): who is part of this segment
- [Excellent working relationships](#): the value of conversation
- [The right services](#): getting what you need when you need it
- [Transparency](#): two way sharing of information
- [Tailored engagement](#): working with you to understand your circumstances
- [Tax performance programs for private groups](#): tailored to 3 key segments

See also

- [What attracts our attention](#): behaviours and characteristics we focus on
- [Business bulletins](#): latest legislative, corporate and administrative tax news

Excellent working relationships

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Excellent-working-relationships/>
- Last modified: 26 Sep 2018
- QC 44825

Privately owned and wealthy groups tell us they work with their tax advisers to meet their obligations and get things right. We may work directly with your tax adviser to understand your circumstances.

Whether we work with you or your tax adviser, we want to have a productive and professional working relationship – one built on transparency and mutual respect.

We prefer to engage with you early, providing access to our experts and clear escalation points to resolve issues. We are improving our review and audit processes to give you certainty about the duration of our engagements and options to reduce timeframes and minimise the impacts on your business.

You can:

- [seek advice from us](#)
- expect productive, professional [engagements](#)
- [engage with us through consultation](#).

Seeking advice from us

We'll provide access to our experts and decision-makers to help you or your tax adviser get things right up front. So we can provide advice suited to your circumstances in shorter timeframes, we ask that you:

- talk to us as early as possible so that we can understand your circumstances and work with you to resolve any issues
- maintain open and regular discussions on the facts and issues so we can get the right information
- work with us to set timeframes for supplying information so we can progress your matter as quickly as possible.

See also:

- [The right services](#)

Tax engagements

When we engage with you or your tax adviser, including on reviews and audits, we want to establish a productive and professional working relationship built on transparency and mutual respect.

To support this relationship, we will:

- be transparent in explaining why we have contacted you, what we understand about your circumstances and any concerns, so there are no surprises
- provide information about our risk assessment of you and the options available if you need to correct a mistake
- provide you with access to a clear escalation point to resolve issues with the ATO.

We will work closely with you to:

- develop a work plan as early as possible in our engagement to give you certainty around timeframes, being sensitive to commercial considerations
- agree on the most efficient channels for exchanges of information
- minimise costs by using the data and information we already have and then identifying any documents or alternative information that we would like you to share with us
- clarify how we manage documents covered by legal professional privilege or the accountants' concession
- keep each other informed on issues as they arise to enable their prompt resolution
- ensure you are regularly updated on the progress of a review or audit
- discuss opportunities for voluntary disclosures or alternative dispute resolution where relevant.

While we may not always agree, we aim to reach a shared understanding on any evidence or explanation of contentious issues and try to come to an agreement with you.

See also:

- [Tailored engagement](#)

Engaging through consultation

We consult with you, your tax advisers, professional associations and industry stakeholders to improve our understanding of your business environment and current tax issues you face.

By working with you, we can identify the right areas to reduce red tape, minimise compliance costs, improve the administration of the tax and super systems, and increase willing participation.

You can:

- Get involved through our [Consultation](#) webpage.

The right services

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/>
- Last modified: 05 Feb 2019
- QC 44826

Privately owned and wealthy groups want certainty about tax matters, taking into account commercially realistic timeframes. They've asked us to improve digital offerings and make better use of technology to get faster outcomes and reduce compliance costs.

In response, we're providing information, advice and services that are timely, efficient and sensitive to commercial realities. We're also working to improve our digital services and are currently developing a number of initiatives.

You can:

- [correct a mistake](#) by requesting a self-amendment or making a voluntary disclosure
- [engage with us for advice](#) to get certainty about a complex transaction or arrangement
- [request a pre-lodgment agreement](#) for practical certainty about a commercial deal or restructure event
- [enter into an annual compliance arrangement](#) to identify and resolve tax issues early
- [request an advance pricing arrangement](#) for your dealings with international related parties
- [apply for a mutual agreement procedure](#) for relief from double taxation on international transactions
- [engage professional tax advisers](#) regarding our view of the tax treatment of significant transactions
- contact us if you're having difficulty [paying your tax](#).

See also:

- [Online information and services](#)
- [How we interpret and apply the law](#)
- [Mutual arrangements for certainty](#)
- [Commercial deals](#)

Engage with us for advice

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Engage-with-us-for-advice/>
- Last modified: 12 Aug 2022
- QC 44827

How to engage with us early to discuss the tax outcomes of complex transactions before applying for formal advice.

On this page

- [Our early engagement service](#)
- [When to contact us](#)
- [How to access early engagement](#)
- [What to expect](#)

Our early engagement service

Early engagement is an opportunity to discuss with us the tax outcomes of complex transactions before applying for formal advice. You can discuss your circumstances and identify any concerns before you act. We will work with you and your advisor to get things right.

Our early engagement for advice service is distinct from our [commercial deals](#) service. This is where you can engage early with us if you are considering a pre-lodgment compliance agreement for a [commercial deal](#).

When to contact us

Early engagement is flexible and is tailored to your circumstances. You can request early engagement:

- if you are considering applying for a
 - private ruling
 - class ruling
 - administratively binding advice

- when you are unsure of the most appropriate type of advice for your situation
- before, during or after you have entered into the transaction.

How to access early engagement

To access early engagement, you can either:

- email us at eerequest@ato.gov.au
- submit an [Early engagement \(advice\) request](#) (NAT 75413) form.

We will contact you to discuss your request and outline the early engagement process.

We will consult with you to:

- seek your timeframes and critical dates
- confirm details of the transaction
- identify the tax issues you are seeking advice on.

If you decide to proceed with early engagement, we will contact you to arrange an initial meeting.

What to expect

During early engagement, we adopt a collaborative approach to understand your situation. We may request information from you to establish the facts of the transaction, and the commercial context and drivers. You may also submit a draft ruling application for our consideration.

We will work with you to identify issues and concerns and ensure that relevant experts participate in our discussions. At the end of the engagement, we will give you advice tailored to your needs and circumstances.

Mutual arrangements for certainty

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Mutual-arrangements-for-certainty/>
- Last modified: 24 Jan 2019
- QC 44828

You can:

- [request a pre-lodgment agreement](#) for practical certainty about a commercial deal or restructure event prior to lodgment
- [enter into an annual compliance arrangement](#) to identify and resolve tax issues early
- [request an advance pricing arrangement](#) for your dealings with international

related parties

- [apply for a mutual agreement procedure](#) for relief from double taxation on international transactions.

Commercial deals

We engage early with privately owned and wealthy groups to offer a pre-lodgment compliance agreement for commercial deals and restructure events.

We define a commercial deal as any significant business transaction that may affect the structure of your business.

See also:

- [Commercial deals](#)

Annual compliance arrangements

An annual compliance arrangement (ACA) is a voluntary administrative arrangement between us and you to govern our compliance relationship.

An ACA provides a level of practical certainty for you by mutually resolving tax risks as soon as possible, generally prior to lodgment. ACAs complement other products and services we offer, such as our rulings program.

These arrangements are most suited to Australia's largest businesses. ACAs can apply to income tax, goods and services tax, excise, fringe benefits tax, petroleum resource rent tax, or any combination of these taxes.

To be considered for an ACA you must have in place an effectively designed and operating tax control framework which:

- is aligned as appropriate with the best practices outlines in the [Tax Risk Management and Governance Review Guide](#)
- is supported by a robust approach to tax risk management that can be evidenced at both the strategic and operational levels, and
- a genuine commitment to continuous disclosure of all material risks.

See also:

- [Annual compliance arrangements – what you need to know](#)

Advance pricing arrangements

An advance pricing arrangement (APA) is an agreement with us on the future application of the arm's length principle to your dealings with international related parties.

APAs provide certainty by:

- ensuring the fair application of the arm's length principle to related party international dealings

- eliminating or reducing the risk of double taxation on related party international dealings (particularly in bilateral and multilateral APAs)
- eliminating the risk of a transfer pricing audit on the related party international dealings covered by the APA.

APAs may be:

- unilateral, which involves your business in Australia and us
- bilateral or multilateral, which involves an agreement between two or more tax administrations and their respective taxpayers.

APAs generally cover a period of three to five years and may be reviewed if the trading circumstances materially change. APAs have an annual reporting requirement.

See also:

- [PS LA 2015/4 Advance Pricing Arrangements](#)

Mutual agreement procedures

International transactions can expose your group to double taxation. For example, a transfer pricing adjustment arising from an audit in one country may result in the same income being taxable in two jurisdictions.

If you believe you have been or will be subject to double taxation, you can apply for relief to the tax administration of your jurisdiction. If your application is accepted we will discuss your case with the other tax administration and try to resolve it in accordance with the relevant double tax agreement. This process is known as a mutual agreement procedure.

A mutual agreement procedure is part of the dispute resolution process and is in addition to your objection and appeal rights.

See also:

- [OECD Manual of effective mutual agreement procedures](#)[↗]
- [Mutual agreement procedure](#)

How we interpret and apply the law

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/How-we-interpret-and-apply-the-law/>
- Last modified: 26 Sep 2018
- QC 44829

On this page:

- [Products to help you](#)
- [If the law is clear](#)
- [If the law is open to interpretation](#)
- [New legislation](#)

Products to help you

We offer a range of advice and guidance products to help you understand how the law works and how it applies to you:

- [ATO advice products – rulings](#)
- [ATO guidance products](#)
- [Tailored technical assistance](#)

If the law is clear

We have a duty to apply the law. If the law is clear but gives rise to unintended consequences, anomalies, or significant compliance costs inconsistent with the policy intent, we advise government – usually through Treasury. We do this whether the existing law favours taxpayers or the revenue; giving the government the opportunity to consider legislative change.

In limited circumstances, the Commissioner of Taxation can use a discretionary power to resolve unforeseen or unintended outcomes in the law to create certainty.

See also:

- [Commissioner's remedial power](#)

We are committed to consultation as a means of improving the administration of tax and superannuation systems.

You can:

- [raise a matter for consultation](#) where the law gives rise to unintended consequences or anomalies.

If the law is open to interpretation

If the law is open to interpretation, our approach is to adopt the interpretation consistent with the policy intent.

Where more than one of the available interpretations achieves the policy intent, we will generally apply the interpretation more favourable to you.

A document containing a precedential ATO view provides our interpretation of the laws we administer in relation to a particular interpretative issue.

Precedential ATO view documents are published on our [Legal Database](#) so you can access the same information we use when resolving interpretative issues. It also allows you to easily find our interpretation of the law.

See also:

- [Precedential ATO view](#)

You can:

- [engage with us for advice](#) to get certainty about a complex transaction or arrangement you are considering from one of our ATO experts.

New legislation

We ensure new legislation is implemented efficiently and effectively by consulting with you, your tax advisers, professional associations, industry bodies and Treasury.

Depending on the nature of new legislation, we may publish a law companion guideline to give our view on how the new law applies. We usually publish a law companion guideline when the new law introduces a new regime, or new and unfamiliar concepts.

See also:

- [Law companion rulings](#)
- [Online information and services](#)

Online information and services

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Online-information-and-services/>
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- QC 44830

We are committed to improving your experience when dealing with the tax and super systems. To make it easier to manage your tax affairs, we provide access to:

- online services, tools and easy-to-understand information for your circumstances – available from our [Individuals](#), [Business](#) and [Super](#) home pages
- published information on the general application of the law including public, class and product rulings – see [ATO advice and guidance](#).

We are working to improve our digital services, with a number of initiatives currently under development.

Next step:

- [Paying tax](#)

See also:

- [Taxpayers' charter - what you need to know](#)
- [Taxpayers' charter - accessing information under the Freedom of Information Act](#)
- [Your privacy](#)

Paying tax

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Paying-tax/>
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- QC 44831

We focus on making it as easy as possible for individuals and businesses to pay their tax on time or promptly address any debt that arises.

We offer a range of online tools and services to help you self-manage your debt. These include:

- a [prepayment](#) option to make payments at any time and as often as you like to make it easier to manage your tax
- [online payment plan](#) services for debts \$100,000 or less – if you are an individual or sole trader with an income tax bill or an activity statement amount of \$100,000 or less, you may be able to use our online services to set up a payment plan. You'll need a myGov account linked to the ATO.
- an automated phone service for debts \$100,000 or less – if your tax bill is \$100,000 or less you may be able to use our automated service to arrange a late payment or pay by instalments. Phone our automated service on 13 28 65 for individuals or 13 72 26 for business.
 - If your tax bill is greater than \$100,000 phone us on 13 11 42 to discuss your circumstances
- a [payment plan estimator](#) to work out a plan that meets your circumstances
- a [business viability assessment tool](#) to assess your business's ability to pay its debts and meet ongoing commitments
- a business performance check tool as part of the [ATO app](#) for you to check the financial health of your business.

We know most people want to pay and we can work with you to find a way forward. If you fail to pay the amounts you owe us we may take stronger action, this can include garnishees (getting your bank or employer to use money they hold for you to pay your tax bill), director penalties and insolvency proceedings.

See also:

- [How to pay](#)
- [If you don't pay](#)
- [Help with paying](#)

Engaging professional tax advisers

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Engaging-professional-tax-advisers/>
- Last modified: 26 Sep 2018
- QC 49159

The level of advice you seek should reflect the complexity of your affairs.

As you are ultimately responsible for your tax affairs, you should be sure of the integrity and likely tax consequences of the advice you receive. Where you feel uncertain, you may wish to have us review the advice you have received or seek an independent second opinion.

We recommend you consult your adviser/s regarding our likely view of the tax treatment of significant transactions. This will help you assess the potential risks involved in adopting a particular position. It is important you openly discuss your tax affairs with your adviser and we suggest you ask whether:

- their advice accords to the current ATO view (or is, at the very least, reasonably arguable)
- all taxes, levies and charges are being paid in respect of your arrangement
- anything in the arrangement exposes you to penalties and interest.

You or your tax adviser may need to seek tailored advice from us if:

- you're not able to find our view of how the law applies to a particular technical issue
- you're not certain how our view of the law applies to your circumstances
- you want greater certainty (protection) than our published information provides.

If you seek advice from us, we encourage you to engage with us as early as possible so that we can understand your circumstances and work with you to resolve any issues within your timeframes.

See also:

- [Engage with us for advice](#)
- [Your rights - being represented by the person of your choice](#)
- [Tax planning](#)
- [Second opinion for smart investors.](#)

Commercial deals

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Commercial-deals/>
- Last modified: 20 Jun 2022
- QC 57799

How privately owned and wealthy groups can get a pre-lodgment agreement for certainty on commercial deals.

On this page

- [What is a commercial deal?](#)
- [Advantages of engaging with us](#)
- [Engage with us early](#)

What is a commercial deal?

We define a commercial deal as any significant business transaction that may affect the structure of your business. Some examples of this may include:

- financing and refinancing
- initial public offerings
- mergers and acquisitions
- restructures
- sale of business (partial or complete) or business assets
- sale of commercial property
- share buybacks
- takeovers.

Our commercial deals service can provide practical certainty on these events. The ideal time for engagement is after the transaction completes and prior to lodgement. We can provide certainty on the tax treatment of a settled fact pattern before you lodge.

Watch:

Media: The Commercial Deals Early Engagement Program
<http://tv.ato.gov.au/ato-tv/media?v=bd1bdiunufnomi>¹⁷ (Duration: 3:09)

You can ask to talk to us about your commercial deal by emailing
eerequest@ato.gov.au

Advantages of engaging with us

If you have recently completed a commercial deal, we can work with you to understand your circumstances and address any potential issues as soon as possible.

If you engage with us, we can:

- help resolve tax technical issues relating to the deal
- work towards agreement on the tax position you intend to take
- help you meet your tax obligations and reduce the likelihood of a review.

Working transparently with us can achieve mutual resolution of tax issues prior to lodgment and help avoid tax disputes post-lodgment.

If agreement is reached and lodgment is received as agreed, we will not conduct a review or audit for the commercial deal transaction in question.

This increases certainty around how the tax law applies to your circumstances.

Engage with us early

The earlier you commence discussions with us about your completed commercial deal the better. We can work with you to get the right tax position before you lodge your tax return. By reaching a pre-lodgement agreement with us, you can avoid potential post-lodgment tax disputes, as well as shortfall penalties and interest.

After you have completed a deal, we will work together to ascertain the relevant facts to reach an agreement on how the transaction will be reported for tax purposes. We may still contact you post-lodgment to confirm that you reported as agreed.

Request a pre-lodgment agreement about your commercial deal by emailing eerequest@ato.gov.au.

For further information on our services, see [The right services](#).

Transparency

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Transparency/>
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- QC 44832

Privately owned and wealthy groups tell us they want transparency about what attracts our attention so they can get things right up front.

They also want to know what we know about them so they understand their tax and super position, and have the opportunity to self-correct and provide information where needed.

In response, we're providing information about what attracts our attention and news

about recent developments in tax and super. We're also introducing new services to give you certainty and transparency about what we know about you.

Transparency is two-way. Where your dealings are transparent we can tell you what we know about you, including our view of your group's tax risk profile, so you can work with us where needed to get things right, and because we understand your circumstances better we can offer you the right services.

You can:

- [correct a mistake](#) by requesting a self-amendment or making a voluntary disclosure
- make the right choices by knowing [what attracts our attention](#)
- lower your tax risk through [effective tax governance](#).

We will:

- be transparent about [how we assess risk](#) and tailor our engagement with you accordingly
- provide an [income tax profile](#) to the largest groups, and other groups where specific issues have attracted our attention – the report sets out our view of their level of risk so they can deal with any issues.

See also:

- [Focus on private companies](#)⁷ - keep up-to-date with all the latest news and initiatives for complex tax topics affecting private groups on our LinkedIn showcase page.
- [Business bulletins](#) - read the latest legislative, corporate and administrative tax news for medium to large businesses and their advisors.

Correcting a mistake

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-you-should-know/Transparency/Correcting-a-mistake/>
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- QC 44833

We accept that the vast majority of taxpayers try to comply with their tax obligations, and therefore we accept that the information they provide is complete and accurate.

Like you, we want to resolve issues quickly and cooperatively. If you find that you need to make an adjustment or made a mistake the first thing you should do is contact us. We will explain your options and help you make the right choice.

You can:

- [request an amendment](#)
- make a [voluntary disclosure](#)

Amendment requests

Generally, if you need to correct something on your tax return or activity statement and we haven't raised an assessment in a review or audit, you can request an amendment.

If you want to dispute the facts or law in an assessment we raised, you use the objection process.

See also:

- [Correct a mistake or amend a return](#)
- [Dispute or object to an ATO decision](#)

Voluntary disclosures

If you tell us about a return or statement that needs correction we generally refer to it as a 'voluntary disclosure'.

If you make a voluntary disclosure you can generally expect a reduction in the administrative penalties that would normally apply.

See also:

- [Correct a mistake or amend a return](#)
- [Make a voluntary disclosure](#)
- [MT 2012/3 Administrative penalties: voluntary disclosures](#)

Income tax profile

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Transparency/Income-tax-profile/>
- Last modified: 26 Sep 2018
- QC 44837

We will provide an income tax profile to the largest groups, and other private groups where specific issues have attracted our attention. By sharing information about what we know about you, the profile provides you with an opportunity to self-correct.

On this page:

- [Information in the income tax profile](#)

Information in the income tax profile

The profile will contain the following information:

- our view of your risk categorisation based on our [risk differentiation framework](#)
- an analysis of your tax performance and economic performance compared with similar businesses and how we assess risk
- an overview of your group structure based on our [private group approach](#)
- specific areas that may [attract our attention](#).

It is important to note that the profile reflects our preliminary view of your group's level of risk at a point in time. It does not indicate that you haven't complied with your tax obligations.

How we assess risk

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-you-should-know/Transparency/How-we-assess-risk/>
- Last modified: 30 Oct 2019
- QC 44838

To understand your circumstances and profile privately owned and wealthy group clients we use sophisticated data matching systems, analytics and other forms of intelligence.

We use a framework to differentiate risk and tailor our engagement with you based on your group's profile and the choices and behaviours made by your group.

We share with you what we know, including our view of your group's profile, so you can work with us where needed.

On this page:

- [Risk differentiation framework](#)
- [How we apply the risk differentiation framework](#)

Risk differentiation framework

We take many approaches to managing risk. One approach we take is by using the 'risk differentiation framework'. We use this framework to tailor our engagement based on our understanding of your risk position, circumstances, choices and behaviours.

The risk differentiation framework is based on information we hold and our understanding of your private group. We use it to assess your level of tax risk, taking into account the relative likelihood and potential consequences of non-

compliance.

When seeking to understand your private group, we consider your tax and economic performance in comparison to similar businesses. We define similar businesses as private groups with similar characteristics to your group.

To determine groups that are similar to you, we consider three general phases for a private group:

- establishing wealth
- retirement and transitioning wealth
- the associated behaviours and activities that affect the way wealth, income and tax is managed.

This method of group comparison recognises that income and wealth may be derived through different activities including:

- operating a business
- investing
- working for a salary.

We adjust our comparison as we learn more about your group.

Find out about:

- [Private group approach](#)

We use this group comparison to determine our initial view of your tax and economic performance. For your:

- tax performance – we use a tax to income ratio when comparing your tax performance with similar businesses. If this ratio is high, it may indicate under-reported income or over-reported deductions
- economic performance - we use profitability ratio when comparing your tax performance with similar businesses. If the ratio is low, this may indicate compliance risks such as bad debts, profit shifting, under-reporting of income or over-reporting of expenses.

These comparisons form a part of our likelihood and consequence scores.

Your likelihood score is the propensity of a tax outcome occurring with which we do not agree. We form this assessment by considering:

- the tax and economic performance of the group compared to similar businesses
- the complexity of group structure
- specific indicators of compliance risk.

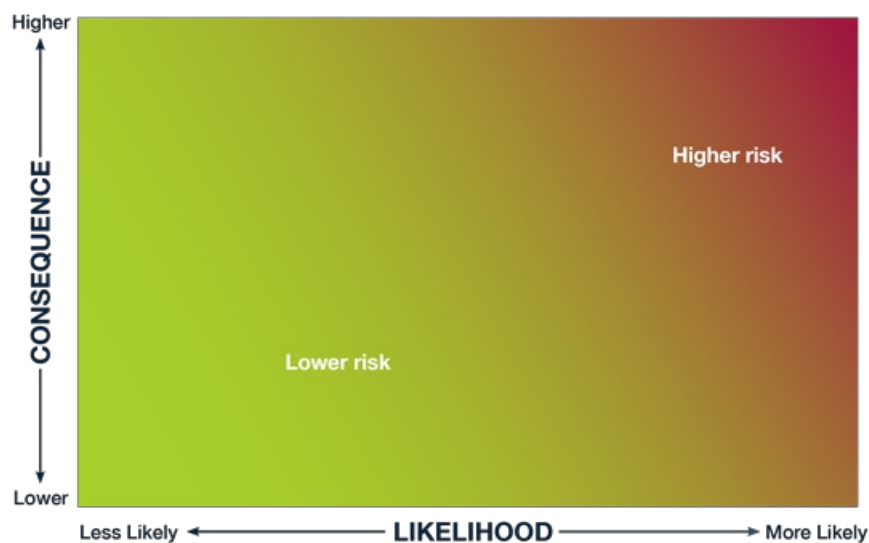
Your consequence score is the potential impact of non-compliance on revenue, in influencing community engagement, our reputation and precedential outcomes of non-compliance. When considering consequence we take into account factors such as:

- wealth
- total business income
- the potential quantum of tax at risk.

The combination of likelihood and consequence informs our initial perception of risk. This perception does not assert non-compliance but may prompt our engagement with you.

We continue to improve our risk differentiation framework as we consider new information through interactions with our clients and alternate data sources, to maximise the effectiveness of our client engagements.

Risk differentiation framework



How we apply the risk differentiation framework

We tailor our engagement and services with you based on our understanding of your position on the risk differentiated framework, circumstances, choices and behaviour. Initial risk categorisations of your group are preliminary only and not definitive. The initial categorisation does not assert compliance or non-compliance. It indicates that we may wish to ask further questions based on what we currently know.

Lower risk

Most privately owned and wealthy groups sit in the lower to medium likelihood and consequence quadrant of the risk differentiated framework. We generally accept this level of risk and reflect it in the nature of our interactions.

Our engagement and services for lower risk groups focus on making it easy to get things right. This includes help and education initiatives, the ability to engage with us early for advice and guidance services, and pre-lodgment support.

Significant restructures and one-off significant transactions will still attract our attention and we may contact you prior to lodgment to provide advice so you get things right up front.

There will be some situations where we will engage you regardless of your risk position. An example of this includes providing educational material, pursuing outstanding debts or lodgment, or where we have an established ongoing relationship as part of your group being part of our Top 500 Program.

See also:

- [Engage with us for advice](#)
- [Private groups tax performance program](#)

Higher risk

Higher risk categorisation may warrant us asking further questions.

In addition to the engagement and services provided to lower risk groups, we may engage more directly with you to understand and work through any issues and to help you get things right.

Our engagement approach will be influenced by your risk position on the risk differentiated framework. Your willingness to cooperate and engage constructively with us in mitigating the risk will influence how we engage with you. Our engagement approach is also influenced by the potential consequences. For example, as your risk profile moves up the consequence scale, our engagement is likely to be more direct and frequent.

See also:

- [Compliance model](#)

Tailored engagement

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/>
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- QC 44839

As a privately owned and wealthy group, we provide you with the certainty you need over your tax affairs, by tailoring our engagements to your circumstances. This ensures we effectively manage our interactions with you in the most timely and efficient way, being sensitive to the group's business and commercial affairs. To support this, we develop our knowledge about your business, industry and commercial realities, so we can better understand your individual circumstances.

Through our engagements, we want to provide assurance that you have paid the right amount of tax and help you maintain compliance into the future. We may engage with you:

- before you lodge your tax return, to give you certainty on your tax position, including on significant commercial transactions
- after you have lodged, to get an understanding of statements made in your returns.

We use data and analytics to understand your industry and risks that may affect your business. By having this information beforehand, we can come into the engagement with a better understanding of your circumstances and then tailor our approach accordingly.

By working with us, we can provide services that make it easier to get things right. This includes discussing issues early to prevent disputes later on.

We will be transparent about the nature of our concerns and encourage two-way dialogue at all times. Where we can't resolve an issue early, we may conduct a review or an audit to examine the issue further.

This collaborative approach gives you greater certainty and can save you time and money.

See also:

- [Tax engagements](#)
- [How we assess risk](#)

Find out about:

- [Tax performance programs for private groups](#)
- [Reviews](#)
- [Audits](#)
- [Making sure we get it right](#)
- [Assessments and amendment periods](#)
- [Penalties and interest](#)
- [Resolving disputes](#)

Tailored Compliance Services

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Tailored-Compliance-Services/>
- Last modified: 26 Sep 2018
- QC 44840

We use a risk differentiated framework to tailor our engagement based on our understanding of your risk position, circumstances, choices and behaviours. Our engagement varies with our assessment of your circumstances and our level of concern. Wherever possible, we aim to engage early and resolve straightforward

matters in a timely and efficient manner. This may be through telephone calls, pre-lodgment correspondence, questionnaires or checklists.

Reasons why we might contact you:

- raising awareness about the applicability of a new law
- verifying possible anomalies identified through data matching
- verifying the integrity of claims for activity statement refunds
- verifying the authenticity of new GST registrations
- seeking lodgment of schedules that should have been included with income tax returns
- requesting further information to support our risk assessment.

Where we suspect significant risks requiring further examination, we are guided by the facts of each case and generally conduct a review, audit or both. To prevent risks and issues escalating into reviews and audits, we encourage you to engage with us in real time before you lodge your tax return or alternatively we may engage with you early to discuss our view of the law. We will be transparent about the nature of our concerns and provide opportunities for you to [disclose any known errors or mistakes](#). This may lead to a reduction in the penalties that would otherwise apply.

In some limited circumstances, we may not contact you before assessments are issued. This might happen where there is the potential for dissipation of assets, or where such advice could compromise the investigation of another agency.

See also:

- [Tax assurance engagements](#)
- [Risk differentiation framework](#)
- [Tax performance programs for private groups](#)
- [Mutual arrangements for certainty](#)

Reviews

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Reviews/>
- Last modified: 26 Sep 2018
- QC 44995

Depending on your tax affairs, we may contact you to obtain a wider understanding of a single issue to multiple issues relating to your business. This tailored service is called a Review. The review process provides us both with an opportunity to quickly and cooperatively resolve matters in a transparent way. Reviews help us determine if there are tax issues requiring a more in-depth examination and response.

When we contact you in a review we want to establish a productive and professional working relationship built on transparency. We will be open with you about what has attracted our attention and provide you with an opportunity to self-correct and provide information where needed.

When we initially engage with you, we will outline our concerns and discuss our information requirements. Prior to requesting information from you, we will contact you or your authorised contact to establish our information needs and why we require them. The information required may vary from case to case. We aim to work cooperatively with you to build a good working relationship, with the aim to improve the resolution process and minimise cost to your business.

The information we request in a review may include:

- financial statements
- schedules
- agreements
- tax reconciliations.

This information clarifies our understanding of risks within the context of your business or personal circumstances. Keeping good records will also help you with our enquiries.

This cooperative approach does not usually require the use of our formal powers. However, depending on the results of our initial meeting and whether we need additional information, a formal interview with you may be required. We will generally advise and arrange the exercise of formal powers with you in advance and outline the process.

If our analysis of relevant information, including any discussions with you, sufficiently addresses our concerns, we will end our review and advise you of its outcomes.

In other cases, we will consider other courses of action, including proceeding to an audit where a more in-depth examination of the issue is required. If this happens, we will give you the option of a meeting to discuss our findings and alternatives. At this meeting we will generally give you another opportunity to consider making a voluntary disclosure.

We will advise the outcome of the review in writing.

See also:

- [Tax assurance engagements](#)
- [Correcting a mistake](#)

Audits

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Audits/>
- Last modified: 26 Sep 2018
- QC 44841

We conduct audits where we consider a more in-depth examination of the issue is required. Our audit program ranges from relatively quick examinations of source documents to more intensive analysis of complex arrangements and transactions. Whatever the issue, we will be transparent about our concerns. We seek your cooperation so we can complete audits as quickly as possible and give you certainty of your tax and super position.

Most audits are escalated from a review. However, where it is warranted we may proceed straight to audit without conducting a review. This may happen, for example, in cases involving less complex issues, or where we suspect fraud or evasion, or where an arrangement or transaction is considered high risk.

When we contact you in an audit we want to establish a productive and professional working relationship built on transparency. We will be open with you about what has attracted our attention and provide you with an opportunity to disclose errors and provide information where needed.

We will normally examine source documents to verify the accuracy of financial accounting information and the integrity of access controls within your systems.

Where our discussions with you and our analysis of relevant information are sufficient to address our concerns, we will end our audit and advise you of the outcomes.

On this page

- [Typical audit process](#)
- [During the audit](#)
- [Information gathering and record keeping](#)
- [Determining and communicating our position in writing](#)
- [If we intend to amend your assessment](#)
- [Finalising the audit](#)
- [e-Audits](#)

See also

- [Tax assurance engagements](#)
- [Computer assisted verification: e-Audit and risk assessment](#)

Typical audit process

In an audit, we will:

- phone to arrange a suitable initial meeting time
- follow up with written confirmation including a meeting agenda outlining key issues for discussion and a draft audit management plan.

At the meeting, we will be transparent about:

- the audit scope, the periods under audit and the expected completion date
- our risk hypothesis and information required to assess this hypothesis
- your choice of channel for providing information
- how we will conduct the audit, including key milestones and relevant guidelines
- the advantages of, and procedures for, making voluntary disclosures
- our expectations of you when we request information or records
- the circumstances in which you can expect us to use our formal access powers.

These discussions will be formalised in an updated audit management plan, which we will provide after the meeting.

The audit management plan will contain contact details of an executive level officer for you to contact.

During the audit

We will keep you fully informed of the audit's progress. If we identify additional risks during an audit, we may broaden the audit's scope. We will advise you immediately if we decide to broaden the scope of an audit.

We will engage in ongoing and transparent communication with you as our view develops. At any stage during an audit, we are open to exploring opportunities for [alternative dispute resolution](#) as a cost-effective means of avoiding potential legal disputes.

Information gathering and record keeping

Your cooperation in being transparent and providing the full facts and supporting evidence quickly will help us determine our position and provide you with certainty as soon as possible.

Australian tax and super laws require you to keep records to support your claims. These records include documents that evidence an intention, election, choice, estimate, determination or calculation. For these purposes 'documents' include computer files and other electronic information.

The information we require varies from case to case. When we initially engage you, we will clearly outline our concerns and discuss our information requirements. To reach a position on complex matters, we may need to examine substantial amounts of information, including information that may be held by third parties.

Cooperative approach

We generally prefer to contact you prior to making our information requests using a cooperative approach. By working with you in this way, we can build good working relationships and minimise cost and disruption.

A cooperative approach does not usually involve the use of our formal powers.

However, we may use our formal powers at the outset in certain higher-risk situations, including:

- where we are requesting information from third parties (including related parties)
- where you have no access or are being denied access to the information held by another party or third party
- cases involving potential tax avoidance
- where you have a history of not voluntarily providing the required information
- where you request that we use formal powers.

Our formal powers

Our formal powers fall into two broad categories:

- Notice powers – require you to give information, attend and give evidence or produce documents.
- Access powers – give us full and free access to places, books and documents. They also require reasonable assistance be given to our officers in exercising these powers. We will generally arrange the exercise of these powers with you in advance except in exceptional circumstances, such as where there is a reasonable suspicion of risk of destruction of documents or more serious breaches of the law.

See also

- [Our approach to information gathering](#)
- [Taxpayers' charter – fair use of our access and information gathering powers](#)
- [Computer assisted verification: e-Audit and risk assessment](#)

Determining and communicating our position in writing

During the latter stages of an audit it is our usual practice to provide you with a position paper that clearly explains our position and gives you an opportunity to respond before we finalise the audit.

A position paper sets out:

- the available facts (which we will endeavour to agree with you first)
- the issue/s
- your contention/s
- our application of the relevant law to the facts
- details of any proposed assessments arising from the audit
- details of who to contact to discuss the matter.

In determining our position we will research the law, taking note of any pre-existing ATO views. We will give full consideration to your position and supporting arguments.

Where we disagree with you, we will explain why and whether an alternative dispute resolution (ADR) process may assist in resolving the dispute. To help determine our position, we sometimes engage external experts such as industry specialists,

valuers, economists and legal counsel.

In some complex or sensitive cases we may appoint a specialist or case leader to help resolve issues.

We will give you an opportunity to comment and we will consider your comments before making our final decision, including request for an independent review.

For large privately owned and wealthy groups with a turnover of more than \$250 million we will consider requests for a [Large market independent review - turnover over \\$250m](#) prior to making our final decision.

If we intend to amend your assessment

If we intend to amend your assessment we will usually advise you beforehand.

In some higher-risk and limited circumstances, we may not contact you before assessments are issued. This might happen where there is the potential for dissipation of assets, or where such advice could compromise the investigation of another agency.

Finalising the audit

We will advise you of the audit's outcome and finalisation in writing, generally within seven days of making our decision.

We will offer a final interview to discuss any penalties and interest charges if this is not included in the final position paper.

If we have concluded that [penalties and interest](#) charges should apply, we will tell you our reason and give you the opportunity to make a submission for reduction or remission of [interest and penalties](#) charges.

e-Audits

In the course of conducting reviews or audits, we may use computer assisted verification (otherwise known as e-audit) methodologies to assist us in analysing your electronic records. This can range from examining individual transactions to looking at your business and system processes as a whole.

Using e-Audit assists us in:

- analysing large amounts of data accurately and efficiently
- examining and understanding your business and systems and processes to help you comply with your tax obligations.

See also

- [Computer assisted verification: e-Audit and risk assessment](#)

Making sure we get it right

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Making-sure-we-get-it-right/>
- Last modified: 17 Mar 2022
- QC 44842

The diversity of privately owned and wealthy groups means a wide range of tax issues come to our attention. Although our officers have a sound understanding of the applicable law, they are able to get assistance from internal advisers and legal specialists.

We give our officers access to technical experts within our business units to ensure our engagements with you are progressed effectively. They may also seek further legal support from our Office of the Chief Tax Counsel where there are concerns about the accuracy of existing positions. Our experts may be involved in discussions with you and your tax advisers.

At times, we may also seek expert advice from external industry specialists or external legal service providers. We consider engaging external counsel as early as possible in situations where the matter is clearly significant or there is uncertainty regarding our view of the law.

To make sure we get it right, we use:

- [technical and case leaders](#)
- a [Technical and Settlement Panel](#)
- a [General Anti-Avoidance Rules Panel](#)

Technical and case leaders

Technical leaders have specialised tax technical skills, enabling them to assist other client engagement officers with risk identification and complex matters. To deal with more complex, novel and sensitive audit and review cases, we may appoint senior tax officers as specialist case leaders. These officers are usually part of the ATO's senior executive service.

Case leaders commonly provide support in cases with highly complex facts or technical issues or where we are not meeting planned milestones. They also assist where cases raise systemic issues of broader significance.

Technical and Settlement Panel

As part of our assurance process, our officers refer certain issues to our Technical and Settlement Panel to ensure integrity of our technical decisions.

The panel, comprising of senior technical officers, provides independent advice on decisions relating to larger audit or review cases, complex technical issues, settlements subject to the [ATO Code of Settlement](#) and suspected fraud or evasion matters.

The panel helps us make timely, well-considered decisions by providing expert technical advice.

Matters that are referred to the panel include:

- tax shortfalls of over \$5 million
- issuing of default assessments under section 167 of the *Income Tax Assessment Act 1936*
- all settlement proposals, with the exception of settlements generally involving more than 20 taxpayers which are referred to our Widely-based Settlement Panel
- findings of fraud or evasion
- shortfall penalty decisions that propose penalties of over \$1 million or at the rate of 75% for intentional disregard
- tax avoidance schemes
- cases with complex technical issues.

General Anti-Avoidance Rules Panel

The General Anti-Avoidance Rules (GAAR) Panel helps us in our administration of Part IVA and other general anti-avoidance provisions by providing independent advice. It ensures decisions about applying these provisions are objectively based and there is a consistency in approach to various issues that arise in the application of the GAARs.

The panel, made up of senior technical officers and external experts has an advisory role; it does not make the relevant decision but its advice is taken into account by our decision-makers.

Matters are generally referred to the panel after we have issued a position paper and have considered your response.

The panel may consider matters without your response where:

- it is for the purpose of providing preliminary advice about a matter
- you have chosen not to respond to the position paper
- there are time constraints
- a reasonable time has passed without a response.

To help the panel provide us with advice, you will usually be invited to address the panel meeting. Before attending a panel meeting, you will also be asked to provide a written submission.

See also:

- [PS LA 2005/24 Application of General Anti-Avoidance Rules](#)

Assessments and amendment periods

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Assessments-and-amendment-periods/>
- Last modified: 26 Sep 2018
- QC 44844

The standard period in which we can amend an assessment is four years for most businesses in privately owned and wealthy groups. The exception is where we find evidence of fraud or evasion, in these situations there is no time limit.

We will work with you to clarify these timeframes when we engage with you, to limit potential uncertainty.

Income tax

Different rules relating to the amendment period can apply to some cases where transfer pricing, research and development and capital gains tax is involved.

Generally, you will have the opportunity to present your case before we issue an amended assessment.

Indirect taxes – GST, wine equalisation tax, fuel tax credits and luxury car tax

If we make an adjustment to your activity statement as a result of compliance activity we have undertaken (whether to increase or decrease your liability), we will do it by making an amendment to your assessment, and issue a notice of amended assessment. For tax periods commencing on or after 1 July 2012, this will usually be an amended assessment.

Generally under our processes we need to provide you with details and reasons for any adjustment before we issue an amended assessment. You will have the opportunity to raise any concerns before the amended assessment is made.

Excise (fuel, alcohol and tobacco)

If you discover you have made an error on an earlier excise return, you can correct the error by lodging an excise amendment form or a new excise return. This includes when you have used the wrong tariff item or volume of product. There are time limits for claiming a refund or rebate.

If we identify an adjustment to your excise liability, we will request that you submit an amendment to the appropriate excise return.

If you disagree with an identified adjustment, we may issue a demand. You will have the opportunity to present your case prior to any decision to issue being made.

See also:

- [Excise returns](#)
- [Excise amendment instructions](#)
- [Excise return and instructions](#)
- [Excise refunds and drawbacks for excisable alcohol](#)
- [Excise refunds and drawbacks for excisable fuel and petroleum products](#)

Product stewardship for oil program and cleaner fuels grants scheme

You can claim a Product Stewardship for Oil benefit up to three years after the start of the claim period in which your entitlement arose. You may request an amendment within two years of the end of the claim period (or such further period as we allow).

The cleaner fuels grants scheme closed on 1 July 2015. Claims for this grant closed on 30 June 2016.

See also:

- [Fuel schemes](#)
- [Product stewardship for oil program](#)
- [Cleaner fuels grants scheme](#)

Penalties and interest

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Penalties-and-interest/>
- Last modified: 26 Sep 2018
- QC 44845

On this page:

- [Interest charges](#)
- [Administrative penalties](#)
- [Excise penalties](#)
- [Promoter penalties](#)
- [Prosecutions](#)

Interest charges

Tax laws impose interest charges from the date a tax liability was due to be paid until it and the accrued interest charges are paid. If a debt is increased by an amended assessment, interest charges also apply from the date the original assessment was due to be paid.

This is intended to:

- ensure that taxpayers who have underpaid their tax during this period do not receive an advantage over those who have paid their tax
- compensate the community for the impact of late payments.

As interest charges are compounding, they can quickly add up. The law provides us with the discretionary power to remit interest charges in certain circumstances.

Where a tax shortfall results from an audit or review and interest applies, we will give you a written statement about the reasons for the decision not to remit all or part of it. This statement will refer to the evidence on which our findings were based.

See also:

- [Penalties and interest](#)
- [PS LA 2011/12 Administration of general interest charge \(GIC\) imposed for late payment or under estimation of liability](#)
- [PS LA 2006/8 Remission of shortfall interest charge and general interest charge for shortfall periods](#)

Administrative penalties

You are not liable to a penalty if you make a false or misleading statement and you (and your tax adviser) took reasonable care. However, if reasonable care was not taken, the law imposes penalties based on your (or your tax adviser's) behaviour. The more culpable the behaviour leading to the statement, the higher the level of penalty. The facts and circumstances of a case ultimately determine the level of penalty, if any.

Even if you have taken reasonable care, you may be liable for a penalty if you do not have a reasonably arguable position about a contestable income tax or petroleum resource rent tax issue.

The amount of penalty that may apply in these and other circumstances may be reduced by making a voluntary disclosure. There are significant reductions if you:

- make a voluntary disclosure before you are notified of an ATO audit or risk review
- make an early disclosure (such as seeking a private binding ruling)
- make an acknowledged voluntary disclosure during the risk review stage of any compliance activity. In some circumstances a lesser reduction may be available for voluntary disclosures after notification of an audit.

Administrative statement penalties are doubled for [Significant global entities](#).

If we have concluded that penalties should apply, we will tell you our reasons and give you an opportunity to present your views or provide further information that may affect the decision. Following this, if we still consider that penalties apply we will give you a written statement of the reasons for the decision to impose the penalty and not to remit all or part of it, including findings on material questions of fact. This will refer to the evidence on which our findings were based.

See also:

- [Penalties and interest](#)
- [MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard](#)
- [MT 2008/2 Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable](#)
- [PS LA 2012/4 Administration of penalties for making false or misleading statements that do not result in shortfall amounts](#)
- [PS LA 2012/5 Administration of penalties for making false or misleading statements that result in shortfall amounts](#)
- [Significant global entities - penalties \(<https://www.ato.gov.au/business/public-business-and-international/significant-global-entities/significant-global-entities--penalties/>\)](#)

Excise penalties

Some administrative penalties and interest charges may apply under the Excise system.

Certain acts or omissions are offences against the *Excise Act 1901* for which specific penalties are also prescribed.

See also:

- Excise guidelines for the alcohol industry, fuel industry, tobacco industry and duty free shops

Promoter penalties

The promoter penalty legislation is aimed at dealing with those who market unsustainable arrangements to the detriment of both taxpayers and ethical advisers. Penalties can apply directly to individuals as well as businesses.

The provisions are intended to apply in two circumstances:

- when an entity engages in conduct that results in them or another entity being a promoter of a tax exploitation scheme
- when an individual or entity implements a scheme promoted on the basis of conformity with a product ruling in a way that is materially different to that described in the product ruling.

See also:

- [Good governance and promoter penalty laws](#)
- [PS LA 2008/7 Application of the promoter penalty laws \(Division 290 of Schedule 1 to the Taxation Administration Act 1953\) to promotion of tax exploitation schemes](#)
- [PS LA 2008/8 Application of the promoter penalty laws \(Division 290 of Schedule 1 to the Taxation Administration Act 1953\) to schemes involving product rulings](#)

Prosecutions

Tax and super laws specify a range of criminal offences that apply where taxpayers have not complied with their obligations. Sanctions may apply to both individuals and companies. As for any taxpayer, business taxpayers may be prosecuted for offences such as:

- making a false or misleading statement (including withholding information material to a tax matter)
- keeping incorrect or false records
- refusing or failing to provide a completed return or information, or to produce records or documents
- refusing or failing to attend before a tax officer or answer questions as and when required by a notice from us
- hindering or obstructing a tax officer who is exercising our access powers.

These offences are prosecuted before a court under the authority of the Commonwealth Director of Public Prosecutions (CDPP).

We also investigate, at times with the assistance of other law enforcement agencies, serious criminal breaches under the Criminal Code (such as fraud and money laundering). These matters are prosecuted by the CDPP.

The decision to prosecute for any Commonwealth criminal offence is made according to the Commonwealth prosecution guidelines, which are available from the [Commonwealth Director of Public Prosecutions](#).⁵⁷

Resolving disputes

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Resolving-disputes/>
- Last modified: 17 Mar 2022
- QC 44846

Where you are likely to conduct your business activities in a complex commercial and legislative environment, disputes can occur when tax law is applied to complex facts.

We want to resolve issues directly with you as early and cooperatively as possible, so that we arrive at sensible positions and to minimize disputes arising. Ideally, these discussions should begin when the issue is first identified, such as in a compliance review, audit or private ruling.

When disputes do occur, we want to resolve them early to avoid litigation where possible. We have a range of dispute resolution strategies available to resolve issues as early as possible.

On this page

- [Direct contact and negotiation](#)
- [Alternative dispute resolution](#)
- [In-house facilitation](#)
- [Settlements](#)
- [Independent review](#)
- [Objections](#)
- [Collecting tax debts when there is a dispute](#)
- [Litigation](#)
- [What to do if you are not satisfied or have a complaint](#)

Direct contact and negotiation

Our preferred method to resolve disputes is through direct contact and negotiation with you and your representative. The overwhelming majority of disputes are resolved this way.

If you are concerned about our compliance activity, we encourage you to discuss the issue with your nominated ATO case officer.

Alternative dispute resolution

Although we always attempt to resolve disputes directly with you and your representatives in the first instance, we will also consider whether an alternative dispute resolution (ADR) process may assist.

ADR is a cost-effective, informal and timely way to resolve disputes. It uses an independent third party to assist in resolving the dispute and can also be useful in narrowing the issues in dispute.

ADR may not be appropriate if, for example:

- it would be in the public interest to have judicial clarification of the issues in dispute
- resolution can only be achieved by departure from an established ATO view on a technical issue
- the relationship between the parties is such that any proposed ADR is unlikely to be successful.

See also

- [ATO plain English guide to alternative dispute resolution](#)
- [PS LA 2009/9 Conduct of Tax Office litigation](#)
- [PS LA 2013/3 Alternative Dispute Resolution \(ADR\) in ATO disputes](#)

In-house facilitation

In-house facilitation is a service where an impartial ATO facilitator meets with you (and/or your representative) and the ATO case officers to identify the issues in dispute, develop options, consider alternatives, and attempt to reach a resolution.

See also

- [Facilitation process](#)

Settlements

We may settle a dispute where we consider it consistent with good management of the tax system. In doing this we balance our responsibility to collect taxes with the need to administer the tax system sensibly, having regard to relevant factors set out in our *Code of settlement*, such as the relative strength of the positions, the cost versus the benefits of continuing the dispute and the impact on future compliance for you and the broader community.

You should make any offer to settle a dispute directly to your case officer both in writing and personally. In some cases, we might initiate settlement discussions or make a settlement offer. Settlements may also arise as an outcome from ADR.

In significant matters, we will generally assign internal technical experts and, if necessary, we may engage with external legal advisors.

See also

- [Code of settlement](#)

Independent review

After receiving a position paper from us during the latter stages of an audit, large public or privately owned groups with a turnover of more than \$250 million can seek an independent review of the statement of audit position prior to us making our final decision.

The independent review is conducted by a review officer from our Objections and Review area (which is independent of our audit area). They will consider the technical merits presented by both the audit team and clients concerning the audit position.

This officer will not have been previously involved in the audit and will bring an independent, fresh set of eyes to the review.

See also

- [Large market independent review - turnover over \\$250m](#)

Objections

You have the right to object to a range of our decisions, including assessments, penalties and private rulings. When we receive a written notice of objection, it is considered by a review officer, from our Objections and Review area, independent of our audit area and the original decision-maker.

The review officer will engage with you in a process that typically involves:

- discussing issues with you to better understand your business context, the relevant facts and your view on the issues
- gathering all relevant information relating to the original decision (for example, audit files) and talking to you about any further information which you can provide
- examining the grounds for objection and considering the scope of the dispute
- researching the issue and consulting with technical experts and any other party as necessary, and assessing any new information provided with your objection application or any other clarifying information we may request
- forming a view on the dispute and, where appropriate, discussing alternative ways of resolving the dispute before issuing our decision
- advising you both over the phone and in writing of our decision and outlining your further rights of review or appeal if appropriate.

Our commitments to service set out what you can expect from us as we review your objection.

You can assist the review by providing all the relevant documentation with your objection and responding in a timely manner if we ask for more information. If we need more time to provide our decision, we may negotiate a longer period with you.

See also

- [Dispute or object to an ATO decision](#)
- [Our commitments to service](#)
- [Amendment and objections – early engagement](#)

Collecting tax debts when there is a dispute

Our approach to managing disputed debts, and indeed all debts, takes into account each client's individual circumstances and the need to prevent those who don't pay from gaining an unfair financial advantage over those who do.

The law requires that tax liabilities be paid by the due date. The due date for tax liabilities is established by law and is not varied if you lodge an objection or start legal proceedings. If you are in dispute with us about your obligations, we will continue to seek payment. However, we recognise the specific issues relating to tax disputes and tailor our approach to address these.

We case manage disputed debts that are:

- high dollar value
- related to certain client segments including large market and high wealth individuals
- significant risks to revenue.

If you have a debt and are disputing one or more of your assessments, we encourage you to enter into a '50:50 arrangement', which will reduce the amount of general interest charge (GIC) payable if your dispute is unsuccessful.

Under a 50:50 arrangement you pay at least 50% of the disputed primary tax

amount plus any other outstanding undisputed tax debts. You also agree to provide any information that is needed to resolve the dispute in a timely fashion. In return, we agree to defer recovery action on the debt in dispute until the conclusion of the dispute. A concessionary GIC remission is also provided over the term of the dispute.

In some lower-risk cases during the objection stage we would not seek to take recovery action until the objection is finalised. During later stages of dispute at the Administrative Appeals Tribunal (AAT) and Federal Courts, clients are expected to enter into a 50.50 arrangement or provide security in order to obtain a deferral of recovery action.

See also

- [Disputing your debt](#)
- [PS LA 2011/4 Recovering disputed debts](#)

Litigation

If you are dissatisfied with an objection decision, you generally have the right to have the decision reviewed by the (AAT or appeal the decision to the Federal Court).

Your application must be lodged directly with either the AAT or the Federal Court, and the law gives strict timeframes in which to do this. Participation in ADR processes does not vary these strict timeframes.

See also

- [PS LA 2009/9 Conduct of ATO litigation and engagement of ATO Dispute Resolution](#)

What to do if you are not satisfied or have a compliment

At the start of our engagement with you we will notify you of the contact officer for your case. If you have any issues with how the case is being conducted, you should raise these issues with the case officer first.

Talking to us early too will help resolve issues. Whenever issues need to be escalated further, you will have access to our decision-makers.

If you are still not satisfied, you can make a complaint. We treat complaints seriously and try to resolve them quickly and fairly. Complaints provide us with important feedback and help us identify ways to improve our service.

If you are happy with our engagement or something or someone has impressed you, please share this with us either verbally or in writing.

As part of our continuous improvement in client service, we also encourage you to make suggestions to us about ways we can improve your experience when dealing with the tax and super systems.

See also

- [Complaints, compliments and suggestions](#)

Tax performance programs for privately owned and wealthy groups

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/>
- Last modified: 01 Oct 2020
- QC 60506

Privately owned and wealthy groups operate some of Australia's largest and most successful businesses and have complex financial and legal arrangements.

We view privately owned and wealthy groups as:

- companies and their associated subsidiaries (often referred to as economic groups) with an annual turnover of more than \$10 million and that are not public groups or foreign owned
- Australian resident individuals who, together with their business associates, control net wealth over \$5 million.

Our approach is to consider all entities under the control of the individual with the primary decision-making role in the group so we can better understand the choices and behaviours of the controlling mind behind a private group structure.

Subject to privacy restrictions, we generally engage with the head of the group rather than separate group entities when conducting our enquiries.

We support privately owned and wealthy groups to pay the right amount of tax through three tax performance programs designed to:

- support willing participation in the tax system
- help them to get things right
- find and address deliberate tax avoidance

Our privately owned and wealthy groups tax performance programs are tailored to three key segments:

- [Top 500](#)
- [Next 5,000](#)
- [Medium and emerging private groups](#)

Group types

Top 500

The Top 500 include private groups that are not public groups or foreign owned that:

- have over \$350 million in turnover, regardless of asset value
- have over \$500 million in net assets, regardless of turnover
- have over \$100 million in turnover and over \$250 million in net assets
- involve a company with total business income of over \$250 million and are included in the large company tax gap population
- are market leaders or of specific interest.

We engage directly with these groups from year to year to establish a high level of assurance that they are paying the right amount of tax.

Find out about:

- [Top 500 private groups tax performance program](#)

Next 5,000

The Next 5,000 include entities linked to Australian resident individuals who, together with their associates, control wealth of more than \$50 million. The Next 5,000 tax performance program was previously known as the High wealth private groups tax performance program.

We aim to increase ongoing willing participation by applying our justified trust methodology in our one-to-one tailored engagements. The program also focuses on prevention rather than correction through providing public advice and guidance on issues relevant to the Next 5,000 population.

Find out about:

- Next 5,000 [tax performance program](#)

Medium and emerging private groups

The medium and emerging private groups include:

- private groups linked to an Australian resident individual who, together with their associates, control wealth between \$5 million and \$50 million
- Australian businesses with annual turnover of more than \$10 million that are not public or foreign-owned and not linked to a high wealth private group.

Medium and emerging private groups represent the majority of total private groups. We use enhanced data and analytics to understand the operating environment of these groups, identify and address tax risks and design tailored approaches to mitigate those risks.

Find out about:

- [Medium and emerging private groups tax performance program](#)

Not mutually exclusive

These populations are not mutually exclusive – some associated entities belong to more than one population.

Our support

Our tax performance programs are designed to support privately owned and wealthy groups to willingly pay the right amount of tax. We recognise the majority of taxpayers do the right thing, but where we see deliberate tax avoidance we act to address it.

See also:

- [Tax avoidance taskforce](#)
- [Justified trust](#)

Medium and emerging private groups tax performance program

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Medium-and-emerging-private-groups-tax-performance-program/>
- Last modified: 01 Dec 2020
- QC 60505

The medium and emerging private groups tax performance program supports medium and emerging private groups to meet their tax obligations. It's one of our programs under the Tax Avoidance Taskforce, aimed at building community confidence that private groups are paying the right amount of tax.

Medium and emerging private groups represent about 97% of the total private group population. Through the program we'll increase our understanding of the current environments these groups operate in. This will help us to identify developing trends and tax risks that affect these groups, and design tailored approaches to mitigate those risks.

The medium and emerging private groups tax performance program runs for four years.

Find out about:

- [Who is covered by this program](#)
- [How we tailor our approach to you](#)

Who is covered by this program

The program covers:

- private groups linked to Australian resident individuals who, together with their associates, control wealth between \$5 million and \$50 million, and
- businesses with an annual turnover of more than \$10 million, that are not public or foreign owned and are not linked to a high wealth private group.

The program doesn't cover private groups or businesses already a part of the [Top 500 private groups tax performance program](#).

We use sophisticated data matching and analytic models to identify wealthy individuals and link them to associated entities. We then look at the group of entities as a whole. This [group approach](#) helps us to understand businesses better. It also enables us provide a more tailored experience, including focusing on specific entities within a group where necessary.

See also:

- [About privately owned and wealthy groups](#)

How we tailor our approach to you

With this program, we're improving our understanding of your business and the environment you operate in. We use improved data and analytics to identify trends and priority risks specific to medium and emerging private groups.

With this increased understanding, we can better tailor our approach and develop strategies to help you address and mitigate tax risks. We'll work with you by:

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

We'll focus our attention on engaging with:

- larger or higher risk private groups and entities
- private groups experiencing rapid growth, looking to expand offshore or where controlling individuals are transitioning to retirement.

See also:

- [What attracts our attention](#)
- [Commercial deals](#)
- [Tailored engagement](#)
- [Tax Avoidance Taskforce](#)

Next 5,000 private groups tax performance program

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Next-5,000-private-groups-tax-performance-program/>
- Last modified: 20 Jun 2022
- QC 60504

The Next 5,000 tax performance program is funded by the Tax Avoidance Taskforce and seeks to give the community confidence that Australia's largest privately owned and wealthy groups are paying the right amount of tax.

Engagements under this program focus on providing certainty of the tax treatment in relation to significant transactions, activities or events and/or potential tax risks specific to your business. Another focus of the program is to provide advice and guidance on relevant issues to help you get things right. By working with Next 5,000 groups, we aim to increase ongoing and willing participation in the tax and super system.

On this page

- [Who is covered by this program](#)
- [How we tailor our approach to you](#)
- [Findings report – Next 5,000 tax performance program](#)

Who is covered by this program

We use data matching and analytic models to identify Australian resident individuals who, together with their associates, control wealth of more than \$50 million. We then consider all entities within a group.

Our [private group approach](#) helps us to better understand private group businesses and provide you with a tailored experience.

The Next 5,000 program does not include private groups in our [Top 500 private groups tax performance program](#).

See also

- [Tax performance programs for privately owned and wealthy groups](#)
- [Tax Avoidance Taskforce](#)

How we tailor our approach to you

To better tailor our approach and develop strategies to address and mitigate tax risks, we identify trends and priority issues specific to Next 5,000 groups. We work with you by:

- letting you know about issues that attract our attention
- publishing public advice and guidance on issues relevant to you
- sending you information specific to your business about potential risks we have identified.
- providing certainty on significant commercial deals through early engagement and pre-lodgment agreements
- engaging through tailored reviews and, where appropriate, audits.

Our tailored approach includes working with groups to provide certainty on the tax treatment of significant events, transactions, or complex tax issues. A key focus of all our engagements is early resolution (where appropriate). This may involve correcting tax errors and improving existing processes to help you get things right and avoid similar errors going forward.

Where groups are unwilling to work with us in an open and transparent way, we take firmer action, such as traditional reviews and audits and consider the option to use our formal information gathering powers, if necessary.

Types of engagement you can expect

We select the most appropriate type of engagement for your group based on the size and structural complexity of your operations, and results from our data analytics and risk models.

Broadly, we use 3 types of engagement in the Next 5,000 program:

- streamlined assurance reviews based on our justified trust methodology
- reviews on risks specific to your business
- pre-lodgment compliance agreement for your commercial deals and restructure events.

Streamlined assurance reviews

For large groups with complex structures or multiple potential tax issues, we take an assurance approach through a [streamlined assurance review](#) to gain confidence that your group has paid the right amount of tax.

Specific reviews are where we have identified an issue or potential risk which we believe we can work with a group to resolve quickly.

Engaging on risks specific to your business

For some groups, we may identify only specific areas of concern that need to be resolved.

Using the data that you have provided in your tax return or BAS matched against other data reported to us, we can identify potential tax risks specific to your business or group. We will contact you about the risks we have identified, by either:

- sending you information about potential tax risks for your group and what action you can take to prevent tax errors or get further advice

- sending you a letter with details of a discrepancy that we have identified in your tax return and what you can do to review or correct the potential error
- commencing a review.

Reviews on risks specific to your business

These reviews focus on specific potential tax risks which we believe we can work with a group to resolve quickly. They do not involve an assurance approach and do not use our justified trust methodology.

In most cases, we complete these reviews within 90 or 120 days. Reviews generally focus on issues that can be resolved by getting further information from you, or by you completing some specific action, such as lodging an outstanding schedule.

Some issues that are the focus of these reviews are:

- where we have identified income from third-party information attributable to you but did not see this income reported on your tax returns
- where an entity in your group has not lodged their tax returns resulting in a shortfall of income tax paid
- late or incorrect lodgments of tax returns, statements or schedules
- instances where you do not appear to have enough income to cover your expenses or to acquire the assets that you own
- inappropriately accessing tax concessions, credits and offsets that you are not entitled to
- large, one-off, or unusual transactions, including the transfer or shifting of wealth
- trust structures and Division 7A, such as written loan agreements or minimum yearly repayments.

See also

- [What attracts our attention](#)

GST-integrated reviews

We will also undertake a number of GST-integrated reviews as part of the Next 5,000 program. This may be as part of a streamlined assurance review or a review on specific potential tax risks.

Where we consider GST, we will seek objective evidence from you in support of your GST treatment.

We complete GST-integrated reviews within the normal review timeframes.

Findings report – Next 5,000 tax performance program

We have published our first [Findings report Next 5,000 tax performance program](#). This is based on our findings, current as at 31 August 2022.

The report includes:

- our observations and insights on the tax performance of Next 5,000 private groups that we have engaged with through streamlined assurance reviews
- common tax issues, risk themes and behaviours and the importance of good tax governance
- the profile of a typical Next 5,000 group and the characteristics that define the Next 5,000 population
- an outline of how we engage with a Next 5,000 group and how we apply the justified trust methodology in our streamlined assurance reviews
- our observations on the GST issues we have observed arising from significant activities, events or transactions
- our approach to resolving issues and our focus for 2021–22.

Next 5,000 Streamlined assurance reviews



- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Next-5,000-Streamlined-assurance-reviews/>
- Last modified: 20 Jun 2022
- QC 69895









A streamlined assurance review enables us to resolve issues quickly and cooperatively in a transparent way. These reviews apply the justified trust methodology to obtain assurance that your group has correctly reported and paid the right amount of tax in respect of the main trading entities including any significant transactions, events or activities within the group.

Review process

A printable version is also available – [Next 5,000 Program Client Experience Roadmap \(PDF, 465KB\)](#) 

Steps a streamlined assurance review generally follows

Step	Description
	ATO issues notification letter
	ATO calls client

	Client receives letter of commencement no earlier than 3 months from notification (or less as agreed)
	Meeting (face-to-face or phone)
	ATO issues request for information (RFI) providing the client with 28 days to respond
	Phone discussion
	Client sends RFI response to ATO
	Ongoing discussion or further request for information (if required)
	ATO issues streamlined tax assurance report (STAR) to client
	Discuss next steps

If we expect any of the steps to take longer, we will discuss this with you.

In most cases, streamlined assurance reviews will be completed within four months of us receiving the information we request from you in our initial RFI. We usually request information relating to the last two tax returns (lodged prior to the commencement of the review) and review the entities in the group with significant activities, events and transactions.

Generally, through this review process we'll:

- [notify you in writing](#)
- [meet you to understand your business](#)
- [write to you to request information](#)
- [contact you to discuss next steps](#)

We'll notify you in writing

We'll notify you in writing that we plan to start a streamlined assurance review. Commencement of any streamlined assurance review will be no earlier than 3 months from the ATO notifying you in writing (or less as agreed).

Providing documents you should already have (for example, financial statements and tax reconciliations) to help us better understand your circumstances when we commence our review will greatly assist us.

We'll meet with you to understand your business

We'll meet with you to get a better understanding of your business and to discuss timeframes and the information we'll need from you.

We'll write to you to request information

We'll write to you setting out the information we need you to provide. The evidence we gather will help us to assure that you are correctly reporting and paying the right amount of tax in respect of the main trading entities including any significant transactions, events or activities within the group.

We'll contact you to discuss next steps

After we receive your response and consider the information you have provided, we'll contact you to discuss our analysis and next steps. We may organise a meeting to discuss areas of concern we have identified.

How the justified trust methodology is applied to your review

[Justified trust](#) is a concept from the Organisation for Economic Cooperation and Development (OECD).

In a streamlined assurance review, we apply the justified trust methodology to the significant transactions, events and activities of your group and trading entities, by reviewing the following four key areas of our justified trust approach. Given our scope is limited to the significant transactions, events and activities of your group, while we apply the Justified Trust methodology, we do not determine if a group has attained justified trust.

Four key areas of our justified trust approach that we apply to streamlined assurance reviews

Area	What we seek	Details
	We seek to understand the design of your tax governance framework, in relation to accountable management and oversight, recognising tax risks and seeking advice.	This includes: <ul style="list-style-type: none">the key roles and responsibilities related to recognising and

Governance	<p>The effective design of the governance framework should be 'fit for purpose' and appropriate to your group structure and tax issues, aligned with the environment it operates in.</p> <p>This gives us confidence that tax outcomes are being correctly reported and will continue to be.</p>	<p>managing tax risks</p> <ul style="list-style-type: none"> • the processes and controls in the preparation of your income tax return • the processes and controls in place to seek advice from your advisor or the ATO.
Tax risks flagged to market	<p>We seek to prove that tax risks we have communicated to the market are not present.</p>	<p>Tax risks flagged to market include via Practical Compliance Guidelines and Tax Alerts.</p> <p>If a risk is identified, we seek to:</p> <ul style="list-style-type: none"> • understand the transaction • understand the tax treatment • assure the transaction is being reported correctly and the correct amount of tax is being paid.
New and significant transactions	<p>We seek to understand your current business activities, particularly significant or new transactions, and the tax outcomes of these.</p>	<p>This includes:</p> <ul style="list-style-type: none"> • new or significant transactions • ordinary business transactions such as <ul style="list-style-type: none"> ◦ cost of goods sold ◦ revenue ◦ depreciation ◦ expenses • specific industry issues.
	<p>We seek to understand the difference between business performance and tax</p>	<p>This includes:</p>

Book to tax	performance.	<ul style="list-style-type: none"> • statement of taxable income for main trading entities • trust distributions.
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How we assess tax governance for the Next 5,000

Effective tax governance means having clear processes and procedures to support decision making and ensure your group meets its tax and super obligations.

For Streamlined Assurance Reviews involving Next 5,000 private groups, we review the existence and design effectiveness of a groups tax governance framework with a focus of the first three of the [seven principles of effective governance](#).

The three principles we focus on are:

- [Accountable management and oversight](#)
- [Recognise tax risks](#)
- [Seek advice](#)

When assessing the design effectiveness of a group's tax governance, we:

- look for documented policies and procedures that are practical and tailored to the taxpayer's group, business, size, and industry
- focus on the design effectiveness of policies and procedures.

While we don't give governance ratings, we do:

- give opinions on the effectiveness of your policies and procedures
- suggest ways tax governance can be improved.

A private group's tax governance is effective when the processes and procedures it has in place consistently result in the correct tax outcomes and in ensuring that the private group is meeting its obligations.

Effective tax governance will help avoid common errors including:

- clerical and transposition errors
- outstanding lodgment obligations
- incorrect reporting of significant transactions
- not taking adequate steps to satisfy Division 7A.

We have generally found that issues are a result of errors that are:

- easy to correct
- easy to avoid in the future with improved governance
- not because of tax planning or avoidance.

How to prepare for a streamlined assurance review

Prepare for a review by considering the questions and documents we will typically ask for outlined in [Preparing for your Next 5,000 streamlined assurance review](#).

This list is not exhaustive, and we may ask additional or tailored questions.

You should have many of the documents we typically request, such as:

- information used to prepare your tax return
- your company's group structure
- tax governance documents.

Our streamlined assurance reviews generally focus on the latest two tax returns (lodged prior to the commencement of the review), so we're likely to request information for this time period.

Special arrangements for temporary full expensing and loss carry back claims

From 2021 onwards, the review may look at claims for [temporary full expensing](#) (TFE) and [loss carry back](#) (LCB). We may want to:

- discuss how these may affect future lodgments
- review any past TFE and LCB claims.

When reviewing TFE and LCB claims, we may request information outside of the usual 2 year period for streamlined assurance reviews.

What to expect at the end of the review

At the end of the review we do not give an overall assurance rating because of its limited scope. We will share our findings with you by:

- outlining the transactions, events and activities where we agree with the tax treatment you adopted and have tax assured
- giving specific feedback, which may highlight areas for improvement and provide guidance on what you can do to mitigate future risks
- outlining where we're unsatisfied with your risk approach and detailing the steps to mitigate these risks.

If there are no outstanding concerns, we will conclude the review. Where we do have concerns, we may:

- give you additional time to mitigate a risk or correct an error
- provide limited follow up to ensure you have taken action, or
- we may decide to further review the issue or commence an audit.

Any future reviews will only be based on:

- issues or years that have not been assured as part of the streamlined assurance review
- new information or significant changes in your tax situation.

Top 500 private groups tax performance program

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/>
- Last modified: 21 Dec 2022
- QC 53710

The Top 500 private groups tax performance program is a key initiative of the Tax Avoidance Taskforce.

On this page

- [About the program](#)
- [Who is covered by this program](#)
- [How we tailor our approach](#)
- [Engagement process](#)
- [How justified trust applies to your engagement](#)
- [Attaining tax assurance and justified trust](#)
- [Monitoring and maintenance approach](#)
- [What you can expect during an engagement](#)
- [Findings report – Top 500 tax performance program](#)

About the program

The Top 500 private groups tax performance program seeks to give the community confidence that Australia's largest privately owned groups are paying the right amount of tax. It is one of the programs under the [Tax Avoidance Taskforce](#).

The program uses a one-to-one approach to collaborative engagements whose aim is to increase willing participation through a focus on prevention rather than correction.

By working together, we're able to better understand the activities carried on by a Top 500 group and tailor their experience when they need to engage with us. This increased transparency means we can identify and resolve issues early and provide services efficiently.

Our objective is to provide a level of assurance based on the principles of [justified trust](#) and give the Top 500 group certainty around whether it is complying with its tax obligations.

If a Top 500 private group doesn't engage with us and demonstrate they want to comply with their tax obligations, we will seek to assure the correct amount of tax has been paid through traditional review and audit action.

Who is covered by this program

The Top 500 private groups program includes private groups:

- with over \$250 million turnover, regardless of net asset value
- with over \$500 million net assets, regardless of turnover
- with over \$100 million turnover and over \$250 million in net assets
- that are market leaders or groups of specific interest.

We use sophisticated data matching and analytic models to identify wealthy privately owned groups and link them to associated entities. We then look at the group of entities as a whole. This [private group approach](#) helps us to understand the business, which allows us to focus on the issues that are relevant and provide a more tailored experience.

For more information see [Tax performance programs for privately owned and wealthy groups](#).

How we tailor our approach

Our engagement approach is tailored and matched to:

- the level of complexity of the Top 500 group's business and tax affairs
- whether the Top 500 group's representatives are open and transparent with us
- the Top 500 group's commitment to demonstrating a willingness to participate in the tax and superannuation systems over the long term
- the quality of [tax governance](#) that the group has in place to ensure that the correct amount of tax will be paid in the future.

By engaging directly, we build a better understanding of the group's business, the issues that drive its success and its approach to risk. Ongoing engagement means we can track compliance from year to year and work together to prevent issues from recurring. The forward-looking aspects of our engagement approach helps the group to maintain good compliance into the future.

Our one-to-one engagements will focus on:

- assuring that the correct amount of tax has been paid in the year or years under review and will continue to be paid into the future (that is, the justified trust approach)
- identifying opportunities where we can work together to help the Top 500 group engage with the tax system
- resolving, in real time, any issues that may arise prior to lodgment.

Based on our interactions, groups will be placed in one of the following engagement experiences.

Partnering

We partner with the Top 500 group to help it maintain good compliance.

Top 500 private groups that have [attained justified trust](#) will be in the partnering category. To reach a partnering position a group must satisfy the key areas of justified trust, which includes the need to have highly effective tax governance in

place. See [How we assess tax governance for Top 500 privately owned groups](#).

If a Top 500 group achieves justified trust, we will partner with its representatives to deliver timely and efficient services that help the group meet its tax obligations. We will also reduce the intensity of our engagement interactions with the group and reduce the group's compliance costs as we enter into a [monitoring and maintenance period](#).

Encouraging

We encourage the Top 500 group to address areas for improvement.

This category includes Top 500 groups that can demonstrate that they have been complying with their obligations, but whose level of tax governance is insufficient to give us confidence that they will continue to comply. It also includes groups who are selectively transparent in their dealings with us.

Top 500 groups in this category are encouraged and supported to improve their tax governance; and to work openly with us so we can deliver tailored services and approaches that provide mutual certainty.

Influencing

We take firmer action in order to influence the Top 500 group toward improving their compliance.




This category includes groups that choose not to voluntarily engage in the Top 500 program and who also lack transparency in their dealings with us. It also includes groups who take aggressive approaches to the management of their tax affairs.



Where Top 500 groups are generally not transparent and take high risk positions, we'll adopt a more intensive approach to ensure risks are addressed using review or audit. Where necessary, we will also use our formal information gathering powers.

Engagement process

A printable version is also available – [Top 500 Program Client Experience Roadmap \(PDF 505KB\)](#)  .

The engagement process generally includes the following steps.

	ATO issues notification letter
	ATO calls client or their representative to arrange a meeting
	Meeting (face-to-face, video conference, or phone)

	ATO issues a letter explaining our approach to engagements with the Top 500 and states the agreed principles that will guide the engagement
	One-to-one engagement interactions commence
	ATO initiates the assurance process with a request for information (RFI) which is tailored in collaboration with the Top 500 client
	Client sends RFI response to ATO
	<p>Analysis of the four key areas of justified trust:</p> <ul style="list-style-type: none"> • tax governance • tax risks flagged to the market • verify treatments of ongoing and atypical transactions • alignment between accounting and tax
	Ongoing discussion or further RFI (if required)
	ATO issues an assurance letter providing details of assurance outcomes for entities within the group for the relevant years and next actions are detailed (where applicable)
	Subsequent yearly engagement will be tailored based on level of assurance

How justified trust applies to your engagement

We use an assurance-based approach to determine whether a Top 500 group is paying the correct amount of tax by applying the justified trust methodology. The process of assurance requires that we have a thorough understanding of a Top 500 group's income producing and wealth extraction activities.

When engaging with a Top 500 client, we review the four key areas that underpin the [justified trust methodology](#).

Effective tax governance

Tax governance means having clear processes and procedures in place within a corporate governance framework to support decision-making, and to ensure that the group is meeting its taxation and superannuation obligations.

Tax governance is effective when the Top 500 group can demonstrate that the framework, processes and procedures that they have in place will result in ongoing compliance with their lodgement, reporting and payment obligations. The [Top 500 tax governance](#) area is particularly important because effective tax governance provides the foundations upon which a private group can demonstrate that they are

achieving the other three key areas of justified trust.

Tax risks flagged to market

We flag compliance risks to the market through communications such as:

- public rulings
- taxpayer alerts
- practical compliance guidelines.

We need to:

- be satisfied that these risks are not present within the group
- ensure that the likelihood of their arising in the future is appropriately mitigated through a group's tax governance framework.

Ongoing and atypical transactions

We must have a high degree of confidence that the tax treatment of ongoing income producing activities of a Top 500 group is correct.

Similarly, we must have high degree of confidence that the tax treatment of any atypical transactions entered into by the group are also correct (for example, CGT consequences of asset disposals, restructures, acquisitions).

Differences in accounting and tax results

We must understand the adjustments that are included in the Top 500 group's tax reconciliations. We need to be satisfied that the material book-to-tax adjustments are complete and correct in the context of the activities that are being carried on.

Assurance over book-to-tax requires transparency so we can verify that the adjustments to the group's accounting treatments appropriately reflect the correct tax principles.

The process includes:

- obtaining an understanding of the accounting treatments used by each relevant entity
- conducting an in-depth reconciliation of the
 - working papers supporting the tax return
 - group's accounting records (financial statements, trial balance, general ledger).

Attaining tax assurance and justified trust

A Top 500 group can obtain holistic tax assurance and achieve justified trust where it satisfies all four of the key areas at a group level. Achieving justified trust will generate a tangible change in a Top 500 private group's experience, as we move into a [monitoring and maintenance period](#).

A Top 500 group can also receive partial tax assurance through the application of the justified trust methodology. Partial tax assurance can be provided where it has been determined that specific (or all) entities in the group are reporting correctly and (if relevant) have paid the correct amount of tax in an income year. This may be the case even though the Top 500 group as a whole has not achieved justified trust (for example, because the group does not have adequate tax governance in place to give us confidence that they will continue to report correctly).

Monitoring and maintenance approach

Reaching justified trust will generate a tangible change in a Top 500 private group's experience and a consequential scale-down in engagement interactions, as we move into a 3 year monitoring and maintenance period.

During this 3 year period, we will rely on the tax governance framework operating effectively to mitigate tax risk. We will provide contemporary services and will only seek to verify the treatment of new tax issues or other material changes to the group.

We will check in with you at least annually, but we also expect that representatives of the group will tell us in real time if the group:

- has made material changes to the design of its tax governance framework or changes to the management of the tax function (for example, a new CFO, tax manager, tax agent or tax partner)
- identifies tax risks that have been newly flagged to market subsist within the group
- has experienced material changes to the nature of their ongoing transactions
- enters into new or atypical transactions of a type not previously assured
- has made material changes in their approach to book-to-tax treatments
- has taken new tax positions or changed tax positions that have previously been assured
- identifies disclosure issues or errors that should be corrected.

After 3 years of monitoring and maintenance

At the expiration of the 3 years of monitoring and maintenance, we will refresh our understanding and evidence base to reaffirm our confidence that the Top 500 group continues to pay the right amount of tax. This will be done by conducting a refreshed justified trust review.

The assurance activities for the refresh year will resume a whole-of-business approach, covering all of the Top 500 group's tax outcomes in applying the 4 key areas of justified trust. However, our assurance activities in the refresh year will build on the detailed understanding that we already have of the group's activities. Therefore, in ordinary circumstances we expect that the process of refreshing our understanding will mean we leverage off

- existing information
- the evidence we hold

- our knowledge of the group.

This will mean less resource investment by taxpayers and us.

The refresh year review will focus on the current income year and will generally not involve enquiries into the years covered by monitoring and maintenance unless key or material issues remain unassured for those years.

We will work with taxpayers on the scope and timing of the workplan for the refresh year.

In certain circumstances, we may conduct a refreshed justified trust review earlier than the fourth year, such as when:

- there has been a fundamental change in business (a takeover, for example) such that there is a new business operation we need to obtain assurance over
- we have reason to consider that our justified trust should no longer be maintained.

What you can expect during an engagement

If you're the controller or representative of a Top 500 private group, you can expect our engagements with you to cover your group's tax and superannuation obligations.

We undertake an initial engagement to confirm our understanding of your business and industry and to understand your approach to managing your group's tax obligations.

Our aim is to:

- provide a level of assurance around whether your group has been getting things right
- to work with you in order to obtain high levels of assurance that you will report correctly in the future.

In some cases this may involve correcting tax treatments that have been applied in prior years.

The engagement will typically involve:

- building an understanding of your ordinary business activities and any atypical transactions that have occurred during the year
- identifying tax issues that arise from your income-generating activities and any atypical transactions that you have undertaken
- conducting an assessment of your tax governance arrangements
- reviewing evidence to establish whether each of the 4 areas of justified trust have been achieved.

At the end of engagement for a year, we'll:

- outline the activities and transactions where we agree with the tax treatments

that have been applied

- give specific feedback based on what we have observed during the engagement – this feedback may highlight areas for improvement and provide guidance on what your group can do to mitigate risks in the future
- outline the risks that we have identified and explain the next steps that we intend to take, where relevant.

Findings report – Top 500 tax performance program

We have published our second *Findings report for the Top 500 program*. This is based on our findings, current at June 2022. The report:

- provides an update to the community about the work undertaken in the Top 500 program since the June 2021 report
- communicates our observations and insights from our engagements with the Top 500 population and provide our findings in the context of the 4 areas of [justified trust](#)
- highlights impediments that are preventing a significant number of Top 500 groups from achieving justified trust
- provides insights into some of the most common tax issues and risks that are present in the Top 500 population
- outline improvements and changes we are making to the program in response to
 - feedback from Top 500 groups
 - our own observations and insights to date
 - what we have learned as the program has evolved.

View the report at [Findings report Top 500 tax performance program](#).

Top 500 client survey summary – February 2022

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Top-500-client-survey-summary---February-2022/>
- Last modified: 02 Nov 2022
- QC 70754

Summary of the outcomes from our survey conducted with Top 500 program participants in February 2022.

On this page

- [Overview](#)
- [Key insights](#)
- [Tax governance](#)
- [Client engagement](#)
- [What clients said](#)

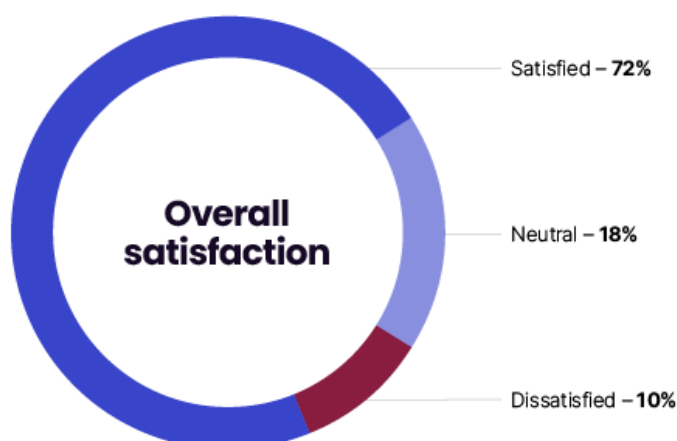
Overview

The survey was conducted to understand our clients experience from their involvement in the [Top 500 program](#). We sent a questionnaire to Top 500 participants and their advisers who we had engaged with.

36% of all survey questionnaires we issued were responded to. We note that some advisers may have responded using one questionnaire on behalf of multiple clients.

The results showed that 72% of participants were satisfied with the program, while 18% were neutral and 10% were not satisfied.

Overall satisfaction responses



Key insights

- Clients value early and ongoing engagement through a one-on-one direct relationship with us.
- Case teams rated highly in their understanding of our clients' groups. However, we need to ensure that requests for information are tailored.
- The program has assisted clients understand how effective tax governance helps them meet their tax obligations. However, this has not strongly translated into investing more in this area.
- We need to ensure that we communicate our view of the effectiveness of governance frameworks and tax risks.
- Costs of participation in the program continue to rate as a concern.
- Clients see benefit in discussing issues through open and regular communication which facilitates early resolution of tax issues and prevents disputes.
- We should be mindful of the length of time needed to respond to requests for

information. Clients would also like more regular updates about the progress of their engagement.

- As a result of our engagements, clients are more likely to consider the tax implications of future transactions.

Tax governance

Participants responded to questions regarding tax governance for the Top 500 program as follows.

I understand how effective tax governance supports me to meet my tax obligations

- 84% agree
- 12% neutral
- 4% disagree.

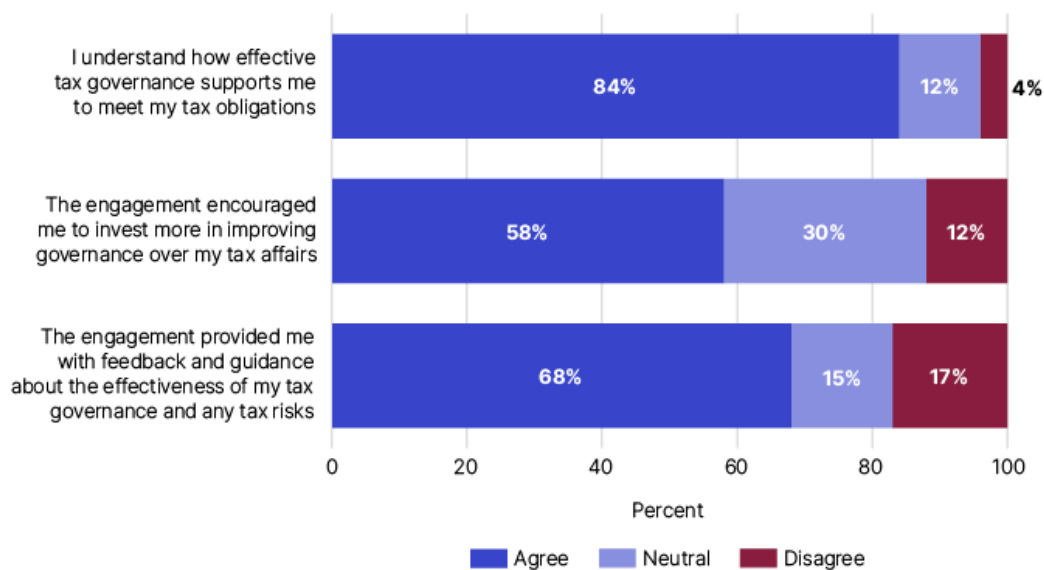
The engagement encouraged me to invest more in improving governance over my tax affairs

- 58% agree
- 30% neutral
- 12% disagree.

The engagement provided me with feedback and guidance about the effectiveness of my tax governance and any tax risks

- 68% agree
- 15% neutral
- 17% disagree.

Tax governance responses



Client engagement

Participants rated our client engagement as follows.

The level of communication you received about the objectives of the Top 500 program

- 81% satisfied
- 14% neutral
- 5% dissatisfied.

The level of understanding of your group structure

- 81% satisfied
- 13% neutral
- 6% dissatisfied.

The level of understanding and working knowledge of your business or other income producing activities

- 78% satisfied
- 14% neutral
- 8% dissatisfied.

The level of knowledge of the tax law relevant to issues raised in the engagement

- 75% satisfied
- 16% neutral
- 9% dissatisfied.

The extent to which requests for information are tailored to business and / or income producing activities

- 68% satisfied
- 20% neutral
- 12% dissatisfied.

The amount of time provided to respond to requests for information is reasonable

- 77% satisfied
- 9% neutral
- 14% dissatisfied.

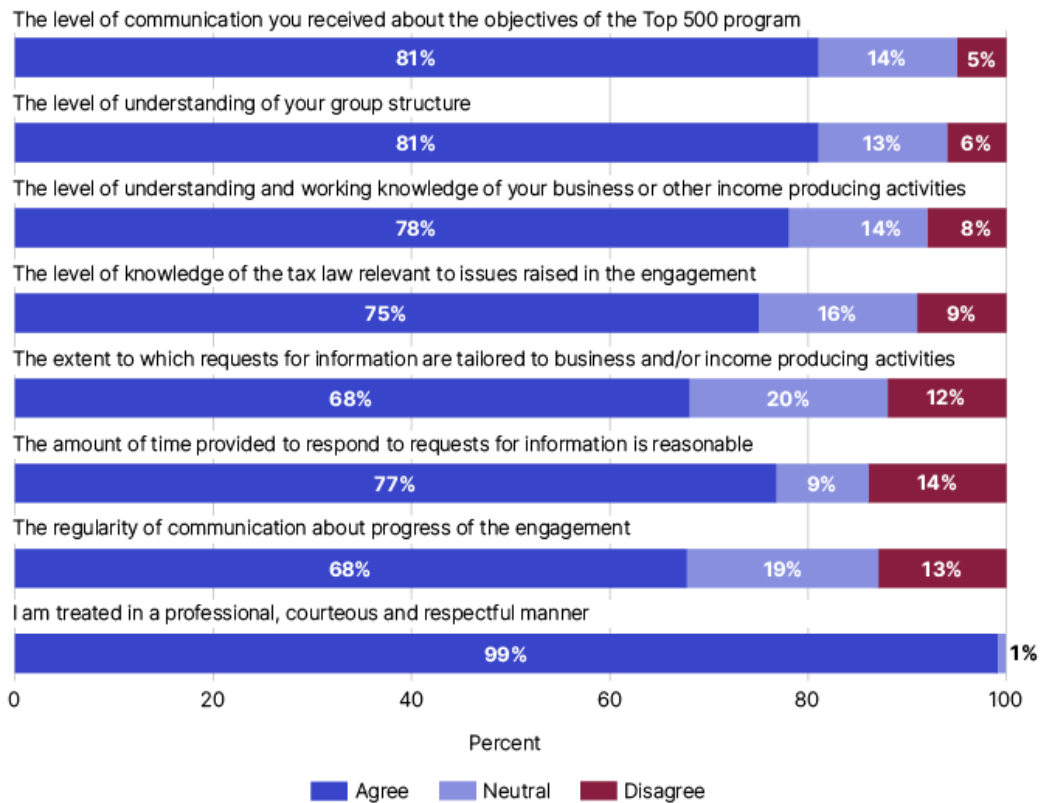
The regularity of communication about the progress of the engagement

- 68% satisfied
- 19% neutral
- 13% dissatisfied.

I am treated in a professional, courteous and respectful manner

- 99% satisfied
- 1% neutral
- 0% dissatisfied.

Client engagement responses



What clients said

- The opportunity to engage on technical matters and risks in a timely basis rather than years later when a dispute occurs is an area that is working well.
- To have a direct contact and ability to discuss issues is a win-win.
- We have been working with our ATO relationship team for many years and over that time have built a mutual relationship of confidence and trust.
- Timing of requests and extent of information required can be extremely resource intensive.
- The process is slow – it would be good to close out the review in a shorter time frame.
- Emphasis on tax governance also has a good impact I think on client's systems and processes.
- The education around ATO expectations relating to risk areas and tax governance is working well.
- Tax governance documentation to meet ATO requests is very time and resource consuming.
- Understand that private groups may not have the level of governance documentation one would see in public groups.
- Provide much clearer policy guidance on how obtaining a positive governance or assurance rating will favourably impact future ATO interactions – that is, frequency, intensity, etc.

How we assess tax governance for Top 500 privately owned groups

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/How-we-assess-tax-governance-for-Top-500-private-ly-owned-groups/>
- Last modified: 21 Dec 2022
- QC 59345

How we rate the effectiveness of your Top 500 group's tax governance and what you can expect when you engage with us.

On this page

- [How we assess your tax governance](#)
- [Seven principles of effective tax governance](#)

How we assess your tax governance

Tax governance is an important focus for the Top 500 tax performance program as it is an area that must be satisfied in achieving justified trust with us.

Demonstrating that your group has effective tax governance in place contributes to giving both you and us confidence that your group is paying the right amount of tax and will continue to do so. For Top 500 groups that wish to demonstrate that they are complying with their tax obligations, taking steps to improve tax governance provides the pathway towards achieving justified trust.

When looking at a Top 500 group's tax governance, our focus is on the framework, processes and procedures the group uses to govern its tax and super obligations. Our focus includes evaluating the existence and design of documented procedures or written guidance available to key decision makers and employees. We also recognise that every business and private group is different, so there is no 'one size fits all' approach to how that might be done.

To demonstrate effective tax governance, it is important you have a framework, process and procedures in place for your whole group, including for trading and non-trading entities; and over the mechanisms your group uses to extract wealth. Generally, the scope of tax governance may need to be more robust for entities that are carrying on a business due to the complexity that often arises with the conduct of commercial activities.

Effective tax governance in the private wealth market means there are processes and procedures in place to ensure that tax risk is mitigated for both the wealth creation and wealth extraction activities that occur within your group.

Seven principles of effective tax governance

For Top 500 private groups, we consider how the [7 principles of effective tax governance](#) have been applied in the context of your group.

We consider all of the 7 principles, with an increased emphasis on the first 4.

We want to help you ensure that the tax governance processes and procedures that you have in place are designed effectively and that they are fit for purpose. This means they are appropriate for the group's structure, size, complexity and the industry in which your group operates. We then want to assure whether those processes and procedures are operating effectively in practice.

Where we identify areas for improvement in our [effective tax governance for Top 500 private groups](#). We will seek to work with you to make suggestions about what your group can do to help ensure it's getting things right.

Your tax governance rating

We will provide you with our view of the effectiveness of your tax governance.

Based on our discussions with you, your responses and the evidence you supply, you will be provided with an overall rating for your tax governance.

Ratings

Rating	Definition
Very high	You provided evidence to demonstrate that a tax governance framework: <ul style="list-style-type: none">• exists• has been designed effectively• is operating effectively in practice.
High	You provided evidence to demonstrate that a tax governance framework: <ul style="list-style-type: none">• exists• has been designed effectively• is operating effectively in practice, with one or more areas of improvement.
Medium	You provided evidence to demonstrate that a tax governance framework: <ul style="list-style-type: none">• exists• has been designed effectively, with one of more areas of improvement in both design and operational effectiveness.
Low	You provided evidence to demonstrate that a tax governance framework exists, with a significant number of areas requiring improvement both in terms of design and operational effectiveness.

Very low	You have not provided sufficient evidence to demonstrate a tax governance framework exists or we have significant concerns with your tax risk management and guidance.
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Top 500 GST assurance program

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Top-500-GST-assurance-program/>
- Last modified: 02 Feb 2023
- QC 67423

This program seeks to provide greater assurance that Top 500 groups are reporting the right amount of GST.

On this page

- [How we operate](#)
- [How we tailor our compliance approach](#)
- [How justified trust applies to your engagement](#)

How we operate

Our Top 500 GST assurance program supports and expands on existing compliance approaches, including justified trust reviews for income tax.

Our specialist GST teams engage with the income tax engagement and assurance team and each taxpayer to gain assurance that they are reporting the right amount of GST.

We also have resources, such as the [Tax governance guide for privately owned groups](#), that outline the key features of governance we believe a business should have to effectively manage tax risks.

How we tailor our compliance approach

Under the [Top 500 program](#), GST and income tax teams work collaboratively to deliver [justified trust](#) assurance reviews across both taxes. We gain assurance by engaging with the Top 500 group and will:

- review a 12 month period that aligns to the income tax year under review
- issue a combined GST and income tax assurance letter providing
 - details of assurance outcomes for entities within the group for the relevant years

- next actions (if applicable).

During our engagement we apply our justified trust methodology and tailor our approach to the circumstances of the Top 500 group, including:

- the taxpayer's overall GST performance
- the type and size of business activities
- GST risk management and governance
- our understanding of the taxpayer from income tax engagements.

How justified trust applies to your engagement

We apply the justified trust methodology and we seek to obtain assurance that:

- appropriate GST risk and governance frameworks exist and are designed effectively
- none of the GST risks we have flagged to the market are present
- the GST outcomes of data testing, atypical, new or significant transactions are appropriate
- we can understand and explain the various streams of economic activity and how they are treated for GST by reviewing the differences between the accounting and GST results.

A GST assurance review will focus on the same financial year as the existing income tax review.

Tax governance

When reviewing your tax control framework for GST purposes, we work collaboratively with the income tax team.

While all [7 principles of effective tax governance](#) are considered for the Top 500 group, for GST we focus on 2 of these principles. The design of these principles directly influences the likelihood the correct amount of GST is remitted or refunded. These two principles are:

- recognising tax issues and risks
- integrity in reporting.

Recognise tax issues and risks

Having regard to the activities and type of entity, this should include having a documented process to prepare the business activity statement (BAS).

Integrity in reporting

Having regard to the activities and type of entity, this should include:

- periodically review systems and controls in place to ensure the controls are operating effectively, noting that this does not need to be tested by an independent tester
- regularly review the underlying data, noting that this does not need to be

- tested by an independent tester
- data controls for information set up and manual processing of data.

Data and transactional testing – ongoing transactions

Data and transaction testing is also undertaken, generally focusing on 3 to 12 months of consecutive BAS periods, to determine whether GST outcomes are appropriate.

Differences in accounting and GST results

We have developed an approach to better understand why accounting and GST results vary. This approach is one of the ways we obtain greater assurance you are paying the right amount of GST.

The approach uses a standard method statement applying a top-down approach to identify and understand variances between accounting figures reported in prepared financials and GST reported on the BAS. The approach is not intended for use by taxpayers with predominately input taxed supplies.

The method is based on the same principles as the [GST analytical tool \(GAT\)](#) referring back to financial accounts. However, it has been tailored specifically to take into account the differences between public and private groups.

The method statement starts with the revenue and expenses reported in your profit and loss statement. It works through a series of adjustments to compare this information with your annualised BAS covering your financial reporting year.

We seek to understand what parts of your reported accounting revenue represent:

- taxable supplies
- GST-free supplies
- input taxed supplies
- transactions that are not supplies for GST purposes (out-of-scope supplies).

We also seek to understand what parts of your reported accounting expenses represent:

- GST- bearing expenses
- non-GST bearing expenses.

The four key steps to the approach are:

1. grouping variances between reporting entities
2. non-GST bearing items (permanent differences)
3. balance sheet and cashflow items (temporary differences)
4. other adjustments (offsetting items/industry specific).

This helps us to understand variances between your financial statements and your BAS results. It also assists us to determine whether those variances are within our expectations relating to the other key focus areas of the justified trust methodology. The approach is not designed to quantify tax shortfalls or overpayments.

We will gain an understanding about the following justified trust focus areas:

- effective tax governance
- tax risks flagged to market
- ongoing and atypical transactions (including GST data and transaction testing).

Once this is progressed, we will use that information about your business to assist our understanding of any potential variances. We will engage with you throughout this process including seeking further explanations where any variances cannot be explained from the information we hold.

Private group approach

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Private-group-approach/>
- Last modified: 01 Oct 2020
- QC 44823

We identify a private group as a group of entities under the control of an individual and their associates. By control, we mean effective control where an individual has the primary decision-making role for the group.

Our private group approach considers all entities related to a controlling individual. Subject to privacy restrictions, we generally engage with the head of the group rather than separate group entities when conducting our enquiries.

This approach allows us to better understand the choices and behaviours of the controlling mind behind a private group structure.

Generally private groups have limited disclosure and less publicly available information. By engaging early with each other, we can build transparency and prevent mistakes.

Using sophisticated data mining techniques, we can detect relationships between the controlling individual and associated private entities, including companies, trusts and partnerships. As a result, we can risk-assess compliance behaviours at a holistic, group level.

We continue to expand our use of data to maintain a real time view of taxpayers and tailor our engagements in a way that makes it easy to get things right and hard not to.

See also:

- [About Privately Owned and Wealthy Groups](#)
- [Tax performance programs for private groups](#)

Effective tax governance criteria for Top 500 private groups

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Effective-tax-governance-criteria-for-Top-500-private-groups/>
- Last modified: 21 Dec 2022
- QC 71108

Guidance about how to implement an effective tax governance framework for Top 500 privately owned wealthy groups.

[The importance of effective tax governance and our approach](#)

Find out about why it's important and how we approach effective tax governance.

[Required items for an effective tax governance framework](#)

Find out what's required for principles 1 to 4 in an effective tax governance framework for Top 500 groups.

[Additional items for an effective tax governance framework](#)

Find out what additional items Top 500 groups can implement for principles 1 to 4 for an effective tax governance framework.

[Further guidance and examples for effective tax governance](#)

Further guidance and examples for Top 500 groups for how an effective tax governance framework could be implemented.

The importance of effective tax governance and our approach

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Effective-tax-governance-criteria-for-Top-500-private-groups/Our-approach/>
- Last modified: 21 Dec 2022

- QC 71109

The implementation of effective tax governance is an important step in helping ensure that Top 500 privately owned groups (Top 500 groups) are complying, and will continue to comply, with their tax and super obligations. When combined with achieving high levels of tax assurance, having effective tax governance in place over each of the areas should result in a Top 500 group achieving [Justified Trust](#).

From a Top 500 group perspective, tax governance helps with the retention of organisational knowledge which can be easily lost with the departure of key personnel. In addition, documented tax governance frameworks, processes and procedures, ensures that new personnel understand their roles and responsibilities and how the group interacts with its advisors when minimising risk.

When reviewing the approach taken by a Top 500 group in implementing tax governance, we consider how the [7 principles of effective tax governance](#) have been applied in the context of the group. We consider all 7 principles, with an increased emphasis on the first 4 principles.

To achieve a high rating for tax governance, a Top 500 group must tailor and provide evidence to show that for each of the key tax governance principles:

- The [required items](#) have been implemented, designed effectively, and where required operating effectively in practice.
- At least 3 of the [additional items](#) have been implemented, designed effectively, and where required operating effectively in practice.

Where your Top 500 group undertakes complex or diverse activities, the tax governance that is required will need to be robust. Accordingly, more of the required and additional items will be relevant to your group. Conversely, where your Top 500 group undertakes less complex or diverse activities, such as a narrow range of passive investment activity, the tax governance that is required over those activities is likely to be somewhat simpler.

The process of implementing effective tax governance in your group doesn't need to occur in a single year. Rather, the process of implementation can occur incrementally and where required, in collaboration with our Top 500 engagement teams.

We recommend that Top 500 groups have an overarching tax governance framework in place that is fit for purpose. We recognise that a Top 500 group may have more than one tax governance framework to accommodate:

- diverse income producing activities
- its ownership structure
- existing approach to management and reporting.

For example, if a Top 500 group operates its business activities along divisional lines, it may wish to keep the frameworks governing each of those activities separate. It could also maintain another framework to manage the tax issues arising from its investment or non-trading activities. Conversely, a Top 500 group may operate a centralised finance or tax function, or both, and may wish to ensure that

its tax governance framework is also structured using a centralised approach.

At any level of centralisation or decentralisation, an overarching tax governance framework should include:

- specific roles and responsibilities
- structure around the management of lodgments and payments
- a list of the tax issues that the Top 500 group is required to manage
- a policy governing how and when to seek external advice
- policies and procedures to ensure high levels of integrity around the information that the group reports for accounting and tax.

In addition to an overarching tax governance framework, to the extent that tax issues are managed internally, documented processes or procedures should exist within the framework to manage material tax issues that arise at a group or entity level.

If responsibility for the management of tax issues is shared with, or placed in the hands of an external advisor, an overarching engagement letter or accompanying communication should contain:

- a list of tax issues requiring management
- a clear scope of the advisor's work
- the responsibilities of the Top 500 group in ensuring the engagement produces the right output.

It is also important that the processes and procedures provide governance over the management of tax issues that arise from both wealth creation and its wealth extraction activities.

Required items for an effective tax governance framework

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Effective-tax-governance-criteria-for-Top-500-private-groups/Required-items/>
- Last modified: 21 Dec 2022
- QC 71110

Find out what's required for principles 1 to 4 in an effective tax governance framework for Top 500 groups.

On this page

- [Introduction](#)

- [Principle 1: Accountable management and oversight](#)
- [Principle 2: Recognise tax issues and risks](#)
- [Principle 3: Seek advice](#)
- [Principle 4: Integrity in reporting](#)

Introduction

To achieve a high rating for tax governance, you implement the required items where they apply.

Principle 1: Accountable management and oversight

Principle 1 requires that your group has put in place:

- Roles and responsibilities in respect of your Top 500 group's tax and accounting functions are clearly defined and designed effectively, for example through organisational charts that
 - map responsibilities for the management of tax issues that arise in your group to key personnel
 - designate role descriptions and sign off points for key deliverables.
- Lodgment and payment calendars with supporting project management procedures to help ensure that your group meets its key lodgment and tax payment obligations on time.
- Where external tax advisors are engaged, roles and responsibilities are clearly defined and fit for purpose for you and them. The role of your advisors should be documented in an overarching advisor engagement letter, or in engagement specific agreement that sets the scope of work for the engagement, including:
 - a list of entities that are in scope
 - deliverables to be produced by the tax agent or advisor which may include a list of lodgments to be prepared or reviewed annually, the occurrence of pre-lodgment closure meetings, the provision of transmittal letters, and periodic catchups
 - a list of financial or other information to be provided by you that will be relied upon by the agent or advisor in the conduct of their work
 - tax issues that are in scope for advisor review, as referenced to a list of tax issues, materiality thresholds, or both
 - specific focus areas where required for items that might present a higher risk of incorrect reporting.
- Mechanisms through which your group's finance or tax function can access adequate resources to help ensure that your group can meet its tax obligations – the policy includes employing, or being able to engage externally, with suitably competent personnel with sound tax qualifications.

Operational effectiveness testing

You need evidence that your policy, processes and procedures are operating effectively requiring verification that the relevant processes or procedures have been followed. In practice, testing the operational effectiveness of processes and procedures that fall under the Accountable Management and Oversight principle can be demonstrated by reference to written evidence such as:

- lodgments and payments per the portal or receipts have occurred in accordance with your group's lodgment and payments calendar
- steps taken to undertake the preparation of returns can be seen through email communications as having occurred in accordance with the return project management procedures
- emails or meeting minutes showing communications between functionaries and the responsible persons identified in your 'Roles and Responsibilities' procedures concerning escalation, review and sign off
- records of agendas, pre-lodgment meetings and information exchanges with your group's advisors etc, have been retained and show alignment with the scope of work and responsibilities under the most recent tax return specific lodgment engagement.

See an example of an [Accountable Management and Oversight](#) tax governance framework.

Principle 2: Recognise tax issues and risks

Principle 2 requires that your group has put in place a process to identify the tax issues and risks that your group has to manage, and processes or procedures that govern how each of those tax issues and risks should be managed.

Recognising tax issues and risks

- Your overarching tax governance framework includes a policy and procedure to conduct an environmental assessment that identifies 'business-as-usual' tax issues that arise from your group's income producing activities.
- The environmental assessment of the tax issues your group is required to managed is a one-off exercise that should be undertaken when a tax governance framework is first implemented, or as part of a self-review process.
- The process of recognising tax issues should also ensure legacy tax issues are identified and taken into account, and that there are processes in place to position your group to be able to manage the potential for tax risk that may arise from atypical transactions.

Operational effectiveness testing

- Evidencing that your policy, processes and procedures are operating effectively requires verifying that the relevant processes or procedures have been followed – in practice, testing the operational effectiveness of processes and procedures that fall under the 'recognise' aspect of principle 2 can be demonstrated by reference to written evidence such as:
 - a documented 'Tax Issues Register' exists that clearly records the business-as-usual tax issues that your group (or specific entities within your group) must manage
 - the workings papers for how the 'Tax Issues Register' was developed have been sighted, which (as an example) show how economic activities are tracked to the trial balance as the starting basis to identify tax issues requiring management
 - where an atypical transaction has occurred, a process of initial triage and

escalation or referral regarding the management of tax risk arising from the transaction is evident from communications.

See an example of a [Recognise Tax Issues and Risks](#) tax governance procedure.

Managing material tax issues and risks

It's important all of the tax issues that arise from the activities undertaken in your group are managed to ensure correct reporting.

However, the tax issues that you should manage under a documented tax governance process or procedure will have been determined based on the following qualitative and quantitative materiality thresholds:

- The quantitative materiality threshold at which a tax governance process or procedure should be in place for tax issues arising from an entity's wealth creation activities (that comprises of an active business) is the lower of \$500,000 or 5% of the entity's total revenue or expense items.

With some trial balance accounts, such as where there is low potential for temporary or permanent book-to-tax differences in the account, tax governance could be limited to reliance on the work of an external auditor in verifying the completeness and accuracy of the account balance.

Where the entity's activities are passive in nature and the 5% of total income or expense threshold is being applied, you are only required to consider tax governance over the account when the balance in the account is greater than \$100,000.

- The qualitative materiality factors arising from your group's wealth creation activities include trial balance items of entities within your group where there is a higher risk of misreporting (such as uncertainties with tax characterisation) and with respect to the management of tax information that does, or could, sit outside of the trial balance, for example
 - franking account balances
 - income derived for tax under transfer pricing arrangements
 - loss schedules.
 - expenditure deducted over time.

The qualitative materiality factors include all tax issues related to your choice of operating and ownership structure (for example, use of companies, trusts or partnerships) and consequential wealth extraction issues (for example, the application of Division 6 and Division 7A).

Operational effectiveness testing

Evidencing that your policy, processes or procedures are operating effectively requires verifying that the relevant processes or procedures that your group has in place to manage the discreet material tax issues have been followed.

In practice, testing the operational effectiveness of processes and procedures that fall under the 'manage' aspect of principle 2 can be demonstrated by reference to

our [Managing Tax Issues](#) examples.

Managing the preparation of income tax returns

The tax return procedures that impact on your group should be documented using checklists, decisions trees or similar.

- To the extent that tax returns are prepared in-house, there are documented end-to-end procedures that are effectively designed and operating effectively in practice. The procedures include:
 - instructions around how to prepare tax return disclosure items, and how data is extracted from source documents
 - processes to reconcile and reference tax reconciliation calculations and tax return disclosure items to the trial balance, accounting or other work papers (see also [principle 4](#)).
- There are effective controls for data and information and the policy and procedures include:
 - protocols to ensure final versions are used to either prepare tax returns in-house, or are provided to the group's external tax advisors to undertake the tax returns preparation process
 - specific procedures to check
 - accounting profit used in the return against finalised financial accounts
 - that opening balances match closing balances in the prior year income tax return
 - final versions of advice are used in the tax return where tax positions are based on external tax advice (for example, due to a significant event) or deliverables under a separate engagement with an external advisor (for example, R&D calculations)
 - checklists and other controls to govern what information is provided to an external reviewer (such as a tax agent) and to ensure that the information provided to the reviewer in response to queries is accurate and complete.
- Where returns are prepared by external tax agents, there is evidence that your tax agent has the following tax governance processes in place to include:
 - tax return and tax reconciliation workpapers prepared by the tax agent are referenced and reconcile to source workpapers, such as the trial balance or accounting and other workpapers
 - a transmittal letter is issued with the tax return which outlines the information provided by your group and assertions that have been relied on by the tax agent in preparing the return, as well as significant matters and tax positions that have been adopted by your agent.
- You exercise oversight over the work performed by the tax agents in reviewing or preparing your tax return, including having procedures:
 - that ensure all the necessary information you are required to provide, has been provided
 - to verify that the scope of work carried out by the tax agent is consistent with the scope of work agreed to in your engagement letter or engagement specific agreement

- to verify that the deliverables required from your tax agent have been provided in final form
- that require the review of the transmittal letter issued by the tax agent, which should outline the significant tax matters and, where relevant, changes made to the tax return as a result of the review.

Operational effectiveness testing

Evidencing that your processes and procedures are operating effectively requires verifying that the relevant processes and procedures have been followed.

In practice, testing the operational effectiveness of processes and procedures that fall under the 'manage' aspect of principle 2 (as it pertains to tax returns) can be demonstrated by reference to written evidence such as, but not limited to:

- a checklist prepared showing that the tax return procedures have been followed and the checklist has been sample tested against the disclosures in the return
- checklists prepared and corresponding emails (with attachments) sighted that show information that has been sent across to your group's tax agent
- emails reflecting correspondence between your group and your agent about tax return disclosures and the process of query and response have been sighted
- tax reconciliation line items that can be easily map back to working papers, trial balance accounts, and fixed asset registers
- the transmittal letter prepared by the tax agent is read and confirms the scope of work undertaken per your engagement letter, and lists (where relevant), significant tax matters that have been considered by the tax agent.

See an example of a [Recognise Tax Issues and Risks](#) tax governance framework.

Atypical transactions

You have a policy in place to ensure tax is considered and documented as part of your group's decision-making around atypical transactions.

- The policy should include a clearly defined list of transactions by reference to materiality thresholds which require approval by certain persons (or positions within your group) – the list of transactions may include:
 - change of ownership (rights to income, capital, and voting)
 - establishment or winding up of entities or businesses
 - amendments to trust deeds
 - acquisition, disposals, and restructures of assets
 - significant changes to accounting methodologies
 - making trust distributions from discretionary trusts
 - loans, payments or debt forgiveness and guarantor arrangements to related entities.
- Escalation procedures should be in place to firstly, determine and secondly, verify the financial and tax consequences of any atypical transactions that your group undertakes.

- Where your group relies on their tax agents or advisors, transactions on the list should be considered within the advisor's scope of work (see [principle 1](#)) and within your group's Seek Advice policy (see [principle 3](#)).
- Procedures to ensure that atypical transactions are documented contemporaneously, including the tax positions taken and the reasons for them – the procedures have regard to the activity and type of entity and include:
 - what transactions are required to be documented including materiality
 - ensuring facts are documented and are current and complete
 - how they should be documented
 - who is responsible for documenting and reviewing the decisions that have been taken.

Operational effectiveness testing

Operational effectiveness testing of how your group manages tax risk arising from an atypical transaction is not mandatory, because an atypical transaction may not have occurred during the year.

However, if operational effectiveness testing was to occur, evidence that your policy, processes or procedures are operating effectively requires verifying whether the relevant processes or procedures that you have put in place have been followed.

To use an example that might be applicable in practice, testing the operational effectiveness of the processes and procedures that are in place to manage atypical transactions can be demonstrated by reference to evidence such as:

- records were sighted of a recent material atypical transaction from the list contained within the policy – the records show that
 - a Senior Accountant prepared the relevant journals and a recommendation
 - the Senior Accountant followed through with an internal escalation process to the CFO
 - the CFO verified and documented the tax consequences with your group's external tax advisor
- a memo was sighted which had been prepared by the CFO advising the Board of the financial and tax outcomes arising from another atypical transaction.

Goods and services tax (GST)

- Where the BAS or GST reporting is prepared in-house for trading entities, there are documented BAS procedures that are operating effectively in practice. The procedures include:
 - procedures to reconcile the BAS disclosures to a control account, the general ledger or trial balance
 - procedures to produce exception testing reports to identify anomalies or potential errors
 - instructions on how to extract data from the system including who is responsible and ensuring final versions are used
 - sufficiently detailed and comprehensive, meaning that a new but

experienced employee can prepare the BAS by referring to the procedures

- there is a separate preparer and reviewer – the reviewer can be internal or external.

Operational effectiveness testing - GST

As GST is highly reliant on effective systems operational effectiveness testing of GST is not mandatory. However Top 500 groups are encouraged to conduct operational effectiveness testing. For more information, see [Top 500 GST assurance program](#).

Principle 3: Seek advice

Principle 3 requires that your group has put in place a clearly defined and documented:

- policy and procedure for seeking external tax advice from your advisors – this written policy can be embedded within an overarching tax governance framework and includes
 - clear escalation thresholds having regard to the group's structure and activities which include quantitative or qualitative factors, or both, for when and how to seek external advice in a consistent way – the procedures may also assist in determining whether a separate scope and costing is required
 - a requirement to conduct periodic (quarterly or semi-annual) check-ins with the group's tax advisors regarding business performance and to note any significant issues or events that have arisen
 - a nominated person (or role) who is responsible to inform the group's tax advisors of significant changes to the group or atypical transactions that have been undertaken, and in that regard for ensuring that facts and assumptions underlying any advice is accurate, current and complete
- a policy and procedure for when your group engages with us – whilst it is not mandatory to engage with us to seek advice, such a procedure should be embedded within an overarching tax governance framework and includes a policy to:
 - consider our published guidance and advice
 - inform your Top 500 client contact of key changes
 - engage with us where higher certainty is required, based on clear thresholds or an assessment of risk – for example, with reference to quantitative or qualitative considerations that may require tax certainty through a commercial deal engagement or a private binding ruling.

Operational effectiveness testing

Evidence that your Seek Advice policy and procedures are operating effectively requires verifying that the relevant procedures have been followed.

Operational effectiveness testing under the Seek Advice principle is limited to the requirement to verify whether periodic check-ins with your advisors have occurred.

This is because a transaction may not have occurred that would enliven your group's Seek Advice policy.

Evidence of the check-in having occurred would be as simple as sighting meeting minutes demonstrating that the tax advisor has been informed of the entity's or your group's business performance, and significant issues or events that arose during the year.

If your group was to undertake operational effectiveness testing by reference to a transaction that has occurred, adherence to the processes and procedures that fall under the Seek Advice principle can be demonstrated by reference to written evidence such as:

- an email or meeting minutes showing that the person responsible under the Seek Advice policy (or under the Roles and Responsibilities policy), has escalated and sought advice as prescribed by the policy
- an email, meeting minutes, or a document with tracked changes from the responsible person which shows that the facts and assumptions upon which advice has been sought (and where relevant any changes) has been communicated to the group's advisors.

See an example of a [Seek Advice](#) tax governance policy.

Principle 4: Integrity in reporting

Principle 4 requires that your group has put in place the following.

- A procedure to monitor and explain differences between tax outcomes and accounting or economic outcomes for entities within the group:
 - This includes a nominated person, or position in the group, that is responsible for identifying, explaining and documenting, any significant differences between the economic performance (per financial statements) and tax performance for each entity within the group that has an income tax return lodgment obligation.
 - Procedures that show how individual trial balance accounts and other relevant working papers map to the tax reconciliations used in the preparation of each entity's tax return (for example, tracking of expenditure that is deductible over time).
 - For trusts within your group, the procedures require you, the trustee, or appointed advisor to identify and explain
 - any mismatches between distributable income (trust law) and net income (tax law) of the trust
 - to the beneficiaries of each discretionary trust who will receive trust distributions
 - any mismatches between who receives the financial benefit of a trust distribution versus who is presently entitled to it.
 - Ensure good record keeping practices are being followed and records are easily accessible.
 - Where your approach to tax governance for the Integrity in Reporting principle is outsourced to external advisors, the policy is documented in

the group's overarching framework, and the advisor's scope of work is documented (see [principle 1](#)).

Operational effectiveness testing

Evidence that the policy and procedure is operating effectively requires verifying whether the relevant policy or procedures have been followed. In practice, testing the operational effectiveness of policies and procedures that fall under the Integrity in Reporting principle can be demonstrated by reference to evidence such as:

- the document that was created by the person in the nominated position shows (for a small sample of entities) that they identified and explained significant differences between economic and tax performance
- tax reconciliation checklists have been prepared that cross reference to the trial balance, and other relevant working papers needed to complete the tax reconciliation
- the working file and back-up archive where tax information for an income year (or reporting period) has been stored has been accessed by the reviewer and verified as complete with a screenshot
- work papers or review processes have been sighted that were prepared by the nominated person that explain and reconcile mismatches in distributable income and net income – for example, if a mismatch is due to the differing treatment of an asset disposal, summarising the treatments under the trust deed and tax law
- a documented checklist or review process has been prepared by a nominated person to verify that the beneficiary who was appointed income from a trust is eligible in accordance with that trusts trust deed
- where trust income has been distributed, the work papers verify that the financial benefit of a trust distribution has been received by the nominated beneficiary and the payment appropriately recorded.

See an example of an [Integrity in Reporting](#) tax governance policy.

Additional items for an effective tax governance framework

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Effective-tax-governance-criteria-for-Top-500-private-groups/Additional-items/>
- Last modified: 21 Dec 2022
- QC 71111

Find out what additional items Top 500 groups can implement for principles 1 to 4 for an effective tax governance framework.

On this page

- [Introduction](#)
- [Principle 1: Accountable management and oversight](#)
- [Principle 2: Recognise tax issues and risks](#)
- [Principle 3: Seek advice](#)
- [Principle 4: Integrity in reporting](#)

Introduction

In addition to evidencing the required items, you will need to show that your group has at least 3 of the following 10 items in place in order to obtain a high assurance rating for tax governance for your group.

Principle 1: Accountable management and oversight

- In regard to roles and responsibilities, the responsibility for tax and reporting governance is segregated, so that one sole person is not charged with both the group's tax reporting obligations, and the evaluation of the effectiveness of governance over the group's tax function.

For example, an independent director could be responsible for overseeing the implementation and operational effectiveness testing of the group's tax governance.

- Whilst reporting lines may be in place to ensure that the controlling minds of your group are aware of the group's tax outcomes, the controls that are in place over your group's tax reporting functions show that your group's tax outcomes are produced independently.

For example, whilst one of your group's controlling minds may sign off the groups' tax returns, the process of preparation, review and the escalation of tax issues, occurs independently of the controlling mind's input.

Principle 2: Recognise tax issues and risks

- Regarding your tax return procedures:
 - The return preparation process includes a procedure that involves an independent review of the draft return by an external advisor.
 - You provide evidence demonstrating that the procedure requiring independent review of your returns is operating effectively in practice.
- To the extent that returns are prepared by external tax agents, you or your agent can show that the agent has procedures in place to:
 - help ensure that the correct tax treatments have been applied to your group's significant ongoing and atypical transactions
 - brief you about their conclusions about your tax position and any differences between your group's economic outcomes and the tax outcomes in your returns
 - brief you about tax positions that they have adopted on your behalf and any other matters they have identified during the return preparation process
 - show that the procedures are operating effectively in practice.

- With respect to the tax governance framework for your group's trading entities:
 - The documented tax governance framework for your group's trading entities is reviewed and endorsed by the Board annually - the process of endorsement includes:
 - identification of the documents that are to be presented to the Board for endorsement
 - nominates the person responsible for seeking the Board's endorsement
 - how the review is to be conducted (for example by an external consultant)
 - what factors the Board is to review in the process (for example results of operational effectiveness testing, changes to the groups' structure or the tax issues the group has to manage).
 - There is guidance in place to address any weaknesses in the tax governance framework, processes or procedures identified as part of the review and endorsement process - the guidance includes
 - timelines
 - allocation of specific duties to responsible personnel
 - a requirement to report back to the Board on progress
 - There is evidence demonstrating that the guidance to address any weaknesses in the tax governance framework, processes or procedures is operating effectively.
- Regarding fringe benefits tax (FBT) – where deductions claimed for expenditure that is subject to FBT is a material issue for tax governance purposes, there are documented procedures to ensure that FBT is being reported correctly including:
 - where the FBT return is prepared in-house, the procedures to ensure the correct amount of FBT is being paid include sufficient detail so that a new but experienced staff member can prepare the return, and guidance to identify and address FBT issues within the context of your group.
 - where the return is prepared by an advisor, the advisor has procedures in place to identify, address and quantify FBT issues in your group
 - evidence demonstrating that the procedures around the management of FBT issues are operating effectively such as
 - workpapers
 - populated checklists
 - finalisations letters from the tax agent outlining issues
 - notes or minutes of meetings with the tax agent.

Principle 3: Seek advice

- You or your group's representatives have conducted an annual check in with us to discuss issues such as:
 - your group's trading environment
 - any atypical transactions that have occurred or that are being contemplated
 - any material changes to your group

- changes to your group's approach to the tax issues it must manage
- Your group has undertaken an atypical transaction or has had to manage an uncertain tax position, and you are able to show that the procedures you have in place to seek advice in getting the tax treatments right are operating effectively in practice.

Principle 4: Integrity in reporting

- A documented policy that requires the financial records of entities within your group that have tax reporting obligations, reflect a true and fair view of those entity's financial performance and position, and that:
 - financial accounts that are required to be audited, an unqualified audit report is provided.
 - financial accounts that are not required to be audited show:
 - a documented procedure that requires an external accountant to review key account balances
 - the scope of review is sufficient to identify material errors within those accounts.
 - there is evidence that the policy and procedure is operating effectively including verification that the agreed upon review procedures were carried out by the external accountants.
- If your group is, or is comprised of, a tax consolidated group that is derived from an accounting consolidated group:
 - there is a documented procedure to identify and capture any differences between the financial performance of the tax consolidated group and the accounting consolidated group
 - there is evidence the procedure is operating effectively in practice, such as reference to the accounting group to tax consolidated group reconciliation.

Further guidance and examples for effective tax governance

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-you-should-know/Tax-performance-programs-for-private-groups/Top-500-private-groups-tax-performance-program/Effective-tax-governance-criteria-for-Top-500-private-groups/Further-guidance/>
- Last modified: 21 Dec 2022
- QC 71112

Further guidance and examples for Top 500 groups for how an effective tax governance framework could be implemented.

On this page

- [Overview](#)
- [Principle 1: Accountable management and oversight](#)
- [Principle 2: Recognise tax issues and risks](#)
- [Principle 3: Seek advice](#)
- [Principle 4: Integrity in reporting](#)

Overview

The following information provides an example of a well-designed tax governance framework that could be implemented to help ensure that 'Central Biz' (a fictional Top 500 group) has effective tax governance in place over its tax obligations.

Central Biz operates 3 distinct divisions that are operated through separate entities. Although the group is not consolidated, Central Biz uses a centralised model to govern its tax affairs. That is, the accountabilities for tax governance reside in one place within the Top 500 group, in this case an entity known as 'Central Co'.

Importantly, if there are any changes to Central Biz's key personnel, the Board of Central Biz and the controlling family can rely on their documented policy to help ensure that new personnel understand:

- their roles and responsibilities in managing the group's tax obligations
- what is required to ensure that the Central Biz group's lodgment and payments are made on time
- the role Central Biz's tax advisors play in helping the group comply with its tax obligations.

The information that follows is intended as an example only. We acknowledge the treatment of some tax issues may:

- carry a higher risk due to their complexity and therefore may require more extensive analysis
- require more or less comprehensive procedures due their complexity or simplicity
- include procedures that could be presented diagrammatically, for example with the use of flow charts or decision trees.

When tailoring governance for your group, you may wish to consider your group's:

- own organisational structure and approach to delegation
- financial reporting requirements
- the extent of any differences between accounting and tax outcomes.

Principle 1: Accountable management and oversight

As a prudent and engaged group Central Biz (a fictional Top 500 group) understands its own time constraints, capabilities and limitations in understanding how the tax law applies and the importance of tax governance. Accordingly, Central Biz has implemented a documented a policy to capture the roles and responsibilities of its key tax personnel. Importantly, if there are any changes to Central Biz's key personnel, the Board of Central Biz and the controlling family can rely on their documented policy to help ensure that new personnel understand:

- their roles and responsibilities in managing the group's tax obligations
- what is required to ensure that the Central Biz group's lodgment and payments are made on time
- the role Central Biz's tax advisors play in helping the group comply with its tax obligations.

Please note the information that follows is intended as an example only. You may wish to consider your group's own organisational structure and approach to delegation when tailoring governance for your group.

Example: 1.1 Roles and Responsibilities

Part A – Reporting and payment responsibilities - general

Central Biz's Chief Financial Officer (CFO) is in overall charge of, and accountable for, the group's tax reporting and payment obligations and to ensure appropriate scoping of engagements with the group's external advisors.

The CFO is to report through to the Managing Director (MD).

The MD is to act as the Public Officer (PO) of each of the entities within the Central Biz group. The PO is accountable for signing and ensuring on time lodgment of the group's FBT and income tax returns.

The accountabilities for the management of the recurring tax reporting obligations of each of Central Biz's three divisions resides with each division's Senior Accountant who are employed in Central Co and report to the CFO.

Part B – Reporting and payment responsibilities – returns and payments

Senior Accountants are responsible for the preparation of each division's BAS and draft FBT and income tax returns in accordance with a lodgment timetable. The Senior Accountant is authorised to engage the group's tax advisors where there are uncertainties around the tax treatment of discreet tax issues.

Senior Accountants are to review the monthly BAS's that are prepared by junior staff to ensure they correctly reflect the group's prescribed GST treatment policies.

The Senior Accountant is required to present the finalised BAS to the Chief Financial Officer (CFO) who signs off and authorises the lodgment and payment of the BAS. The Senior Accountant is required to notify the CFO when the BAS lodgment and payment has occurred and retained confirmations thereof.

Senior Accountants are required to escalate draft FBT and income tax

returns for second level review by the CFO, who then engages an external review of the returns by the group's tax advisors, in accordance with the terms of their engagement letter.

The returns should then be presented by the CFO to the Public Officer (PO) for his signature prior to their lodgment by the due date. The PO is then required to brief Central Co's Board regarding the outcomes.

The CFO is responsible for ensuring the bank accounts from which tax payments are made are adequately funded and that tax payments are made on time.

Example: 1.2 Preparation, lodgment and payments

Part A – Due dates for BAS, Income Tax Returns and Fringe Benefits Tax Returns

The Central Biz group's policy is that all monthly BAS, income tax and FBT returns are to be lodged by their due dates.

The lodgment and payment dates specified in the calendar below are to be followed and achieved for each of the group's operating entities.

Lodgment and payment calendars are to be reviewed annually by the group's tax advisors to ensure they are current.

Lodgment calendar

Month	Due	Lodgment Item	Business Division 1	Business Division 2	Business Division 3
JUL	21 Jul	Monthly BAS & PAYG I – June	Required	Required	Required
AUG	14 Aug	PAYG Withholding Annual Report	Required	Required	Required
AUG	21 Aug	Monthly BAS - July	Required	Required	Required
SEP	21 Sep	Monthly BAS - Aug	Required	Required	Required

OCT	21 Oct	Monthly BAS & PAYG I - Sep	Required	Required	Required
NOV	21 Nov	Monthly BAS - Oct	Required	Required	Required
DEC	1 Dec	Pay Tax (lodgment 15/01)	Not required	Required	Required
DEC	21 Dec	Monthly BAS - Nov	Required	Required	Required
JAN	15 Jan	Tax return lodgment	Not required	Required	Required
JAN	21 Jan	Monthly BAS & PAYG I - Dec	Required	Required	Required
FEB	21 Feb	Monthly BAS - Jan	Required	Required	Required
MAR	21 Mar	Monthly BAS - Feb	Required	Required	Required
MAR	31 Mar	Tax Return lodge & pay	Required	Not required	Not required
APR	21 Apr	Monthly BAS & PAYG I - Mar	Required	Required	Required
MAY	21 May	Monthly BAS - Apr	Required	Required	Required
MAY	23 May	FBT Annual Return	Required	Not required*	Not required*
JUN	21 Jun	Monthly BAS - May	Required	Required	Required

Not required* - This is due to staff not being provided with fringe benefits.

Part B – Preparation and lodgment of BAS and tax returns

The Senior Accountants for each division are to maintain electronic alerts - one week ahead of BAS lodgments; and 2 months ahead of ITR and FBT return lodgments, at which times the Senior Accountants should commence the BAS or FBT and income tax return preparation process.

Senior Accountants for each division are to maintain and update a handbook (or similar guide) that maps the entities GL accounts to the relevant label fields in the BAS.

The preparation and sign off of income tax and FBT returns is to be conducted in accordance with the attached project schedules which show the timing of activities across over an end-to-end process (including key milestone dates).

Download the example of a [Tax Return Project Plan \(XLSX, 10.9KB\)](#) 

Part C – Payments of tax

All pay as you go instalment income 'wash up' payments are to be made from the Central Co bank account for the relevant operating division (entity).

The bank account numbers from which income tax payments are to be made are as follows:

- Division 1 – XXX44500
- Division 2 – YYY44501
- Division 3 – ZZZ44501

The ATO account numbers to which income tax payments should be paid are as follows:

- Division 1 – ATOXXX1234567
- Division 2 – ATOYYY1234567
- Division 3 – ATOZZZ1234567

All other payment obligations reported on the BAS are to be made from the general clearing accounts of the relevant operating entity to the designated ATO CAC account.

Reconciliations of the components of each divisions BAS payments should be retained and stored at tax file ref ##BAS_MM/YYYY.

Example: 1.3 Scoping the role of the Central Biz group's tax advisors

Part A - Engagement letters and engagement specific agreements

To facilitate the provision of tax advisory services as and when required, at all times Central Biz will maintain an engagement letter with a suitably qualified tax advisory firm.

As noted in Part A of this section, Central Biz's chief financial officer (CFO) is accountable for the implementation, renewal, and appropriate scoping of engagements with the Central Biz group's external advisors.

The engagement letter (or engagement specific agreements) should provide specific details regarding the type and scope of tax services that the appointed tax advisory firm will provide to Central Biz and an associated

schedule of fees. For example, the engagement letter (or specific agreement) should:

- where relevant to the tax issues requiring management by the entity in a tax return process, specify the need for a review process for accounts where the tax treatments may differ from accounting, such as repairs and maintenance, cost of goods sold (COGS) and legal fees, among others
- where relevant to an entity's activities, require a review of treatments applied to items of income and expenditure that are the subject of ATO rulings or taxpayer alerts
- include materiality thresholds in the engagement letter or an agreed scope of work
- specify what information will be provided by Central Biz in supporting the work of its advisors
- specify what the tax advisor's deliverables will be around tax return reviews, for example
 - prescribing the conduct of a pre-lodgment closure meetings
 - the provision of a transmittal letter outlining the work that has been conducted and noting any salient issues.

In order to plan work schedules, and to ensure the groups tax advisors can be on top of the tax implications arising from any changes to the Central Biz business, or its operating environment, the engagement letter should prescribe periodic catch ups (for example, quarterly).

The terms of, and the tax advisory firm's compliance with the engagement letter, should be reviewed and renewed annually.

Principle 2: Recognise tax issues and risks

As a prudent and engaged group Central Biz (a fictional Top 500 group) understands its own time constraints, capabilities and limitations in understanding how the tax law applies. Central Biz also understands the importance of:

- recognising and managing tax issues and potential or actual tax risks
- having appropriate processes and procedures in place to help support the management of tax issues and risks
- considering tax as part of the decision-making processes around atypical transactions.

Importantly, if there are any changes to Central Biz's key personnel, the Board of Central Biz and the controlling family can rely on their documented "Recognise Tax Issues and Risk" policy to help ensure that new personnel understand their responsibilities and can identify the tax issues that require management.

Please note the information that follows is intended as an example only. You may wish to consider your group's own organisational structure and the range of issues

that you have to manage when tailoring tax governance in your group.

Recognising tax issues and risks

Example 2.1 Tax issues and risks

Part A – Recognise Tax Issues and Risk Policy – overview

The Central Biz group's policy is to recognise the tax issues and tax risks within our overall tax governance framework by consolidating a list of tax issues into a central document, the 'Tax Issues Register'.

The tax issues that are to be identified and listed in the Tax Issues Register arise from each of our operating division's 'business-as-usual' activities.

The Tax Issues Register must be available for, and referred to by, our accounting, tax or finance team as appropriate.

Procedures for the recognition of tax issues that arise from atypical transactions are also to be followed as part of our group's 'Recognise Tax Issues and Risk' policy.

Part B – Responsibilities for Recognising Tax Issues and Risks

Accountable Personnel	Prescribed Activities
Divisional Senior Accountant	<p>Implement procedure in Part A - Review the trial balance of the entities over which the Senior Accountant has responsibility, in order to identify accounts containing line items that:</p> <ul style="list-style-type: none">• require management for tax purposes• may contain permanent or temporary differences• are the subject of the ATO's published tax rulings or alerts• require management under a tax governance process or procedure. <p>Collate the information from the review into a Tax Issues Register for each entity in the group and escalate the consolidated register, and any supporting comments, to the CFO for review.</p> <p>Implement procedure in Part B – identify tax issues arising from atypical transactions and escalate initial briefs to the CFO.</p>
CFO	<p>Review and approve the list of tax issues recorded in the 'Tax Issues Register'.</p> <p>Initiate review of the Tax Issues Register as necessary</p>

(minimum every 3 years).

Part C – Procedures for the initial identification of tax issues arising from 'Business-as-usual' transactions for each Business Division

1. Identify all accounting revenue and expense items in the trial balance that contribute to each entity's accounting profit and loss. That is, those items that require management for tax purposes.
2. Disaggregate any aggregated accounting revenue or expense control accounts in the trial balance, such as accounts with headline classifications such as 'vehicle expenses'.
3. Out of the accounts identified in (2), identify where the accounting and tax treatment of items recorded in the account may differ permanently.
4. Out of the accounts identified in (2), identify where the accounting and tax treatment may differ temporarily.
5. Refer to the entity's prior year working file to identify carried forward legacy tax issues. Examples can include losses, prior year expenditure and prepayment adjustments.
6. Identify ATO issued Taxpayer Alerts or Taxation Rulings that may apply to items recorded in the trial balance accounts.
7. For the purposes of identifying which accounts may contain tax issues that require a tax governance process or procedure, identify revenue and expense accounts in the group's active businesses that are quantitatively material, based on either:
 - for our operating entities, the lower of 5% or more of the entity's total revenue or expenses, as applicable; and \$500,000
 - for our passive investment entities, the lower of 5% or more of the entity's total revenue or expenses where the balances in those accounts are greater than \$100,000; and \$500,000
 - where the balances in the accounts are lower than the quantitative thresholds but have been determined by management to present a high risk of being reported incorrectly for tax purposes.
8. Collate information from the previous steps into a table and repeat the process for each entity in business division. Collate and summarise into a 'Tax Issues Register'.
9. Submit to the CFO for review and approval.

Part D – Identification of tax issues arising from atypical transactions

Atypical transactions with a transaction value of greater than \$500,000 require approval and sign off by the CFO.


Consideration should be given to whether it is appropriate to seek external advice in accordance with the Central Biz Group 'Seek Advice' policy, noting the following extract:

'Organisational restructures and disposals of assets with a value of \$Xm

must be brought to the attention of the Board in concert with a summary of the financial and tax consequences of those disposals.'

Procedure:

1. Division Senior Accountant to provide a summary briefing that identifies and quantifies the tax issues and financial consequences for the division and notes any uncertainties.
2. Escalate the briefing to the group's CFO.
3. CFO to review and:
 - confirm agreement with the briefing's conclusions via email
 - seek to resolve queries with Senior Accountant's conclusions via email
 - where uncertainties cannot be resolved, or outside the scope of expertise or time constraints, engage external advisors.
 - CFO to provide a memo to the Public Officer outlining the conclusion of financial and tax consequences.

Download the streamlined example of Central Biz's approach to recognising tax issues using the [Trial balance approach and Tax Issues Register \(XLSX, 15.8KB\)](#)  .

Managing tax issues

The information that follows is intended as an example of how documented procedures can be utilised to ensure that tax issues are treated correctly. We acknowledge that

- procedures could also be presented diagrammatically with the use of flow charts or decision trees
- some tax issues require more or less comprehensive procedures due to their complexity or simplicity.

When tailoring governance for your group, you may wish to consider your group's own activities and tax issues that you have to manage.

Example 2.2 Tax Issues Management

Part A – Overview

Central Biz group's tax issues management policy recognises that as a group we employ personnel with the capabilities to manage most of the tax issues listed in our 'Tax Issues Register'.

Our capabilities are supported by the procedures laid out in this section of our tax governance framework. The procedures are presented in detail to support job sharing arrangements and help personnel who may be new to

their role with the Central Biz group.

Where required (for example, due to uncertainties) we will seek external advice from our advisors to ensure that the correct treatments are applied to the tax issues our group has to manage.

Part B – In-house procedures for managing tax issues arising from ongoing (business-as-usual) transactions

Expenditure on Legal fees

1. For each division, a Junior Accountant is to review, and prepare a draft reconciliation of, the division's legal fees expense account by:
 1. identifying line items relating to legal advice and classify transactions concerning
 - the operating division's 'business as usual' activities
 - the acquisition or disposal of assets or businesses
 - financing activities
 - fines or penalties
 - defence of patents, intellectual property or other rights
 - private or domestic affairs of the group's controllers
 2. ensuring expenditure is captured in the entity to which the advice relates
 3. resolving queries about the nature of the legal services obtained with the operating division that incurred the expense
 4. reconciling the legal fees expense account by each classification listed in 1a), and preparing journal entries for any expenditure that falls within 1b)
 5. submitting the draft reconciliation to the Senior Accountant for review.
2. Senior Accountant to finalise reconciliation workpaper for the legal fees expense account (including noting any adjustments that need to be carried forward) by:
 1. reviewing the Junior Accountant's draft reconciliation
 2. classifying each class of expenditure listed in the draft reconciliation as
 - immediately deductible
 - deductible over time (and the basis as required)
 - a non-deductible, permanent difference
 - non-deductible, but included in the tax cost, or the cost base of, the relevant asset to which the legal services relate
 3. quantifying and specifying the book-to-tax reconciliation adjustments that are required as a result of analysis in 2b)
 4. escalating any uncertainties regarding classification or treatments of each category in 2b) and 2c) to the Central Biz group's external tax advisors as part of the advisor's review of the tax return and

associated working papers

5. sending the reconciliation workpaper to the Junior Accountant including directions to code appropriate journal entries to give effect to 1d).

3. Junior Accountant to:

1. include legal expenses reconciliation workpaper in the current year's tax working file and back-up to the designated facility
2. update the tax fixed asset register for legal expenses that should be included in the tax cost, or cost base, of the relevant asset, upon confirmation from the Senior Accountant.

Expenditure on Repairs & Maintenance (R&M)

As a capital intensive business R&M expenditure is a significant part of Central Biz's cost base, accordingly each of our operating divisions is to maintain a distinct general ledger account for R&M.

Currently our accounting policy for the treatment of R&M expenditure differs from the treatments required for income tax and therefore a book to tax reconciliation is required. To simplify the book to tax reconciliation procedure Senior Accountants are encouraged to set up additional R&M sub accounts in their division for R&M expenditure of greater than \$1,000 and greater than \$5,000.

1. For each division, a Junior Accountant is to review, and prepare a draft reconciliation of, their division's R&M expense accounts by:
 1. extracting the operating division's R&M account(s) for the reporting period and identifying line items recording R&M expenditure of greater than \$5,000
 2. examining line items identified in 1a) and related invoices to determine, and take note of where, items of expenditure were incurred
 - on repairing assets and equipment in order to maintain them at, or return them to, their state of intended use; or
 - in relation to the acquisition of, creation of, or significant improvements to, an asset
 - on the replacement of major components that are themselves depreciable assets or improvements to depreciable assets
 3. scanning the remainder of the R&M account(s) for expenditure that could relate to the
 - acquisition or creation of low cost or low value assets
 - replacement of major components that are themselves depreciable assets or improvements to depreciable assets
 - private or domestic affairs of the group's controllers.
 4. ensuring R&M expenditure identified in 1a) is captured in the entity which incurred the R&M expenditure.

5. resolving any queries about the nature of the R&M expenditure with the line manager who approved the expenditure
 6. reconciling totals in the R&M expense account by each classification listed in 1b) and 1c) and preparing journal entries for any expenditure that falls within 1d)
 7. submit the draft reconciliation to the Senior Accountant for review.
2. Senior Accountant is then required to:
1. review the Junior Accountant's reconciliation of the R&M expense account
 2. scan the R&M expense account for line items the Junior Accountant may have missed in their review and analysis
 3. classify each class of expenditure listed in 1b) and 1c) as:
 - immediately deductible
 - a non-deductible, permanent difference
 - non-deductible, but included in the tax cost, or the cost base of, the relevant asset, or in a low value pool
 4. quantify and specify the book-to-tax reconciliation adjustments that are required as a result of the analysis in 2c)
 5. escalate any uncertainties regarding classification or treatments of each category in 2c) to the Central Biz group's external tax advisors as part of the advisors review of the tax return and associated working papers
 6. finalise reconciliation workpaper and send to the Junior Accountant with directions to code appropriate journal entries.
3. Junior Accountant to:
1. include R&M reconciliation workpaper in the tax working file and back-up to our designated facility.
 2. update the tax fixed asset register to include R&M expenses the Senior Accountant has confirmed should be recognised as
 - an asset, or
 - included in the tax cost or cost base of an existing asset, or
 - included in a low value pool for tax purposes.

Principle 3: Seek advice

As a prudent and engaged group Central Biz (a fictional Top 500 group) understands its own capabilities and limitations in understanding how the tax law applies. Accordingly, Central Biz has implemented and documented a policy to establish the parameters around when to:

- seek advice internally
- when to go externally to their tax advisors

- when to engage with the ATO.

Central Biz's "Seek Advice" policy has been documented and is well known to and accessible by, the group's key personnel.

Importantly, if there are any changes to Central Biz's key personnel, the Board of Central Biz and the controlling family can rely on their documented Seek Advice policy to help ensure that new personnel understand when they are required to escalate issues to obtain higher levels of certainty that they are getting it right.

Please note the information that follows is intended as an example only. You may wish to consider your group's needs and capabilities when tailoring an approach around when to seek external advice.

Example 3.1 Seek Advice

Part A – General approach to escalation

There is a general approach to escalation for organisational restructures and disposals of assets with a value of \$Xm. That is, the matter must be brought to the attention of the Board in concert with a summary of the financial and tax consequences of those transactions.

Part B – Engagements with the Central Biz group's advisors

Central Biz's tax advisors must be appraised at least quarterly of material changes to the business, its operating structure, or atypical transactions that have been undertaken.

External tax advice from the Central Biz group's tax advisors must be sought in respect of any proposed:

- mergers, acquisitions, and divestments of equity interests
- atypical asset sales
- organisational restructuring
- cross border transactions
- non-vanilla financing or changes to the group's capital structure
- transactions between the Central Biz group and its shareholders or their associates
- revenue authority reviews
- tax treatments that may conflict with an ATO view, Taxpayer Alert or Practical Compliance Guideline.

The CFO or their appointed delegate is responsible for ensuring the currency of facts and relevant information related to any of the above including:

- obtaining transaction related information from Central Biz's operational stakeholders
- for providing such information to the group's tax advisors.

The CFO is responsible for ensuring that positions adopted by the group based on any advice received is correctly captured in the relevant entity's tax return.

Senior Accountants are authorised to cost and obtain advice around other tax uncertainties that might arise in the Central Biz business (for example, expense characterisation issues) where that advice cost is less than of \$X0,000.

Part C – Engagements with the Australian Taxation Office:

Central Biz's CFO will serve as the main liaison point with the ATO.

The Central Biz group's Top 500 client relationship contact at the ATO should be notified of transactions that in the CFO's judgement will have a significant impact on the group's tax position or ongoing business structure.

Formal advice from the ATO should be sought if the group's external advisors determine that tax treatments that are to be applied to a transaction might be inconsistent with published ATO views.

Informal advice from the ATO should be sought for disposals of assets or businesses with a value of more than \$X0m.

Principle 4: Integrity in reporting

As a prudent and engaged group that conducts a significant amount of its financial and tax reporting in-house, Central Biz (a fictional Top 500 group) understands the importance of ensuring that:

- the financial and tax records of entities within the group reflect a true and fair view of the activities that are being carried on
- tax positions align with the law and differences with accounting can be explained
- good record keeping practices are being employed and financial and tax records are easily accessible.

Importantly, if there are any changes to Central Biz's key personnel, the Board of Central Biz and the controlling family can rely on their documented 'Integrity in Reporting' policy to help ensure that personnel understand how the group goes about ensuring that each of its divisions is, and continues to, report correctly for tax purposes.

Please note the information that follows is intended as an example only. You may wish to consider your group's own organisational structure, financial reporting requirements, and the extent of any differences between accounting and tax outcomes, when tailoring governance for your group.

Example 4.1 Integrity in Reporting

Part A – Financial reporting responsibilities:

The Chief Financial Officer (CFO) is responsible for the accuracy of the Central Biz group's financial reporting obligations and the compliance of those reports with the accounting standards.

Where financial accounts of a group entity are externally audited, the CFO will be the contact person with the external auditor and liaise with the auditor and accounting staff on all matters concerning the audit.

Where financial accounts of a group entity are the subject of external audit the audit opinion and any auditor's management report are to be escalated by the CFO to the managing director and to the Board.

The CFO is responsible for the subsequent implementation of any improvements to the group's controls or accounting practices that are suggested by the auditor.

The Senior Accountants in each division are responsible for mapping and keeping records of how individual trial balance accounts and other relevant working papers map to the tax reconciliations used in the preparation of each entity's tax return.

The Senior Accountants for each division are responsible for identifying and documenting differences between the accounting and tax performance of entities within the Central Biz group who have a tax return lodgment obligation.

The CFO is required must be able to explain (in detail) differences between the accounting and tax performance of entities within the Central Biz group who have a tax return lodgment obligation.

The Senior Accountants for each division are responsible for maintaining, archiving, and backing up the group's financial and tax records.

Part B – Financial reporting integrity:

In addition to those entities where the group is under a statutory obligation to have the financial accounts of group entities audited, the following entities will have their financial reports audited to ensure their accounts reflect a true and fair view:

- Entity A
- Entity B

In addition to those groups entities whose financial accounts are audited, the accuracy and completeness of account balances in the following entities will be verified under specific assurance engagements:

Part B – Financial reporting example

Entity	Accounts
Entity C	Sales income Cost of goods sold – closing Bad debts provision
Entity D	Fixed Assets (Accounting) Fixed Assets (Tax)
Entity E	Bad debts expense

Part C – Differences between accounting and tax:

Where relevant, a brief written narrative explaining any material differences between a group entity's economic (accounting), and tax performance is to be prepared and retained in the tax return working file of the relevant group entity.

Draft tax reconciliations which map to accounts in the trial balance and other working papers are to be prepared internally, reviewed by the CFO, and then verified by the group's external tax advisors (per principle 1).

A checklist is to be maintained and updated as required that records the accounts in each entity's trial balance that need to be mapped (wholly or partly) to that entity's tax reconciliation.

The Central Biz group's tax advisors are to be engaged where there are uncertainties about the right tax treatments that need to be applied to discreet items in the trial balance accounts (per principle 3).

Any mismatches between the distributable income (trust law) and net income (tax law) of Central Trust A or Central Trust B, are to be documented and retained for future reference.

Income or corpus appointments to beneficiaries selected by the trustee of Central Trust A or Central Trust B are to be cross checked against the trust deeds to ensure the trustee has exercised their power accordance with the deed.

Mismatches between who receives the financial benefit of a trust distribution from Central Trust A or Central Trust B, versus who is presently entitled to it, are to be documented and advice about the tax consequences escalated in accordance with the Seek Advice policy.

Part D – Record keeping:

Financial and tax records are to be maintained [in file ref #]; archived [at

location X] and digitised [in file ref ##]; and backed up [in file ref ###; and offsite in the cloud].

What attracts our attention

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-attracts-our-attention/>
- Last modified: 24 Aug 2022
- QC 44834

The behaviours, characteristics and tax issues that attract our attention.

On this page

- [What are privately owned and wealthy groups](#)
- [Behaviours and characteristics we look at](#)
- [Your concerns](#)

What are privately owned and wealthy groups

We view privately owned and wealthy groups as:

- companies and their associated subsidiaries (often referred to as economic groups) with an annual turnover greater than \$10 million, that are not public groups or foreign owned
- resident individuals who, together with their business associates, control net wealth over \$5 million.

We provide information and services tailored to help you and your tax advisers get things right.

Behaviours and characteristics we look at

We publish information on the behaviours, characteristics and tax issues of privately owned and wealthy groups that attract our attention to:

- help you get things right
- be transparent in our dealings with you.

The following behaviours and characteristics may attract our attention:

- tax or economic performance not comparable to similar businesses
- low transparency of your tax affairs
- large, one-off or unusual transactions, including the transfer or shifting of wealth

- aggressive tax planning
- tax outcomes inconsistent with the intent of the tax law
- choosing not to comply, or regularly taking controversial interpretations of the law, without engaging with us
- lifestyle not supported by after-tax income
- accessing business assets for tax-free private use
- poor governance and risk-management systems.

Your concerns

If you're concerned about your tax or super position, you can:

- [engage with us for advice](#) about a complex transaction or arrangement
- [correct a mistake](#) by requesting an amendment or making a voluntary disclosure.

If you know or suspect [illegal phoenix activity](#), tax evasion or [shadow economy](#) behaviour you can either:

- complete the [tip-off form](#) – the form is also available in the contact us section of the [ATO app](#)
- phone the Shadow Economy hotline on 1800 060 062.

Your information is treated confidentially, and tip-offs can be made anonymously. You don't have to give your name if you don't want to.

Non-lodgment

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Non-lodgment/>
- Last modified: 24 Aug 2022
- QC 58472

Avoiding or delaying payment of tax by not lodging your tax obligations when required will attract our attention.

On this page

- [Our focus](#)
- [Examples of non-lodgment](#)
- [Other things we look at](#)

Our focus

We focus on occasions when taxpayers avoid or delay paying taxes by not [lodging](#) their tax return, fringe benefit tax (FBT) return or activity statement when required.

Our focus is targeted by applying improved data matching processes across a range of sources that identify entities who have:

- received income and are required to lodge an income tax return or activity statement but haven't done so
- lodged an income tax return or activity statement but haven't reported all their income.

Examples of non-lodgment

Examples include when an entity has:

- not lodged and has a high amount of incoming and outgoing cash amounts
- not lodged a return when returns for previous and subsequent years had been lodged
- lodged business activity statements during the year but did not lodge a tax return
- not lodged and has reportable fringe benefits amounts included in their employee's payment summaries or STP reporting.

Other things we look at

We also look at:

- outstanding business activity statements
- entities that did not lodge a return for the year under review and where instalments are low compared to the previous year
- directors with a number of outstanding lodgments
- directors who lodge a return not necessary.

Business structure

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/>
- Last modified: 24 Aug 2022
- QC 58473

Risks that attract our attention on the structure and transactions of privately owned wealthy groups.

Consolidation

We focus on consolidation issues from inappropriate CGT reporting, cost-setting rules, membership and loss utilisation.

Demergers

We focus on transactions and schemes that exploit the demerger provisions for a

tax benefit.

[International transactions](#)

Failure to report or incorrect reporting of international transactions attracts our attention.

[Lower company tax rate](#)

We are concerned when ineligible corporate tax entities claim the concessional tax rate for base rate entities.

[Professional firms](#)

Individual professional practitioners who redirect their income to an associated entity to reduce their tax liability.

[Property and construction](#)

In the property and construction industry, how you classify income from property development may attract our attention.

[Research and development tax incentive](#)

We review behaviours of concern that result in incorrect Research and Development (R&D) tax offsets claims.

[Self-managed super funds](#)

We monitor transactions and schemes that take advantage of concessional tax rates that apply to complying super funds.

[Trusts](#)

We focus on various trust risks.

Consolidation

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Consolidation/>
- Last modified: 24 Aug 2022
- QC 69435

We focus on consolidation issues from inappropriate CGT reporting, cost-setting rules, membership and loss utilisation.

On this page

- [CGT consequences](#)
- [Cost-setting rules](#)
- [Membership](#)
- [Losses](#)

Consolidation allows wholly-owned corporate groups to operate as a single entity

for income tax purposes.

CGT consequences

We focus on the reporting of capital gains or losses related to consolidation.

Situations that attract our attention include:

- corporate groups that restructure and have one or more consolidated groups within a private group
- where multiple entities join or leave the consolidated group
- incorrectly reporting capital gains or losses arising from the allocable cost amount (ACA) and allocation process on joining or leaving the consolidated group – for example, a head company has not reported a capital gain when a negative ACA occurred from an entity leaving the group.

Cost-setting rules

We focus on the:

- allocable cost amount (ACA) calculation
- allocation on joining or leaving a consolidated group.

Situations that attract our attention include:

- restructuring that may affect the ACA calculation, before joining, forming or leaving a consolidated group
- on joining a group
 - miscalculating or overstating the ACA, for example, relating to the costs of membership interests or the accounting liabilities of the joining entity
 - inappropriately including or excluding assets before allocating the ACA to assets
 - incorrectly allocating the ACA to assets which results in increased revenue deductions or cost bases of CGT assets – examples include using inappropriate market values or incorrectly making relevant adjustments
- on leaving a group
 - incorrectly calculating the ACA, for example by excluding or understating liabilities
 - incorrectly allocating the ACA to the membership interests and treatment of pre-CGT shares (if any).

Membership

We focus on the formation of a consolidated group and the eligibility of members.

Situations that attract our attention include:

- the incorrect formation of a consolidated group

- incorrectly including or excluding an entity as a member of a consolidated group
- late notifications of entries or exits from a consolidated group.

Losses

We focus on whether losses have been correctly transferred, the available fraction has been correctly calculated and losses correctly used.

Situations that attract our attention include:

- incorrectly including or excluding an entity as a member of a consolidated group, where it may cause unintended tax benefits
- incorrectly transferring or using losses
- high available fractions that, if incorrect, would allow a consolidated group to use transferred losses at an inappropriate rate
- failing to adjust the available fraction as required.

Demergers

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Demergers/>
- Last modified: 24 Aug 2022
- QC 69436

A demerger involves the restructuring of a corporate group by splitting its operations into 2 or more entities or groups. When a [demerger](#) happens, the shareholders of the head entity of the group acquire a direct interest in the demerged entity.

The demerger provisions offer CGT and income tax relief at both the entity and shareholder level. This tax relief is intended for genuine demergers that offer business benefits through restructuring. Demergers should not be undertaken to achieve a tax benefit.

Situations that attract our attention include:

- disposing of the demerged entity or business after the demerger event
- shareholders acquiring more than their share of the new interests in the demerged entity
- schemes aiming to inappropriately obtain CGT rollover concessions through a corporate restructure that does not satisfy the demerger requirements
- demergers that appear to have been undertaken to obtain a tax benefit rather than to improve business efficiency
- demergers that eliminate or significantly reduce assessable capital gains or dividends.

For more guidance on demergers and restructuring, refer to:

- [Income Tax Assessment Act 1936 – section 45B](#) *Schemes to provide certain benefits*
- [TD 2020/6](#) *What is a 'restructuring' for the purposes of subsection 125-70(1) of the Income Tax Assessment Act 1997?*

International transactions

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/>
- Last modified: 24 Aug 2022
- QC 69437

Failure to report or incorrect reporting of international transactions attracts our attention.

[Capital gains withholding](#)

Failure to withhold and pay the withholding on disposal of certain high-value real property and membership interests.

[Characterisation of inbound foreign funds](#)

Cross-border arrangements that mischaracterise inbound foreign funds provided by non-residents to Australian taxpayers.

[Foreign residents and taxable Australian property](#)

Foreign residents disposing of taxable Australian property must lodge returns advising of any gain or loss.

[Hybrid mismatch rules](#)

Prevent multinational companies from gaining an unfair advantage by avoiding income tax or getting double tax benefits.

[Intangible assets](#)

International arrangements that incorrectly characterise intangible assets, or connected activities or conditions.

[International dealings schedule – non-lodgment](#)

How to lodge the international dealings schedule – non-lodgment will attract our attention.

[Non or under-reporting attributable foreign income](#)

Australian entities' who fail to report or incorrectly report attributable foreign income.

[Non-resident withholding tax – interest, dividend or royalty](#)

Where interest, dividend or royalty withholding tax has not been withheld, paid or not declared or reported correctly.

[Significant global entities](#)

Entities that meet the definition of a SGE but do not identify as one on their tax return or fail to lodge documents.

[Country-by-country reporting entities](#)

Entities that fail to declare their country-by-country reporting entity status on their tax return or lodge documents.

[Residency](#)

We review tax residency changes relating to restructures, asset disposals or a significant increase in worldwide income.

[Section 23AH non-assessable non-exempt income](#)

We focus on situations where income has been incorrectly recognised as non-assessable non-exempt.

[Thin capitalisation](#)

Entities with multinational investments and whose debts exceed 60% of the net value of their Australian investments.

[Transfer pricing – related party dealings](#)

Income not subjected to domestic tax due to non-arm's length conditions of international related party dealings.

Capital gains withholding

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Capital-gains-withholding/>
- Last modified: 24 Aug 2022
- QC 69439

Foreign resident capital gains withholding applies to disposals of certain taxable

Australian property under contracts entered into from 1 July 2016.

Situations that attract our attention include where there is a disposal of:

- real property with a market value of at least \$750,000 and both
 - the foreign resident vendor did not apply for a clearance certificate or a withholding variation
 - the purchaser has not paid a withholding amount
- membership interests in an Australian entity that owns substantial real property assets and the foreign resident vendor held a material ownership interest in the entity.

For more information on withholding, see [Capital gains withholding: Impacts on foreign and Australian residents](#).

Characterisation of inbound foreign funds

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Characterisation-of-inbound-foreign-funds/>
- Last modified: 24 Aug 2022
- QC 69440

We review cross-border arrangements that mischaracterise inbound foreign funds provided by non-residents to Australian taxpayers.

We are concerned with whether the correct tax characterisation has been adopted for funds received into Australia.

Inbound foreign funds need to comply with relevant tax laws, applicable tax treaties and the factual circumstances such as the underlying transaction, the structure used and the relationship between the relevant parties.

We are concerned that such arrangements may be contrived and unnecessarily complex to reduce or disguise the amount of income tax or withholding tax payable.

Foreign investors investing directly into businesses

Cross-border arrangements mischaracterising the structure used by foreign investors to invest directly into Australian businesses can attract our attention. They typically display one or more of the following features:

- The Australian resident entities are unable to obtain capital from traditional external debt finance sources on normal terms.
- The foreign investor either already participates in the management, control or

capital of the Australian entity at the time of investment, or starts to participate in the management, control or capital as part of the investment.

- Financial dealings between resident and foreign resident related parties that do not intend to create legally enforceable obligations or proceed on the basis indicated by the form of the arrangement.
- The investment has features not consistent with commercial debt or equity investments.
- The investment may provide the foreign investor with direct exposure to the economic return from a particular Australian business or asset portfolio (whether via trading activities or from the proceeds on disposal).

Loans and gifts

Situations that attract our attention include where there is insufficient substantiation and mischaracterisation of funds received from offshore family and related parties in the form of loans or gifts, see [gifts or loans from related overseas entities](#). We focus on arrangements where Australian resident taxpayers derive income or capital gains offshore and either:

- fail to declare the foreign income in their tax return
- conceal the character of the funds upon repatriation to Australia as a purported 'gift' or 'loan' from a related overseas entity.

For more information on mischaracterisation and disguising undeclared foreign income, see:

- [TA 2020/2](#) *Mischaracterised arrangements and schemes connected with foreign investment into Australian entities*
- [Division 974](#) ITAA 1997 Debt and Equity interests
- [TA 2021/2](#) *Disguising undeclared foreign income as gifts or loans from related overseas entities*.

Foreign residents and taxable Australian property

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Foreign-residents-and-taxable-Australian-property/>
- Last modified: 24 Aug 2022
- QC 69441

Foreign residents (except beneficiaries of resident non-fixed trusts) can disregard a capital gain or loss from a CGT event (such as a disposal), unless that CGT asset is taxable Australian property (TAP).

TAP comprises of:

- taxable Australian real property (TARP)
- indirect Australian real property interests (see [Indirect interests in Australian real property](#))
- assets used in carrying on a business through a permanent establishment in Australia
- an option, or right, to acquire any of the above assets.

Foreign residents disposing of TAP are expected to lodge returns advising of any gain or loss.

Foreign residents attract our attention if they:

- hold significant direct or indirect interests in TAP assets – for example, shares in mining companies and interests in commercial properties
- dispose of TARP or indirect interests but do not meet their CGT obligations in relation to the disposal
- characterise or value assets in a way to come within the CGT exclusion
- enter into a series of transactions such as 'staggered sell-down' arrangements that attempt to come within the CGT exclusion
- lodge returns that are not in accordance with new associate inclusive test in determining total participation interests
- fail the principal asset test by inappropriately allocating significant market value to non-TARP assets
- are unlikely to have sufficient funds or assets remaining in Australia to meet their tax obligation relating to a disposal of a TARP.

For information on staggered sell-down arrangements and exploiting asset valuations to avoid capital gains tax, see:

- [TA 2008/19](#) *Foreign residents attempting to avoid Australian capital gains tax by certain 'staggered sell down' arrangements*
- [TA 2008/20](#) *Foreign residents exploiting asset valuations to avoid capital gains tax.*

Hybrid mismatch rules

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Hybrid-mismatch-rules/>
- Last modified: 24 Aug 2022
- QC 69442

Enacted in 2018, the [hybrid mismatch rules](#) aim to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining

double tax benefits through hybrid mismatch arrangements. These arrangements exploit differences in the tax treatment of an entity or instrument under the laws of 2 or more tax jurisdictions.

The hybrid mismatch rules apply to payments that result in hybrid mismatch outcomes such as where:

- a payment is deductible in one jurisdiction and non-assessable in the other jurisdiction
- one payment qualifies for a tax deduction in 2 jurisdictions
- a payment indirectly funds a hybrid mismatch in another jurisdiction.

These rules will neutralise hybrid mismatches by cancelling deductions or including amounts in assessable income.

Practical Compliance Guideline [PCG 2018/7](#) *Part IVA of the Income Tax Assessment Act 1936 and restructures of hybrid mismatch arrangements* provides guidance on when restructures may attract our attention.

Intangible assets

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Intangible-assets/>
- Last modified: 24 Aug 2022
- QC 69443

We review international arrangements that incorrectly characterise either intangible assets, or activities or conditions connected with intangible assets.

Taxpayers may engage in operations that require the use or enjoyment of intangible assets developed, maintained, protected or owned in a foreign jurisdiction. We are concerned when these taxpayers fail to pay, or recognise payment of, a royalty under Australia's tax treaties and laws.

We are also concerned with migration of intangible assets. Migration refers to any transactions that allows an offshore party to access, hold, use, transfer, or obtain benefits in connection with, Australian intangible assets or associated rights.

In these circumstances, there is typically a significant mismatch between the substance of the relevant parties' operations and the form of their legal agreements. There is also generally an incorrect characterisation of the relevant assets and activities performed in connection with such assets.

We are concerned that:

- parties to arrangements of this type may not comply with Australian royalty withholding tax obligations associated with consideration for the use of intangible assets, under Subdivision 12-F of Schedule 1 to the *Taxation Administration Act 1953*
- the analysis or methodology used to determine the arm's length conditions or profits connected with these arrangements may result in parties obtaining a transfer pricing benefit for the purposes of Division 815 of the ITAA 1997
- the Australian entity disposes of their intangible assets to the offshore related party for low consideration on non-arm's length terms, thereby minimising its CGT liability – the Australian entity may have also inappropriately utilised other CGT concessions, such as the rollover in subdivision 126-B ITAA 1997
- such arrangements may be entered into or carried out for the dominant or principal purpose of obtaining a tax benefit – this may attract the application of Part IVA of the ITAA 1936 or the diverted profits tax or both
- intellectual property arrangements involving inadequate reward for either
 - value contributed by the Australian entity
 - non-arm's length migration of rights in property created by the Australian entity.

For more information on mischaracterisation of activities and non-arm's length arrangements, see:

- [TA 2018/2](#) *Mischaracterisation of activities or payments in connection with intangible assets*
- [TA 2020/1](#) *Non-arm's length arrangements and schemes connected with the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangible assets.*

International dealings schedule – non-lodgment

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/International-dealings-schedule---non-lodgment/>
- Last modified: 24 Aug 2022
- QC 69444

We focus on tax returns and other information indicating that an international dealings schedule may be required but has not been lodged.

The international dealings schedule forms part of the entity's tax return.

The [International dealings schedule instructions 2022](#) will help you complete the

Non or under-reporting attributable foreign income

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Non-or-under-reporting-attributable-foreign-income/>
- Last modified: 24 Aug 2022
- QC 69445

We focus on Australian entities that have failed to report or incorrectly reported attributable foreign income (see, [foreign income return form guide](#)). This includes Australian corporate tax entities with offshore activities that have repatriated their income as a foreign equity distribution that is non-assessable non-exempt income (NANE) (see [section 768-5](#) of the ITAA 1997).

Situations that attract our attention include where:

- the controlled foreign company (CFC) or transferor trust (TT) is in an unlisted country
- there is a failure to disclose all interests in CFCs, TTs or other foreign entities
- there is a failure to lodge an international dealings schedule, despite disclosing an interest in a CFC, TT or another foreign entity in the tax return
- there is inconsistent or incomplete information disclosed regarding CFCs and details of CFC attribution and calculation amounts in the tax return, the international dealings schedule and other tax return schedules
- the income being generated through a CFC is tainted
- fund movements are contrary to where the CFC or TT is located
- there is a sudden drop in attributable foreign income without a change in the number of CFCs or TTs
- the amount of NANE income reported has increased from the previous year but no attributable foreign income has been reported for the current and prior years
- entities have large claims for deductions, under [section 25-90](#) of the ITAA 1997, for outgoings incurred in deriving NANE income
- a CFC in an unlisted country provides benefits (including non-arm's length loans or waiver of a debt) to its shareholders or associates in a form other than dividends. Section 47A of ITAA 1936 may apply to deem these benefits as dividends.

For information on completing foreign source income questions on your income tax return, see [Foreign source income and foreign assets or property 2022 \(for individuals\)](#).

Non-resident withholding tax – interest, dividend or royalty

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Non-resident-withholding-tax---interest-dividend-or-royalty/>
- Last modified: 24 Aug 2022
- QC 69446

We focus on:

- interest, dividend or royalty withholding tax that has not been withheld or paid
- situations where an incorrect amount of withholding tax is paid
- deductions for interest or royalty payments to an offshore entity being incorrectly claimed or misclassified on tax returns
- a withholding tax exemption or tax treaty relief being incorrectly claimed
- situations where an entity pays interest, dividends or a royalty to a non-resident and fails to lodge, by 31 October, either
 - a [PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report](#)
 - an [Annual investment income report](#)
- situations where entities defer their interest to avoid or defer withholding tax and claim deductions on an accruals basis
- arrangements where offshore related entities are used to facilitate the avoidance of interest withholding tax in relation to interest expenses deducted against Australian-sourced income and paid to non-residents
- offshore entities that claim a credit for tax withheld without declaring income
- situations where there are discrepancies between the amounts
 - claimed as deductions for interest or royalty payments on the tax return
 - reported as withheld and paid on the activity statement or annual report.

For more information on amounts paid to foreign residents, see [Investment income and royalties paid to foreign residents](#).

Additional guidance can be found in our Taxpayer Alerts:

- [TA 2018/4](#) *Accrual deductions and deferral or avoidance of withholding tax*
- [TA 2020/3](#) *Arrangements involving interposed offshore entities to avoid interest withholding tax*

Significant global entities

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Significant-global-entities/>
- Last modified: 24 Aug 2022
- QC 69448

Certain measures only apply to entities that meet the definition of a [significant global entity](#) (SGE). Subdivision 960-U of ITAA 1997 currently defines SGE as a global parent entity or member of that global parent entity's group with annual global income of A\$1 billion or more. The SGE concept is not limited to entities that are members of a multinational group. An SGE can also be an entity in a group that only operates in Australia.

Amendments to the law in 2020 extended the definition of SGE to include:

- groups headed by individuals
- trusts
- partnerships
- private companies.

The amendments apply in relation to income years or periods commencing on or after 1 July 2019 with penalties applying from 1 July 2020 to entities that were not previously SGEs. SGEs may be subject to [increased penalties](#) and compliance measures including:

- [Combating multinational tax avoidance](#)
- [Diverted profits tax](#).

We focus on entities that:

- meet the SGE definition but do not identify as one on their tax return
- fail to lodge relevant and complete documentation as required.

Country-by-country reporting entities

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Country-by-country-reporting-entities/>
- Last modified: 24 Aug 2022
- QC 69449

The revised significant global entity (SGE) definition also includes changes to country-by-country (CBC) reporting requirements. CBC reporting entities are a subset of SGEs that are required to provide [CBC reports](#) and [general purpose financial statements](#) (GPFS) to us if they have not been filed with the Australian Securities & Investments Commission (ASIC).

We focus on CBC reporting entities that:

- meet the definition but do not identify as such on their tax returns
- fail to lodge relevant and complete documentation as required.

Some SGEs may still have CBC and GPFS reporting obligations under the law that applied before the amendments mentioned above. Entities should check their status to ensure that any returns that may be due are provided as required.

Residency

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Residency/>
- Last modified: 24 Aug 2022
- QC 69450

We focus on individuals, companies and trusts shifting their tax residency to another jurisdiction before or during restructures or asset disposals within their family group with the aim of:

- avoiding an Australian tax liability
- obtaining tax benefits on the disposal of CGT assets
- making tax-free distributions to associates.

Other situations that attract our attention include when tax has not been paid on:

- an entity's assets when ceasing to be an Australian resident
- a resident entity's worldwide income.

We also focus on wealthy individuals who change their Australian residency status commensurate with a significant income event occurring in their personal lives or in relation to their family group.

There is more information about central management and control test in the below resources:

- [TR 2018/5](#) *Income tax: central management and control test of residency*
- [PCG 2018/9](#) *Central management and control test of residency: identifying where a company's central management and control is located.*

For assistance with residency status, see [Working out your residency](#).

Section 23AH non-assessable non-exempt

income

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Section-23AH-non-assessable-non-exempt-income/>
- Last modified: 24 Aug 2022
- QC 69451

We focus on an Australian company's overseas branch or permanent establishment income that has been incorrectly recognised as non-assessable non-exempt (NANE) branch income under [section 23AH](#) of the ITAA 1936. We also focus on the deductions being claimed to have been incurred by the Australian company in deriving section 23AH NANE branch income for which no deduction is available.

Situations that attract our attention include where:

- there is no permanent establishment but section 23AH NANE income is declared
- a permanent establishment may not have passed the active income test and the income is both
 - adjusted tainted income
 - eligible designated concession income (this applies to permanent establishments in listed countries only)
- there are low non-deductible expenses but section 23AH NANE income is declared.

For information on foreign branch income, see [Taxation of branch profits](#).

Thin capitalisation

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Thin-capitalisation/>
- Last modified: 24 Aug 2022
- QC 69452

We focus on Australian and foreign entities that have multinational investments and whose debts exceed 60% of the net value of their Australian investments.

An entity attracts our attention if it has:

- failed to lodge the international dealings schedule when required
- reported a large amount of overseas interest expense on the tax return and has not completed the thin capitalisation section

- failed the safe harbour debt test, arm's length debt test or worldwide gearing test (based on the international dealings schedule) and has not declared the debt deduction disallowed
- relied on the arm's length debt test without due consideration of the Commissioner's view in [TR 2020/4](#) *Income Tax: Thin Capitalisation – the arm's length debt test*
- determined the value of its assets and liabilities inappropriately for thin capitalisation purposes
- revalued assets for [thin capitalisation](#) purposes.

For information on the arm's length debt test, see [PCG 2020/7](#) *ATO compliance approach to the arm's length debt test*.

Transfer pricing – related party dealings

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/International-transactions/Transfer-pricing---related-party-dealings/>
- Last modified: 24 Aug 2022
- QC 69453

Income not subjected to domestic tax due to non-arm's length conditions of international related party dealings.

On this page

- [Our focus](#)
- [Non-commercial financing arrangements](#)
- [Related-party financing arrangements](#)
- [Related party service arrangements](#)
- [Mischaracterisation of management services](#)
- [Customer and supplier contracts or relationships moved offshore](#)
- [Shifting Australian assets or operations offshore](#)
- [Offshore hubs that derive high profits](#)

Our focus

We focus on income or profits generated in Australia that are not being subjected to domestic tax due to non-arm's length conditions of international related party dealings. For information on concept and risk, see [International transfer pricing – concepts and risk assessment](#).

Non-commercial financing arrangements

Situations that attract our attention include entities entering into financing arrangements with international parties on non-commercial terms that generate

excessive interest deductions or non-recognition of income in Australia.

Related-party financing arrangements

We are seeing instances where the terms and conditions of related party financing arrangements in the property and construction industry give rise to a [transfer pricing](#) benefit. We will review these arrangements having regard to the options realistically available to the entities at the time.

Related party service arrangements

We are seeing instances of related-party service fees being paid offshore that do not meet the benefits tests required for deductibility in accordance with TR 1999/1 concerning transfer pricing for intra-group services.

Mischaracterisation of management services

We are concerned with arrangements that mischaracterise transactions as the provision of management services where, in substance, all functions in relation to the offshore entity are either performed by staff in Australia or outsourced to third party providers that are directed by the Australian employees. These arrangements may cause a transfer pricing benefit to arise and may trigger other anti-avoidance provisions.

Customer and supplier contracts or relationships moved offshore

We are concerned with arrangements where pre-existing customer and supplier contracts or relationships are moved from an Australian entity to an offshore entity creating a transfer pricing benefit. We will seek to understand the commercial rationale for the change and seek evidence to support the arm's length nature of the transaction.

Shifting Australian assets or operations offshore

We are concerned about business restructures that shift Australian assets or operations offshore without arm's length compensation or appropriate recognition for their inherent underlying commercial value.

Offshore hubs that derive high profits

We are concerned about offshore hubs that derive high profits from marketing or procuring goods or services for Australian operations.

For information on record keeping see, [PCG 2017/2](#) *Simplified transfer pricing record-keeping options*.

For information on our compliance approach, see [PCG 2017/4](#) *ATO compliance approach to taxation issues associated with cross-border related party financing arrangements and related transactions*.

Lower company tax rate

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Lower-company-tax-rate/>
- Last modified: 24 Aug 2022
- QC 69454

We are concerned when ineligible corporate tax entities claim the concessional tax rate for base rate entities

Artificial or contrived arrangements implemented to access the lower company tax rate attract our attention.

The lower company tax rate applies to a corporate tax entity that is a base rate entity (BRE). The company tax rate of 30% applies to all other corporate tax entities. For more information, see [Changes to company tax rate](#).

We recognise that the majority of corporate tax entities will apply the correct tax rate. However, situations that attract our attention include:

- corporate tax entities not eligible to be a BRE claiming the concessional tax rate such as entities that
 - fail to include the annual turnover of all of their connected entities and affiliates in calculating their aggregated turnover (see, [Aggregation](#))
 - have 80% or greater of their income as base rate entity passive income (see, [LCR 2019/5](#) *Base rate entities and base rate entity passive income*)
- artificial or contrived arrangements to change the company tax rate, such as arrangements where groups
 - restructure to reduce their aggregated turnover
 - shift the derivation of non-passive income to companies who derive only passive income
 - shift passive income to companies deriving non-passive income.

For more information on compliance and administrative approaches for prior years, see [PCG 2018/8](#) *Enterprise Tax Plan: small business company tax rate change: compliance and administrative approaches for the 2015–16, 2016–17 and 2017–18 years*.

Professional firms

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Lower-company-tax-rate/>

- Last modified: 24 Aug 2022
- QC 69455

We are concerned about arrangements involving individual professional practitioners who redirect their income from a business or activity that includes their professional services to an associated entity where it has the effect of significantly reducing their tax liability.

Arrangements that attract our attention include those that lack commercial rationale or have high-risk features.

Arrangements that lack commercial rationale:

- seem more complex than necessary to achieve the relevant commercial objective
- appear to serve no real purpose other than to gain a tax advantage
- have a tax result that appears to be at odds with its commercial or economic result
- result in little or no risk in circumstances where significant risks would normally be expected
- operate on non-commercial terms or in a non-arm's length manner
- present a gap between the substance of what is being achieved and the legal form it takes.

Arrangements with high-risk features:

- have financing arrangements relating to non-arm's length transactions
- exploit the difference between accounting standards and tax law
- are materially different in principle from [Everett and Galland](#)
- involve multiple classes of shares and units held by non-equity holders.

For more information on the allocation of profits and our compliance approach, see:

- [PCG 2021/4](#) *Allocation of professional firm profits – ATO compliance approach*
- [Assessing the risk: allocation of profit within professional firms](#)
- [TA 2013/3](#) *Purported alienation of income through discretionary trust partners.*

Property and construction

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Property-and-construction/>
- Last modified: 24 Aug 2022
- QC 69456

Where entities have conducted property development, we focus on how they

include the profit or income from those activities on their tax returns. A particular focus is how the income should be classified, depending on whether the development was:

- part of a business of property development
- undertaken for a profit-making purpose.

Situations that attract our attention include:

- entities that use an SMSF to fund the development and subdivision of properties leading to sale
- property that has been disposed of shortly after the completion of subdivision where the amount is returned as a capital gain (refer to [TD 92/124](#))
- where there's a history of property development or renovation sales in the entity's wider economic group but the current sale is returned as a capital gain
- an entity that is a land-owner and has related entities that undertake a property development (refer to [TR 2018/3](#))
- claiming inflated deductions for property developments that are not in accordance with the trading stock provisions, or spreading headworks and other costs over the inventory in line with the decision in [Federal Commissioner of Taxation v Kurts Development Limited \[1998\] FCA 1037 \(Kurts Developments²⁷\)](#)
- an entity that undertakes multi-purpose developments with both revenue and a capital purpose, for example an entity that retains units for rent after development (the entity needs to make sure that costs are applied appropriately).

Research and development tax incentive

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Research-and-development-tax-incentive/>
- Last modified: 24 Aug 2022
- QC 69457

The ATO and AusIndustry (on behalf of Innovation and Science Australia) jointly administer the [research and development \(R&D\) tax incentive](#). The incentive aims to support companies that undertake eligible R&D activities. AusIndustry administers the registration and compliance of the R&D activities. We are responsible for the R&D expenditure claimed on the tax return.

We focus on claims:

- made by entities in particular industries
- related to particular behaviours.

Four industries of concern have been identified:

- agriculture
- building and construction
- mining
- software development.

Particular behaviours of concern are:

- claiming the R&D tax offset on business-as-usual expenses
- apportionment of overheads between eligible and non-eligible R&D activities
- payments to associates
- whether or not expenses have been incurred
- approaches taken by R&D consultants
- fraudulent claims
- failure to keep records.

For more information on the R&D incentives and industries, see our taxpayer alerts:

- [TA 2015/3](#) *Accessing the R&D tax incentive for ineligible broadacre farming activities.*
- [TA 2017/2](#) *Claiming the R&D tax incentive for construction activities*
- [TA 2017/3](#) *Claiming the R&D tax incentive for the ordinary business activities.*
- [TA 2017/4](#) *Claiming the R&D tax incentive for agricultural activities*
- [TA 2017/5](#) *Claiming the R&D tax incentive for software development activities*

Self-managed super funds

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Self-managed-super-funds/>
- Last modified: 24 Aug 2022
- QC 69458

With [self-managed super funds](#) (SMSFs), we focus on transactions and schemes that aim to inappropriately take advantage of concessional tax rates that apply to complying super funds.

Our attention is attracted by:

- schemes in which parties were not dealing with each other at arm's length and non-arm's length expenditure either has
 - been incurred in gaining or producing ordinary or statutory income
 - not been incurred but would have been expected to be incurred if the parties were dealing with each other at arm's length
- other issues including

- income from property developments being inappropriately diverted into SMSFs (see SMSF Regulator's Bulletin [SMSFRB 2020/1](#))
 - intra-group lending and guarantee arrangements that inappropriately benefit SMSFs (see SMSF Regulator's Bulletin [SMSFRB 2020/1](#))
 - income derived by a fund through a fixed entitlement to the income of a trust
- issues around valuation of any type of property being indirectly or directly purchased from a private group
 - significant management and administration expenses
 - private company dividends or unit trust distributions being diverted to SMSFs
 - illegal early release of superannuation benefits
 - personal services income diverted to SMSFs
 - incorrect calculation of exempt current pension income.

We know some schemes target Australians planning for their retirement and encourage people to channel money inappropriately through their SMSF.

The [Super Scheme Smart](#) aims to educate individuals and their advisers about these schemes.

These schemes have some common features.

They:

- are artificially contrived with complex structures, usually connecting with an existing or newly created SMSF
- involve a significant amount of paper shuffling
- aim to give a present-day tax benefit, often resulting in the individuals involved paying minimal or zero tax, or even receiving a tax refund
- sound too good to be true and, as such, they generally are.

For guidance and rulings, see:

- [TR 2006/7](#) *Income tax: special income derived by a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust in relation to the year of income* (special income was the predecessor to NALI)
- [LCR 2021/2](#) *Non-arm's length income – expenditure incurred under a non-arm's length arrangement*
- [PCG 2020/5](#) *Applying the non-arm's length income provisions to 'non-arm's length expenditure' – ATO compliance approach for complying superannuation entities*

Trusts

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Business-structure/Trusts/>
- Last modified: 24 Aug 2022
- QC 69459

We focus on several risks including complex distributions, lodgment of trust and beneficiary tax returns, and trust and taxable income mismatches.

The [Tax Avoidance Taskforce – Trusts](#) continues to target higher risk trust arrangements in privately owned and wealthy groups. In particular, these possess risk characteristics beyond ordinary trust arrangements or tax planning associated with genuine business or family dealings.

Transactions and taxes

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/>
- Last modified: 24 Aug 2022
- QC 58474

Explanation of transactions and taxes that attract our attention.

[Bad debts](#)

We focus on the correct application of the rules where deductions are claimed for bad debts

[Capital gains tax](#)

Certain capital losses, disposals and small business CGT concession claims attract our attention.

[Commercial debt forgiveness](#)

Situations where an entity has had a debt forgiven (whether formally or informally) may attract our attention.

[Deductions](#)

Incorrectly claiming deductions will attract our attention.

[Economic stimulus measures](#)

We identify schemes to inflate or access loss carry back, temporary full expensing and backing business investment.

[Excise and excise equivalent goods](#)

We focus on licence and permission obligations, record keeping and releasing goods without authority to deal.

[Franking credits](#)

Incorrect claims, poor governance, increases in or refund of credits through a concessional tax rate raises concerns.

[Fringe benefits tax](#)

Some FBT issues are around motor vehicles, employee contributions, entertainment and car parking valuation.

[Private use of assets or private pursuits in business](#)

What to do if you use an asset purchased by a business for a mix of business and private purposes.

[Private company benefits](#)

We focus on arrangements that extract wealth from private companies while avoiding the appropriate amount of tax.

[Revenue losses](#)

Some revenue loss issues we look out for are how losses are incurred and used.

[Taxation of financial arrangements](#)

We focus on entities that are subject to TOFA to ensure that they apply the TOFA rules correctly.

Bad debts

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Bad-debts/>
- Last modified: 24 Aug 2022
- QC 69461

We focus on deductions claimed for bad debts, in particular:

- the genuine nature of bad debts
- whether it is correct to treat the debt as bad
- arm's length treatment of debts within closely held groups
- the treatment, by related entities, of income reflecting the debt
- the documentation and evidence supporting the claims.

We also look at the correct application of the deduction rules, in particular:

- the period when the debts were written off
- the amount being claimed
- whether there is a lending business or the debt is included in income
- the rules being used for individuals, companies and trusts.

For more information on bad debts, refer to:

- [Section 25-35](#) ITAA 1997
- [TR 92/18](#) *Income tax: bad debts*.

Capital gains tax

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Capital-gains-tax/>
- Last modified: 24 Aug 2022
- QC 69462

Certain capital losses, disposals and small business CGT concession claims attract our attention.

On this page

- [Capital losses](#)
- [Capital gains tax – disposal](#)
- [Small business CGT concessions](#)

Capital losses

Situations that attract our attention include:

- losses that appear to be excessive, incorrect or misclassified
- changes to the company in the year the loss occurred and whether there was a change in either
 - the ownership of the company (may fail the continuity of ownership test)
 - the nature of the business (may fail the business continuity test)
- capital losses artificially generated to offset [capital gains](#), including
 - non-arm's length transactions used to manipulate cost base
 - capital losses realised solely to offset capital gains through wash sales
- entities that incorrectly apply capital losses
- entities that reclassify capital losses as revenue losses to offset taxable income
- mismatches between the tax return and the CGT schedule.

Capital gains tax – disposal

Situations that attract our attention include:

- when capital gains reported is less than what it should be, based on our estimates using external data sources
- entities that fail to meet their CGT schedule lodgment obligations
- companies (other than life insurance companies) claiming a CGT discount
- beneficiaries that fail to gross up the discounted share of capital gain distributed by a trust
- entities that received cash (or other ineligible consideration) through a partial [scrip for scrip rollover](#)
- entities that disposed of high value assets but returned small capital gains or claimed unsubstantiated capital losses
- entities that incorrectly apply CGT rollover provisions.

Small business CGT concessions

We want to ensure entities genuinely meet the eligibility criteria when claiming [small business CGT concessions](#).

Situations that attract our attention include:

- entities that fail the [small business entity test](#) (for example, fail to carry on a business or have an aggregated turnover greater than \$2 million)
- entities that fail the [maximum net asset value test](#) – net assets of the entity, connected entities and affiliates exceeds \$6 million
- where the asset disposed of does not meet the definition of an [active asset](#)
- entities that do not meet the [additional conditions where the CGT asset is a share or trust interest](#)
- entities that fail to correctly identify significant individuals and CGT concession stakeholders – see [Additional conditions if the CGT asset is a share or trust interest](#)
- entities that restructure for the primary purpose of enabling access to small business CGT concessions which might not otherwise be available
- entities that claim the small business rollover, but do not report a CGT event J5 at the end of the replacement asset period when they fail to acquire a replacement asset
- entities that do not meet the additional conditions applicable to the type of small business CGT concession claimed such as exceeding the small business CGT retirement exemption limit of \$500,000
- entities that fail to correctly report or apply the 15-year exemption.

Commercial debt forgiveness

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Commercial-debt-forgiveness/>
- Last modified: 24 Aug 2022
- QC 69464

Situations that attract our attention include entities that have:

- had a [debt forgiven](#) (whether formally or informally)
- a commercial debt forgiven (see [Division 245](#) of the ITAA 1997 – *Forgiveness of a commercial debt*), but the gain it represents for the debtor has not been recorded correctly in the tax return
- had a deemed forgiveness that takes place when a debt is assigned to a party related to the debtor
- entered into a debt for equity swap and failed to adjust their loss claims.

For more information on commercial debt forgiveness, see [TD 2022/1](#) *Income tax: commercial debt forgiveness – does the exclusion for debts forgiven for reasons of natural love and affection require that the creditor be a natural person?*

Deductions

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Deductions/>
- Last modified: 24 Aug 2022
- QC 69466

Situations that attract our attention include:

- incorrectly claiming deductions (see [income and deductions for business](#)) that decrease taxable income including from
 - failing to add back non-deductible expenses in the reconciliation statement
 - inappropriately valuing closing stock at below cost or replacement value
- payments made to related parties for services that either
 - were not provided
 - had no connection with earning assessable income
- undefined expenses
- using the trading stock election rules to lower the valuation of closing stock.

For more information on trading stock, see [TR 93/23](#) *Valuation of trading stock subject to obsolescence or other special circumstances*.

Economic stimulus measures

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Economic-stimulus-measures/>
- Last modified: 24 Aug 2022
- QC 69467

The loss carry back, temporary full expensing and backing business investment – accelerated depreciation are measures designed to stimulate business investments and to help businesses recover from the economic effects of COVID-19.

We will be actively identifying tax schemes and arrangements that seek to artificially inflate or enable access to claims relating to these measures.

For more information on behaviours that attract our attention in relation to the stimulus measures, see [Economic stimulus measures – compliance and integrity](#).

Excise and excise equivalent goods

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Excise-and-excise-equivalent-goods/>
- Last modified: 24 Aug 2022
- QC 69476

We have an ongoing focus on the risks associated with:

- licence and permission obligations
- record keeping
- releasing goods without the proper authority to deal.

Information about these can be found in our detailed web content:

- [Excise on alcohol](#)
- [Excise on fuel and petroleum products](#)
- [Excise on tobacco](#)
- [Excise equivalent goods \(imports\)](#)

We have increased our focus on illicit alcohol products that reach retailers and consumers without excise or customs duty obligations being met.

Arrangements that attract our attention involve excisable or customable alcohol products entering the Australian domestic market without the required excise or customs duty being paid. This is illegal and we treat it very seriously.

Arrangements that [attract our attention around illicit alcohol](#) include:

- unlicensed manufacture
- licensed manufacture or storage of unreported product
- selling illicit alcohol
- diversion of illicit alcohol.

Franking credits

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Franking-credits/>
- Last modified: 24 Aug 2022
- QC 69478

Situations that attract our attention include:

- entities incorrectly claiming franking credits or not applying appropriate governance to their franking credit balance (see [Imputation](#) and [Integrity rules](#))
- a substantial increase in, or refund of, franking credits
- arrangements to access franking credits through an entity with a concessional tax rate, such as a superannuation fund.

For information on structured arrangements, see [TA 2018/1](#) *Structured arrangements that provide imputation benefits on shares acquired on a limited risk basis around ex-dividend dates*.

Fringe benefits tax

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Fringe-benefits-tax/>
- Last modified: 24 Aug 2022
- QC 69479

Some FBT issues are around motor vehicles, employee contributions, entertainment and car parking valuation.

On this page

- [Motor vehicles](#)
- [Employee contributions](#)
- [Entertainment](#)

- [Car parking valuation](#)

Motor vehicles

We look out for situations where an employer provides a motor vehicle to an employee who uses it for private travel or has it available to use privately.

Both the actual private use of a motor vehicle and its availability for private travel are fringe benefits. This means that the employer may have a fringe benefits tax liability.

Situations that concern us include when employers:

- fail to identify or report these fringe benefits
- incorrectly apply [exemption provisions](#)
 - for vehicles that are not eligible
 - by treating all travel as business
- incorrectly claim reductions for these benefits without the appropriate records to support the reduction.

Additional resources can be found in the *Fringe benefits tax – a guide for employers*

- [Chapter 7 – Car fringe benefits](#)
- [Chapter 18 – Residual fringe benefits](#) (refer to section 18.6 'Taxable value of motor vehicles other than cars')
- [Chapter 4 – Fringe benefits tax record keeping.](#)
- [Fringe benefits tax – car calculator](#)

Employee contributions

The general effect of an employee contribution to benefits is that it:

- reduces the amount of fringe benefits tax payable (see, [Reducing your FBT liability](#))
- is included in the employer's income.

We look out for mismatches between the amount reported as an employee contribution on the fringe benefits tax return and the income amounts on the employer's tax return.

For more information see, *Fringe benefits tax - a guide for employers* [Chapter 2 – Calculating fringe benefits tax](#).

Entertainment

If you provide your employees or their associates with food and drink, gifts or leisure activities (such as Christmas parties and business lunches) you may have a fringe benefits tax liability.

We look out for situations where employers are providing entertainment activities to

their employees and the expenses are:

- claimed as deductions in their tax return without correctly reporting and paying fringe benefits tax
- classified as sponsorship or advertising where there is an entertainment aspect to the activity.

See *Fringe benefits tax - a guide for employers*:

- [Chapter 14 – Entertainment and fringe benefits](#)
- [Chapter 20 – Fringe benefits tax exempt benefits.](#)

Car parking valuation

You are required to obtain a valuation report to support the calculation of car parking fringe benefits from a suitably qualified valuer and substantiate the market valuation.

We are aware that COVID-19 has affected the rates of commercial parking in many areas, and that market valuations may be impacted as a result.

For car parking, situations that concern us include when the calculation is based on:

- nil market valuations or market valuations that appear to be significantly discounted
- parking rates that are not representative of commercial parking in the area
- parking rates that are not supported by evidence.

See *Fringe benefits tax - a guide for employers* [Chapter 16 – Car parking fringe benefits](#)

Private use of assets or private pursuits in business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Private-use-of-assets-or-private-pursuits-in-business/>
- Last modified: 24 Aug 2022
- QC 69480

What to do if you use an asset purchased by a business for a mix of business and private purposes.

On this page

- [Where assets are used for private and business use](#)

- [Income tax](#)
- [Fringe benefits tax](#)
- [GST](#)
- [Superannuation](#)

Where assets are used for private and business use

If an asset purchased by a business is used for a mix of business and private purposes, you can only claim a deduction for the portion of the expenses related to your business, see [Account for private use of assets correctly](#).

We continue to improve data matching processes across a range of sources to identify entities that may be using business assets for personal purposes without appropriately accounting for that use.

We also look at the use of assets for private pursuits that are not appropriately accounted for under the law, including deductibility of expenditure, Division 7A or fringe benefits tax. More information can be found on [Payments by private companies – use of assets](#) and [Depreciation and capital expenses and allowances](#).

Situations that attract our attention include:

- private aircraft ownership or activities
- art ownership and dealings
- car or motor bike racing activities
- high value and charter boat activities
- enthusiast or high value motor vehicles
- grape growing and other farming pursuits
- horse breeding, racing and training activities
- holiday homes and rental accommodation
- sporting clubs and other activities involving participation of the principals of private groups or their associates.

Income tax

We focus on issues about:

- claiming deductions against other income for the conduct of private pursuits or assets that are private in nature – this is a tax risk if the entity is not carrying on a business relating to those assets or pursuits
- eligibility for an immediate or accelerated deduction in relation to assets
- incorrectly apportioning deductions where the asset either
 - has been used for both income producing and private purposes
 - is not available for rent or hire
- entities that have disposed of assets but have not reported revenue income or capital gains.

Fringe benefits tax

We are concerned about entities that have purchased assets through their businesses but have used them for the personal enjoyment of an employee or associate.

GST

We are concerned about entities that have claimed input tax credits for expenditure for private pursuits.

Superannuation

We are concerned about self-managed super funds (SMSFs) that have acquired assets and used them for the benefit of the fund's trustees or beneficiaries.

Private company benefits

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Private-company-benefits/>
- Last modified: 22 Nov 2022
- QC 69482

We focus on arrangements that extract wealth from private companies while avoiding the appropriate amount of tax.

On this page

- [The transactions we monitor](#)
- [Director loans](#)
- [Dividend access share schemes](#)
- [Deemed dividend](#)
- [Unpaid present entitlements](#)

The transactions we monitor

Transactions that attract our attention, include those that:

- are conducted through one or more interposed entities
- involve excessive or non-arm's length payments.

To target areas of concern, we continue to improve data matching processes across a range of sources to identify entities that received income or other benefit but haven't reported it and may have a tax liability.

These areas of focus may include:

- director loans

- dividend access share schemes
- deemed dividend
- unpaid present entitlements.

Anti-avoidance rules may also apply to such arrangements.

Director loans

We focus on:

- directors who are shareholders of private companies and who report low levels of salary and wages with minimal other sources of income
- whether shareholders and their associates are maintaining a lifestyle that cannot be supported by the level of income reported to us.

For information on private company benefits, see [Payments and other benefits affected](#).

Dividend access share schemes

Situations that attract our attention include:

- using dividend access shares as part of a scheme to enable dividend stripping
- arrangements that involve the use of 'dividend access shares' to distribute accumulated profits of a company in a tax-free (or lower tax) form to an associate of the ordinary shareholders of the company.

We encourage taxpayers to review their affairs if they have entered into such arrangements.

For more information on dividend access share arrangements, see:

- [TA 2012/4](#) *Accessing private company profits through a dividend access share arrangement attempting to circumvent taxation laws*
- [TD 2014/1](#) *Income tax: is the 'dividend access share' arrangement of the type described in this Taxation Determination a scheme 'by way of or in the nature of dividend stripping' within the meaning of section 177E of Part IVA of the Income Tax Assessment Act 1936?*

Deemed dividend

A [deemed dividend](#) may arise where a payment or other benefit is provided by a private company to a shareholder or their associate.

The payment or benefit provided can be treated as a dividend for income tax purposes even if the participants treat it as some other form of transaction, such as a loan, advance, gift or writing off a debt. The deemed dividend is included in the assessable income of the shareholder or their associate.

Our attention is attracted when:

- amounts are taken from a company and not repaid

- a complying loan agreement has not been put in place
- minimum yearly repayments on a loan are not paid
- income from interest on a loan is not declared
- company funds or assets are used for private purposes
- transactions occur through interposed entities which appear to be an arrangement involving a payment or loan from the company to a shareholder or their associate
- money has been borrowed directly or indirectly, from a company to repay an existing loan, or make minimum yearly repayments on a complying loan, from the same company
- payments are made on an existing loan (either full amount or minimum yearly repayments) and when the payments were made the shareholder or their associate intended to, directly or indirectly, reborrow a similar or larger amount from that company
- arrangements appear to be designed to avoid the application of [Division 7A](#) or otherwise achieve an inappropriate tax advantage.

Unpaid present entitlements

An [unpaid present entitlement](#) (UPE) is where a private company is a beneficiary of a trust and is presently entitled to an amount of trust income but does not actually receive payment of that distribution.

Situations that attract our attention include:

- private companies, including assessable trust distributions, not receiving payment of the distribution from the trust before the earlier of either
 - the due date for lodgment
 - the date of lodgment of the trust's tax return for the year in which the present entitlement arose
- a failure to put funds retained by the trustee in a sub-trust for the sole benefit of the private company beneficiary
- a failure to pay the UPE at the conclusion of the term specified in an investment agreement
- arrangements releasing the trustee from having to pay the UPE to the private company beneficiary.

For information on the tax avoidance taskforce for trusts, see [What attracts our attention](#).

Revenue losses

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Revenue-losses/>

- Last modified: 24 Aug 2022
- QC 69490

Some revenue loss issues we look out for are how losses are incurred and used.

On this page

- [Revenue losses incurred](#)
- [Revenue losses used](#)

Revenue losses incurred

We focus on entities that inappropriately generate tax [losses](#) by over-claiming expenses and reconciliation items in a given year.

Potential compliance risks include:

- inflating expenses and creating artificial losses
- understating, mischaracterising or omitting income
- misclassifying capital losses as revenue losses.

Entities with one or more of the following factors in their tax returns attract our attention:

- high operating loss in a single year
- significant revenue loss in a single year
- high negative reconciliation items resulting in low or no taxable income
- poor profitability over a sustained period.

For information on keeping records relevant to a tax loss, see [TD 2007/2](#) *Income tax: should a taxpayer who has incurred a tax loss or made a net capital loss for an income year retain records relevant to the ascertainment of that loss only for the record retention period prescribed under income tax law?*

Revenue losses used

We focus on entities that are using or carrying forward tax losses incorrectly.

Tax losses that attract our attention include those:

- being used where companies do not satisfy either the continuity of ownership or business continuity tests
- deducted in the current year and exceeding the previous year's carried forward tax losses
- that cannot be reconciled with relevant labels on the tax return
- being used by trusts that do not satisfy the relevant [trust loss rules](#).

Rulings and determinations:

- [LCR 2019/1](#) *The business continuity test - carrying on a similar business*
- [TR 1999/9](#) *Income tax: the operation of section 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132 (same business*

test)

- [TR 2007/2](#) *Income tax: application of the same business test to consolidated and MEC groups – principally, the interaction between section 165-210 and section 701-1 of the Income Tax Assessment Act 1997*
- [TD 2007/2](#) *Income tax: should a taxpayer who has incurred a tax loss or made a net capital loss for an income year retain records relevant to the ascertainment of that loss only for the record retention period prescribed under income tax law?*

Taxation of financial arrangements

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Transactions-and-taxes/Taxation-of-financial-arrangements/>
- Last modified: 24 Aug 2022
- QC 69491

The [taxation of financial arrangements \(TOFA\)](#) rules in Division 230 of the ITAA 1936 are often complex and errors can arise.

TOFA issues that attract our attention include:

- exceeding a TOFA threshold, but not applying the [TOFA rules](#)
- not reporting TOFA gains and losses correctly on the tax return, which may lead to an incorrect PAYG instalment rate being issued
- failing to bring to account accrued but unrealised gains on debt-like securities such as discounted bonds – this rule applies to all taxpayers and is not limited to those subject to the TOFA rules
- failing to use market values for transfers of financial arrangements between related parties
- improper characterisation of a financial benefit as [sufficiently certain](#) for the purposes of the TOFA accruals methods.

Tax crime

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-attracts-our-attention/Tax-crime/>
- Last modified: 24 Aug 2022
- QC 58475

We detect and deal with those who avoid paying their fair share of tax or try to claim payments they are not entitled to.

On this page

- [Illegal phoenix activity](#)
- [Refund fraud, identity crime and organised crime](#)

Illegal phoenix activity

When a company is liquidated, wound up or abandoned to avoid paying its debts is known as [illegal phoenix activity](#). A new company is then started to continue the same business activities without the debt. When this happens:

- employees miss out on wages, superannuation and entitlements
- other businesses are put at a competitive disadvantage
- suppliers or sub-contractors are left unpaid
- the community misses out on revenue that could have contributed to community services.

We're working with other government agencies through the [Phoenix Taskforce](#) to stamp out illegal phoenix activity.

Refund fraud, identity crime and organised crime

Tax crime affects the whole community by reducing the revenue that is used to fund essential community services. Those people who try to evade or cheat the tax and super system will get caught and we will prosecute them accordingly. We will not tolerate this behaviour.

We take all forms of [Tax crime](#) seriously and we are constantly increasing our ability to tackle it. We partner with domestic and international intelligence, and regulatory and law enforcement agencies, to disrupt perpetrators of serious financial crime and bring them to account. Our focus is on activities involving refund fraud, identity crime and organised crime and those who enable them.

As part of our fight against tax crime, we are a member of a number of taskforces, including the:

- [Joint Chiefs of Global Tax Enforcement](#) (J5)
- [Serious Financial Crime Taskforce](#) (SFCT)
- [Illicit Tobacco Taskforce](#) (ITTF)

To report any known or suspected illegal behaviour you can either:

- complete the [tip-off form](#) (the form is also available in the help and support section of the [ATO app](#))
- phone us on the ATO Tip-off hotline on 1800 060 062.

Tax governance for privately owned groups

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/Tax-governance/>
- Last modified: 01 Dec 2021
- QC 49189

Privately owned groups are significant contributors to the Australian economy. The decisions they make can have a considerable impact on our tax and super systems.

On this page

- [What good governance achieves](#)
- [What tax governance is](#)
- [We can help](#)

What good governance achieves

When private groups have good governance in place around their decision-making, that gives the community and government confidence that private groups are meeting their obligations and paying the right amount of tax.

What tax governance is

Tax governance means having clear processes and procedures in place in a corporate governance framework to support tax decision making and manage tax and super risks. A private group's tax governance is effective when the processes and procedures it has in place consistently result in the correct tax outcomes and in ensuring that the private group is meeting its obligations.

Tax governance will look different for each business, but the principles are the same. We encourage private groups to consider how the [seven principles of effective tax governance](#) apply in their circumstances.

We can help

We are committed to helping private groups improve their tax governance. Our guidance is designed to help private groups design and improve their tax governance frameworks, processes and procedures.

Find out about:

- [How we assess tax governance for Top 500 privately owned groups](#)
- [Next 5,000 private groups tax performance program](#)
- [Tax governance guide for privately owned groups](#)

Tax governance guide for privately owned groups

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-privately-owned-groups/>
- Last modified: 01 Dec 2021
- QC 59346

Privately owned groups recognise the importance of good governance to manage the ongoing performance and success of their business, and they are making efforts to strengthen their corporate and tax governance.

On this page

- [Good governance](#)
- [What this resource does](#)

Good governance

Good governance:

- promotes accountability and transparency in business
- supports businesses in making financial and business decisions
- sets out clear rules and responsibilities
- helps businesses meet their regulatory and other legal obligations
- helps businesses meet their expectations around their environmental and social responsibilities and economic and reputational risks
- is important in managing tax obligations and risk.

The right governance for a private group will depend on a range of factors, including, the group's structure, size, complexity and the industry in which the group operates.

What this resource does

This resource outlines the governance a private group should have in place to effectively manage the tax and super risks that can arise from significant events during the different stages in a group's lifecycle. It sets out guiding principles of the tax governance practices a private group can incorporate into its corporate governance framework.

You and your tax advisers can use this resource:

- as guidance in developing an effective tax governance framework as part of your overall suite of corporate governance initiatives
- to identify how you can make improvements to your governance in managing the tax issues and tax obligations that arise over time
- in evaluating whether the frameworks, processes or procedures that you put in place are operating effectively.

This practical guidance sets out major events in a typical private group's lifecycle. It highlights the:

- tax governance issues that accompany these events
- associated tax and super risks that attract our attention.

For Top 500 privately owned groups and Next 5,000 private groups, see the [seven principles of effective tax governance](#).

You may wish to find out about:

- [Corporate governance and tax governance](#)
- [Starting your business](#)
- [Business expansion](#)
- [Funding and finance](#)
- [Philanthropy](#)
- [Succession planning](#)
- [Exiting a business](#)
- [Retirement planning](#)
- [Estate planning](#)

You can also see:

- [How we assess tax governance for Top 500 privately owned groups](#)
- [Next 5,000 private groups tax performance program](#)
- [What attracts our attention](#) to help you get things right.

Next:

- [Working with the ATO](#)

Corporate governance and tax governance

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Corporate-governance-and-tax-governance/>
- Last modified: 18 Jun 2019
- QC 49146

Corporate governance encompasses the rules, relationships, systems and processes under which authority is exercised and controlled within businesses. It comprises the mechanisms by which businesses, office holders and those in control are held to account.

For private groups, there is a growing expectation for them to have a level of governance that ensures accountability, transparency and integrity.

For example, with the introduction of corporate transparency measures, some private groups now have to consider the publication of their tax information as a factor in managing their reputation with stakeholders, customers and the broader Australian community.

Depending on the size and nature of your business, you may already have governance arrangements in place to meet the expectations of various stakeholders and authorities.

A subset of corporate governance is tax governance. It means having a framework in place to identify, assess and manage tax and superannuation risks. Effective tax governance can provide a level of confidence that you're paying the right amount of tax.

Effective tax governance builds a sense of confidence for the ATO that your tax affairs are under control, helping you to achieve certainty about your tax affairs, which may ultimately mean reduced compliance costs for your business.

Find out about:

- [Benefits of effective tax governance](#)
- [Seven principles of effective tax governance](#)
- [Working with the ATO](#)
- [Key governance steps and processes](#)

See also:

- [The Information System Risk Assessment tool](#)

Benefits of effective tax governance

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Corporate-governance-and-tax-governance/Benefits-of-effective-tax-governance/>
- Last modified: 31 May 2016
- QC 49161

Effective tax governance not only positively influences your relationship with the ATO, but can also provide practical benefits for your business, such as:

- supporting business planning and decisions through expert advice and transparent decision making – which helps business stability and avoids unwelcome surprises
- building the capability of your management and providing real time assurance so that business owners can optimise business performance
- helping manage commercial and business risks – for example, governance that

ensures effective succession planning makes transferring a business or assets more transparent and may also support business relationships

- helping avoid fraud in the business
- facilitating compliance with other laws and regulations, such as corporate regulations, trust laws and state taxes
- ensuring accurate financial reporting and reinforcing the integrity of business records.

Next:

- [Seven principles of effective tax governance](#)

Seven principles of effective tax governance

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Corporate-governance-and-tax-governance/Seven-principles-of-effective-tax-governance/>
- Last modified: 21 Dec 2022
- QC 49162

Apply our 7 principles of effective tax governance to support decision making and ensure tax and super obligations are met.

On this page

- [Core elements of effective tax governance](#)
- [Principle 1: Accountable management and oversight](#)
- [Principle 2: Recognise tax issues and risks](#)
- [Principle 3: Seek advice](#)
- [Principle 4: Integrity in reporting](#)
- [Principle 5: Professional and productive working relationship](#)
- [Principle 6: Timely lodgments and payments](#)
- [Principle 7: Ethical and responsible behaviour](#)

Core elements of effective tax governance

Effective tax governance means having clear processes and procedures in place in a corporate governance framework to support decision making and to ensure that the group is meeting its tax and super obligations. For a large private group to have effective tax governance, it's important that the following 3 core elements are present across each of the 7 principles of effective tax governance:

- existence
- design effectiveness
- operational effectiveness.

Core elements across the 7 principles of effective tax governance:

Elements	Explanation
Existence – a tax control framework, and the processes and procedures in the framework, exist	There is a system or a way of doing things that results in consistent outcomes.
Design effectiveness – the framework, processes or procedures in the framework have been designed effectively	The system is designed effectively to ensure that the correct amount of tax is paid. It also identifies and mitigates tax risks, having regard to the client's group. We expect that the framework is documented for it to be designed effectively.
Operational effectiveness – the framework, processes and procedures are operating effectively	Where the framework is well designed, the framework, processes and procedures must also operate effectively in practice in ensuring that compliance obligations are met, and in identifying and mitigating tax risks.

The 7 principles that should be present in an effective tax governance framework are:

- [Principle 1: Accountable management and oversight](#)
- [Principle 2: Recognise tax issues and risks](#)
- [Principle 3: Seek advice](#)
- [Principle 4: Integrity in reporting](#)
- [Principle 5: Professional and productive working relationship](#)
- [Principle 6: Timely lodgements and payments](#)
- [Principle 7: Ethical and responsible behaviour](#)

Principle 1: Accountable management and oversight

Roles and responsibilities are clearly defined and understood in terms of accountability for tax administration and decision making.

You understand your tax and super obligations, including registrations, lodgment, reporting, payment and record keeping obligations.

Where responsibility for tax governance is shared with your tax advisors, ultimately you as the business owner are confident that you understand your tax advisor's role in meeting your tax and super obligations.

This may include:

- clearly defining roles and responsibilities through organisational charts, role

descriptions, lodgment calendars or procedure documents that cover all key tax obligations for your group

- clearly defining the role of external advisors through engagement letters, agreed scope of work and lodgment calendars. It may be useful to ensure that the tax issues that arise from the group's ongoing transactions are captured in the scope of work.
- procedures to ensure tax obligations are met, and that the group has sufficient financial capacity to meet its tax obligations as they fall due.

Principle 2: Recognise tax issues and risks

Appropriate processes and procedures are in place to support compliance with the group's tax and super obligations and that help the group identify and manage tax issues that arise from their activities before they become tax risks.

Tax considerations are included in your decision-making processes and you're alert to the consequences of the decisions that are made. Material transactions are well documented and subject to appropriate review and sign off for tax risk management purposes. Where tax issues or tax risks – have been identified, there is a plan to manage those issues or risks and limit the impact on your business.

A thorough review process considers the ATO's published view and identifies potential differences of opinion that may give rise to a dispute. The risk of a dispute with the ATO over a difference in law or factual interpretation is identified early and steps are taken to engage with us.

Compliance obligations

Having regard to the activities and type of entity, this should include having a documented process to prepare income tax and FBT returns, and business activity statements (BAS):

- To the extent returns and the BAS are prepared in-house, there are end-to-end procedures that include
 - how data is extracted and who is responsible to ensure the correct data sets are used
 - how to ensure that the correct tax treatments are applied to material ongoing and atypical transactions
 - consideration of the ATO view, including in treating material ongoing transactions
 - how to prepare the tax reconciliation calculations and guidance on how they are linked to tax return disclosure items
 - referencing and reconciliations to accounting reports, workpapers or source documents
 - separation of duties in the preparation and review processes.
- Where tax agents are engaged to prepare returns, there are procedures that include
 - effective controls to ensure that accurate data and information is provided to external tax agents (where relevant)
 - review of deliverables including management letters, returns and

lodgment status to ensure that the work performed is consistent with the agreed scope and that tax obligations are met.

Considering tax in decision making

Having regard to the activities and type of entity, you need a documented process to:

- ensure tax is considered and documented as part of your decision-making – it may be useful to consider a defined list of transactions that are material in the context for your group and whose treatments require approval from certain persons
- show that the governing body (for example, the Board of Directors) has endorsed a tax governance framework.

Principle 3: Seek advice

Clearly defined arrangements are in place for escalating tax issues and seeking tax advice. Consulting published ATO guidance and engaging with us early for tailored advice where more certainty is needed.

This may include having a documented process to:

- explain the clear escalation thresholds which could include quantitative and qualitative factors, for when and how to seek external advice in a consistent way
- inform advisors of significant changes or atypical transactions
- ensure facts and assumptions that advice is based on is accurate, complete and not superseded
- consider ATO published guidance and advice
- explain the clear thresholds for when and how to engage with the ATO and where pre-lodgment positions are agreed to, lodge according to the agreed position.

Principle 4: Integrity in reporting

Owners or managers can form a view of whether the financial records of the business, including tax reporting, reflect a true and fair view. Tax positions align with the law. Tax outcomes either reflect economic performance or can be explained by other factors.

Systems and controls are in place to ensure accurate reporting, and these controls are reviewed periodically to ensure they remain effective. Good record-keeping practices are followed to maintain important documentation for the relevant periods, and to ensure that information is easily accessible.

This may include having a documented process to:

- monitor and explain significant differences between income years, and between accounting or economic outcomes and the tax return
- periodically review systems and controls in place to ensure the controls are

- operating effectively
- ensure effective record keeping
- form a view that financial records are true and fair
 - Where financial accounts are audited, an unqualified report is provided to support the financial accounts.
 - Where financial accounts are not audited, they may be reviewed by an external advisor. In this case, the scope of the review should be sufficient to identify material errors.

Principle 5: Professional and productive working relationship

You have an open, transparent, respectful and professional working relationship with the ATO.

Through our engagement with you or your advisers, we aim to create a seamless working relationship to resolve any issues and avoid disputes.

Principle 6: Timely lodgments and payments

Effective tax governance is demonstrated by meeting obligations including lodgment and payment obligations in full and on time. Timeframes are set for tax lodgments and payments.

Tax liabilities are well managed and paid on time. You engage with us when you're unable to pay on time and you have a valid reason for being unable to do so.

Principle 7: Ethical and responsible behaviour

Acting ethically and responsibly – with honesty, integrity and in a way consistent with the reasonable expectations of the broader community and the taxpayers' charter.

Ethical and responsible behaviour involves more than mere technical compliance with the law. Effective tax governance not only ensures accurate reporting, but helps avoid behaviours associated with tax manipulation, avoidance and schemes.

More information:

- [Working with the ATO](#)
- [How we assess tax governance for Top 500 privately owned groups](#)
- [Effective tax governance criteria for Top 500 private groups](#)
- [Next 5,000 private groups tax performance program](#)

Working with the ATO

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Corporate-governance-and-tax-governance/Working-with-the-ATO/>
- Last modified: 31 May 2016
- QC 49163

Effective tax governance contributes to mutual trust between the ATO and private groups and their advisers, leading to the correct tax outcomes and lower compliance costs. Effective governance processes ensure:

- accurate reporting
- correct application of tax laws
- effective management of tax risks.

On this page:

- [Engage with us for advice](#)
- [Our engagement with you](#)

Engage with us for advice

Effective tax governance is demonstrated by considering the ATO view of the application of the law. You can manage tax risks by knowing what issues and behaviours [attract our attention](#) and take steps to get things right.

When deciding on the tax treatment for significant or complex transactions, consult ATO guidance and advice products. This will help you assess the potential risks involved in adopting a particular position. You may also consider consulting your tax adviser.

If you or your tax adviser are not able to find the ATO view on how the law applies to your circumstances, or are not certain about how it applies, you can [engage early with us for advice](#).

Where your treatment is not consistent with the ATO view, we expect you to carefully consider and document the reasons for your position. Consider taking steps to engage with us to get certainty.

The lack of documentation or adopting a poorly reasoned position may indicate a failure of effective tax governance. This can impact your tax profile and increase the likelihood of the ATO undertaking a review or audit to understand the issues.

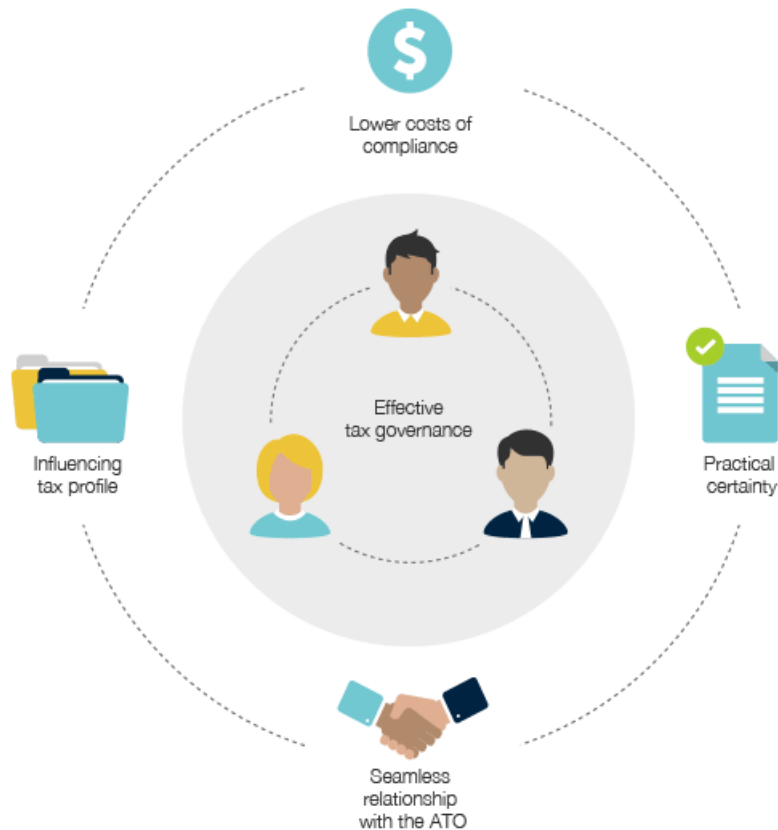
Our engagement with you

Our aim is to engage with you and your advisers in a way that minimises time, cost and effort for all parties. In order to achieve this, we take a risk-based approach. We tailor our interactions to your tax profile and the group's behaviours.

A business with governance that is effectively managing tax and superannuation risks and achieving correct tax outcomes provides us with assurance that you are paying the right amount of tax. This assurance reduces the amount of interaction we need to have with your business. In some circumstances we will provide you with

confirmation that your return is finalised for a particular year and will not be subject to further review by us.

Where we need to understand your business better, demonstrated effective tax governance enables us to resolve issues sooner. This means potentially lower compliance costs and seamless interactions with the ATO.



Key governance steps and processes

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Corporate-governance-and-tax-governance/Key-governance-steps-and-processes/>
- Last modified: 18 Jun 2019
- QC 49164

There are some key steps and processes you can take to ensure an effective level of tax governance in your business.

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- [Sound decision-making processes to address tax risks](#)
- [Proper advice](#)
- [Systems and controls to maintain integrity in reporting](#)
- [Record keeping and documentation](#)
- [Timelines for tax lodgments](#)
- [Tax liabilities and cashflow management](#)

Understand your obligations

Effective tax governance helps your business comply with tax administration obligations. Operating without required tax registrations or failing to lodge returns on time will attract our attention and potentially expose your business to interest and penalties.

It's important that you understand your obligations, including any registration and reporting requirements, both for tax and other regulators. Regulatory and tax obligations vary according to the type of entity structure (trust, company, partnership or super fund) you choose.

Your business should have procedures to capture all tax administration obligations, and review them annually for any changes that impact your business. For tax registrations, effective tax governance processes include:

- annual review of all tax and corporate registrations to identify gaps or lapsed registrations
- comprehensive payroll and superannuation procedures for registering new and departing staff
- defined accountabilities for ensuring registrations are complete
- assistance from a tax adviser for new, complex or unfamiliar registrations.

It's also important to keep your [contact details](#) with us up to date so that we can contact you.

See also:

- [Work out which registrations you need](#)
- [Registration](#)
- [Your workers](#)

Sound decision-making processes to address tax risks

It's good practice to adopt decision-making that is transparent and accountable and aligns with corporate policies and procedures. In an effective governance model, tax risks are properly factored into decision-making, particularly for larger, new or one-off transactions, such as acquisition or disposal of business and assets.

How you document your policies and procedures will depend on your business size and needs. Whatever your circumstances, a good starting point would be to incorporate tax governance principles and policies into your overall governance framework, and day-to-day tax governance procedures into your operational business procedures.

Many private groups have a 'family board' with less formal decision-making processes. Your business should have clear policies and procedures for making and recording key decisions. This may include permanent files with details of all meetings held (formal and informal) to discuss business affairs. The formality of such processes generally matches the size and complexity of a business.

You may also incorporate objective reviews or tax advisers into your decision-making processes. Including your trusted advisers in your decision-making helps ensure that issues are adequately addressed and decisions adequately recorded.

Proper advice

ATO guidance and advice

Effective tax governance is demonstrated by considering the ATO view when determining the appropriate tax treatment for transactions or arrangements. Consult our current guidance and advice products such as tax alerts, taxation rulings and interpretative decisions.

If you or your tax adviser are not able to find the ATO view on how the law applies to your circumstances, or are not certain how it applies, you can [engage directly with us for advice](#) before lodging tax returns.

Professional advice

Having qualified professional advisers who understand your business can:

- ensure your business is appropriately structured
- help you meet regulatory obligations
- reduce ongoing tax risks, and
- provide a resource for escalating future tax issues.

You may also wish to [engage directly with us](#) for advice when tax issues are more complex and require certainty.

Your relationships with advisers should be clearly defined. Engagement or appointment letters should articulate the adviser's role, responsibilities and obligations.

As part of the year-end compliance process, in conjunction with your adviser:

- identify and flag unusual or significant transactions (such as major asset purchases and private transactions or arrangements connected with the business) for discussion with advisers
- if you have pre-CGT assets including shares or carried-forward losses, document any changes to business operations that may impact their status
- identify ordinary and any extraordinary transactions where the tax treatment is unclear, controversial or may not be reasonably arguable or in accordance with the current ATO view.

See also:

- [Research a technical issue using our advice and guidance products](#)
- [Engage professional tax advisers](#)

Example 1

You recently identified two complicated and material tax issues relating to your carried-forward losses and your consolidated group. You're not certain how the law applies in your unique circumstances.

You engage with your adviser who assures you that your treatment of the first issue is consistent with the ATO view. However, on the second issue you may have a reasonably arguable position but your adviser is uncertain and recommends engaging directly with the ATO. You, your adviser and the ATO work through the issue based on your circumstances and come to an agreed position. This is reflected in the tax treatment of the issue. As the tax treatment accords with the ATO view, the group's tax profile is lower.

Systems and controls to maintain integrity in reporting

The [Information System Risk Assessment \(ISRA\) tool](#) is available for business clients and advisors to self-assess the integrity of their information technology (IT) systems. The tool will establish if the IT systems are well governed with appropriate controls to help businesses meet their tax and super reporting obligations.

A good tax governance framework includes systems and controls to ensure accurate reporting and identify, assess and manage any tax risks. To address these risks:

- establish effective procedures for correcting errors or oversights that impact on your tax obligations, including raising the issue with relevant stakeholders, advisers and the ATO where necessary (see [Correcting a mistake](#) and [Correcting GST errors](#))
- have tax and accounting staff with the knowledge and skills to properly manage your tax affairs and the opportunity to engage with external advisers where necessary on more complex matters
- put systems in place (such as exception reporting) to identify, flag and address unusual transactions or events when they occur
- document any reasonably arguable position in relation to the tax treatment of transactions, particularly those outside the ordinary dealings of the business
- consider engaging a tax agent or adviser to lodge tax returns and other statements and adopt procedures to address enquiries or information requests from the ATO and other regulatory bodies
- ensure you and your adviser understand how to [seek advice from us](#) to get certainty about a complex transaction or arrangement
- establish procedures to ensure all advice sought is adhered to and practically applied – and where there are deviations from the advice or recommendations, these are articulated along with their supporting reasons

- ensure senior decision makers are aware of any outstanding issues or disputes with the ATO
- ensure procedures are in place to raise tax provisions for higher-risk transactions, and where statutory financial accounts are prepared, the tax note details these extraordinary transactions and their associated tax impact
- document any significant changes to the business operations by way of minutes of meetings.

To be effective, your tax governance needs to support an appropriate tax outcome. Ensure your tax governance framework remains effective by:

- testing systems and controls
- regularly reviewing your tax governance arrangements to make sure they suit your business
- regularly checking that your policies and procedures are up to date with current tax laws
- having policies that refer to current reference materials and examples available to staff from various resources (including the ATO website)
- ensuring staff responsible for the taxation function maintain knowledge, skills and experience to perform their core duties, with practices such as
 - continuing professional development
 - hiring practices that reflect the skills and experience required
 - encouragement for staff to identify and address emerging skill gaps
 - annual reviews of staff resourcing and capability during periods of expansion
- maintaining up-to-date tax modules in your accounting systems, with all outputs (such as reports, ledgers and accounts) reviewed for accuracy and completeness, including procedures to detect and deal with system output or accuracy errors.

Good tax governance practices also contribute to the security of your business information, including protecting it from identity theft. Be aware of the risks and how to [protect your business](#) and your systems from identity theft.

Example 2

Your accounting and tax governance procedures ensure your financial controller is kept up to date with changes in tax laws, and accounting systems are thoroughly reviewed before information is provided to your tax agent for tax returns.

While periodically reviewing your accounting ledgers, your financial controller identifies a complex tax issue relating to your business inventory. Your tax governance procedure requires that you seek external advice (from the ATO or a professional adviser) on complex tax issues. The advice you receive ensures that you are paying the correct amount of tax and are making more informed commercial decisions about business inventory.

See also:

- [Tax control frameworks for medium and small corporations](#)

Record keeping and documentation

Under tax law, you must keep records to support your liabilities and claims, including documents evidencing an intention, election, choice, estimate, determination, valuation or calculation.

Establish record-keeping systems and practices that are appropriate to the size, scale and complexity of your business. Consider implementing internal controls, such as secondary sign-offs and reconciliations, to ensure the integrity of all accounting records.

Ensure that all the founding documents and any subsequent amendments or variations are complete, executed or signed and stored for easy access when needed. Maintain records relating to your annual tax obligations, including asset registers.

Documents that you're required to keep can be in written or electronic form. If you store your records electronically make a backup copy to ensure the evidence is easily accessible if the original becomes inaccessible or unreadable.

Good practice includes ensuring that business decisions makers and advisers have full access to key documents.

Documenting key decisions to support tax treatment

Adopt practices that ensure key decisions are documented at the time they are made. Key decisions made at the formation of a business and at the start of transactions often impact future tax outcomes. Contemporaneous records of such decisions can form crucial evidence to support your tax treatment of major transactions and may prove valuable should we later review your tax affairs.

Appropriate tax governance arrangements will ensure continued access to source documentation, such as the trust deed, detailed records of proceeds and expenditures relating to the sale of property, financial statements, trust income distribution resolutions and other key evidence supporting tax treatment.

When making decisions to undertake new projects or ventures, keep a record of any advice received, as well as contemporaneous statements from business owners on their plans and intentions.

Example: Property investment – capital or income?

You decide to make a significant property investment, which you intend to dispose of in the near future. You document the decision and keep the records in a permanent file.

Later, when the ATO contacts you as part of a review of your subsequent disposal of the property, you're able to demonstrate your original intentions from contemporaneous objective evidence, such as permanent records and documented advice. The issue is quickly resolved without leading to audit.

See also:

- [Manage your invoices, payments and records](#)
- [Electronic record keeping](#)

Timelines for tax lodgments

A good tax governance model will provide for documented timelines to ensure income tax returns, excise returns and activity statements are lodged by the due dates.

Timelines should allow sufficient time for tax agents to be appointed (unless the entire tax function is in-house), financial records to be reviewed, key tax treatments to be agreed and final returns prepared.

At any time, you may identify errors in registrations, governing documents or lodgments. Routinely review ongoing tax positions and foster a culture of self-correction. Promptly and voluntarily disclosing errors to us is an indicator of good tax governance and suggests regular self-review is being undertaken.

Example 3

Your business has grown rapidly over the last four years, and preparing the year-end financial statements now takes more time. For the last two years, your tax returns have been lodged several months late due to competing priorities and delays encountered in preparing financial statements. The late lodgments attracted ATO attention, and your business was reviewed and charged interest for late tax payments.

However, this year you have strengthened your governance procedures by preparing a calendar for lodgment and agreeing with your staff and tax agent on accountabilities for meeting financial statement and tax return deadlines. As a result, your tax lodgment due dates are met and the ATO becomes aware of your improved tax governance.

A reporting and lodgment procedure may include processes such as:

- annual review to identify, and capture in a calendar, all due dates for all tax obligations
- defined accountabilities within your business and with your tax agent for ensuring lodgments are on-time

- engagement with the ATO to request lodgment extensions where appropriate
- identifying trigger points for key non-tax reporting, such as corporate law reporting obligations and deadlines.

Tax liabilities and cashflow management

Staying on top of your business debts and operating cashflow requirements is critical to the success and even the survival of your business. Tax liabilities often arise irregularly and can impact cashflow.

Poorly managed tax liabilities are an indicator of inadequate tax governance. Persistent late or non-payment of tax liabilities, particularly when coupled with failure by the taxpayer to engage with us to arrange payment terms, attracts our attention.

To demonstrate effective governance around tax liabilities, consider adopting the following practices:

- establish a corporate debt management policy including management of tax liabilities
- prepare a schedule of income tax, PAYG withholding, GST, excise and customs duties and other tax-related payments
- include estimates of tax payments in formal cashflow budgets
- apply formal processes to ensure that tax, finance and treasury functions share tax payment information and forecasts
- contact the ATO to propose and agree on payment arrangements where tax payments can't be paid on time.

See also:

- [How to prevent tax debt](#)
- [Help with paying](#)

Starting your business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Starting-your-business/>
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At this point in the business lifecycle a number of issues routinely attract our attention. Having effective tax governance will enable you to mitigate tax risks and their consequences. If we have reason to review your tax affairs, we will take into account your tax governance processes and adherence to them.

Find out about:

- [Structuring your business](#)
- [Acquiring a new business](#)
- [Clear separation of business and private assets](#)
- [Remuneration arrangements](#)

See also:

- [Starting your own business](#) – While this resource is primarily intended for small businesses, the basic tax obligations when starting up are common to all.

Structuring your business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Starting-your-business/Structuring-your-business/>
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- QC 49165

Business entities should be set up in compliance with relevant laws and regulations, such as corporation and trust laws.

Choose a business structure appropriate for your business.

Whichever structure you choose, make sure you understand the responsibilities that go with it. Talk to an accountant, tax adviser, solicitor or other business adviser if you need advice.

On this page:

- [Companies](#)
- [Trusts](#)
- [Self-managed super funds](#)
- [Partnerships](#)

See also:

- [Choosing your business structure](#)

Companies

If you've chosen a company structure for your business, it's important to ensure that the correct corporate documentation is complete and on hand.

This typically includes its constitution or governing rules, certificate of registration, board meeting minutes, directors' resolutions, a business plan, share register, and

share certificates.

Directors should understand their role and responsibilities, including their obligations under corporations law and responsibilities for ensuring the company meets its tax and superannuation obligations. A public officer should be appointed as the company's representative for dealing with us.

Major changes to a company's ownership or share structure often attract our attention. When establishing a new company or acquiring another company, having processes in place that ensure your new company's share ownership and share structure are promptly reported to ASIC demonstrates effective governance.

Trusts

Many private business and investment structures include trusts.

Trusts are highly flexible structures but can also be complex to manage. An effective tax governance framework ensures that you and your advisers have processes in place to correctly administer your trust, so that tax and any legal risks are managed.

Trust deed

Ensure your trust is established correctly. You'll need a valid trust deed that sets out the rules for establishing and operating the trust. The trust deed and any variations should be:

- prepared by a qualified person
- signed and dated by relevant parties including the settlor and all trustees
- properly executed according to state or territory laws
- regularly reviewed, and updated as necessary.

Make sure you and your advisers have a complete copy of the original executed trust deed, including all amendments and variations.

Ensure all trustees understand their obligations and are administering the trust according to the terms of the deed and trust law. This includes understanding:

- how the income of the trust is calculated
- who are the defined beneficiaries
- how to make a valid resolution and distributions.

Entitlements, resolutions and distributions

It's good practice to review the terms of the trust deed before the end of each income year, or any earlier date required by the deed for making resolutions to distribute income or capital. Ensure that all trustee resolutions or declarations are made in accordance with the terms of the trust deed by the relevant times to avoid them being invalid.

Ensure that the trustees understand how the income of your trust is calculated and that any resolutions reflect this definition.

If you're 'streaming' capital gains or franked distributions (making particular beneficiaries entitled to them), firstly check that you're not prevented from doing so by the trust deed. Then check that you've complied with the relevant legislative requirements for the creation and recording of these entitlements.

Trustees should notify beneficiaries of their entitlements within a reasonable time of them becoming entitled and advise beneficiaries of the trust amounts to be included in their tax returns.

Example: Administering a trust

You establish your family business using a trust structure, with annual tax governance procedures to ensure proper administration of the trust.

Your procedures require you to conduct an annual review starting in April to ensure that your trust deed is well understood and up to date, and resolutions to distribute trust income to family members are completed by 30 June.

During your annual review process, your tax adviser suggests updating your trust deed to permit streaming of capital gains and franked distributions. You agree to this and your resolutions are completed by 30 June.

In April the following year, with the prospect of your business making a record profit, you consider whether to distribute trust income for the first time to your family investment company and a charity, but are unsure whether this is permitted. Your governance procedures require both you and your tax adviser to check the deed to ensure that the company and the charity are eligible beneficiaries and document your findings before making resolutions to distribute income. You document your findings, make your resolutions in June and promptly notify the charity of their entitlement.

A year later, you decide to sell your business, and your trust makes a large capital gain. Your original governance process has ensured that your deed is up to date and allows you to correctly stream capital gains to your chosen beneficiaries.

After selling your business, your trust is later selected by the ATO for review of the business disposal and trust distributions. Your trust's records are readily located and provided to us with minimal effort. We accept your tax returns in full and close the review. Your effective tax governance arrangements will be considered in your tax profile in future.

See also:

- [Trusts](#)
- [Resolutions checklist](#)

- [What attracts our attention – Trusts](#)

Self-managed super funds

Some business owners decide to include a self-managed super fund (SMSF) in their business structure.

If you decide to set up a SMSF, ensure you understand what is involved in setting it up correctly (see [SMSF tax governance](#)).

See also:

- [Self-managed super funds](#)
- [What attracts our attention – Self-managed super funds](#)

Partnerships

Businesses that operate as partnerships are typically established and governed by partnership agreements. It's essential that business partners and their advisers maintain ready access to their partnership agreement and any variations.

Partnership agreements may stipulate the process by which partners record transactions, prepare financial reports and satisfy the partnership's tax obligations. Partners need to be aware of tax and other governance procedures set out in the partnership agreement and ensure they are adhered to.

Partnership agreements often deal with the retirement of existing partners or the addition of new partners. Changes in partners may give rise to tax issues that attract our attention. Have procedures in place to ensure that all key tax requirements are addressed when partners are joining or leaving.

See also:

- Partnership
- [Changing the makeup of a partnership](#)

Acquiring a new business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Starting-your-business/Acquiring-a-new-business/>
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- QC 49166

When acquiring a business or entity, consider whether to conduct a commercial or tax due diligence process to identify and manage all risks associated with your new

investment. Document the tax due diligence undertaken for business acquisitions that exceed a certain size or carry significant risks.

If you don't conduct a detailed due diligence, ensure the risks associated with your investment have been adequately considered through other means, such as in discussions with your advisers and warranties in your purchase contracts.

When purchasing the shares in an existing business, you may be accepting the risk associated with that company's tax history. A tax due diligence process will help you factor the tax compliance 'health' of a prospective business purchase into your negotiations and identify existing tax risks that need to be mitigated.

If you operate a [consolidated group](#) for income tax purposes and you acquire 100% of the interests in another business it will generally join your consolidated group. The acquisition process may give rise to tax issues that attract our attention, particularly in relation to the allocation of costs to assets and the transfer of tax losses into the group.

Example: Acquiring a new business

Before purchasing the shares in an existing business, your governance procedures required you to conduct a tax due diligence process in conjunction with your advisers.

This process identified a number of ongoing tax risks that required attention. You raised these risks in negotiations with the vendor, who agreed to reduce the price due to the unresolved tax risks. Following the purchase, you engaged early with the ATO to seek our advice and a resolution of the risks identified during the purchase process.

The ATO is aware of your business group's effective tax governance and will take this into account in its future engagements with you.

Consolidation and private groups

When your tax consolidated group acquires another business and it joins the group, ensure that the group complies with the consolidation rules.

In particular, the process of [allocating costs to assets](#) and [transferring tax losses](#) may attract our attention.

Asset cost setting

Your tax consolidation procedures should ensure that when an entity joins your consolidated group, the purchase price of ownership interests in the entity is allocated to the tax costs of its assets in a way that is both defensible and sufficiently documented for use in future years.

This will typically involve:

- preparing calculations and work papers to determine the allocable cost amount (ACA) for the joining entity and demonstrate the correct allocation of this amount to the tax costs of the joining entity's assets
- preparing accurate financial statements as at the joining time to support the allocation of the ACA to the joining entity's assets
- valuing material assets that require use of market values for the ACA allocation process – for larger or higher risk items, an independent valuation may be expected
- collecting all information relevant to the entry of the joining entity, such as asset registers, depreciation schedules, franking account information and pre-CGT asset characteristics
- engaging professional advisers to prepare consolidation reports where necessary.

Allocations of the ACA that result in inappropriate deductions or increases in the cost bases of the joining entity's assets may attract our attention.

Carried-forward losses

Your procedures should ensure that when an entity joins your tax consolidated group, any carried-forward losses of the joining entity are reviewed to determine whether the tax loss transfer provisions are satisfied and the correct loss utilisation rates (the 'available fraction') are determined.

This will typically require you to:

- undertake analysis to determine whether the loss transfer rules are satisfied for carried-forward losses of the joining entity
- document joining entity losses eligible for transfer and calculate the available fraction in relation to each bundle of losses that the joining entity transfers to the consolidated group
- prepare or obtain and keep any market valuations required for calculating the available fraction for each bundle of joining entity losses
- seek advice on any complexities.

Tax governance policies which ensure that rigorous and contemporaneous tax consolidation calculations are kept can give you certainty, reduce your future compliance costs and help you demonstrate effective tax governance.

See also:

- [Consolidation](#)
- [What attracts our attention – Consolidation](#)
- [Market valuation for tax purposes](#)

Clear separation of business and private assets

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-privately-owned-groups/Starting-your-business/Clear-separation-of-business-and-private-assets/>
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Business owners sometimes use business funds or assets for private purposes without repaying or accounting for them correctly. Such transactions may be treated as assessable income of the owner (or associate).

When starting a business, put systems in place to ensure accurate tracking and recording of private expenses and use of business assets. The tax rules relating to private use of company assets can be complex. Consider seeking advice to make sure you're meeting your obligations.

Ensure stakeholders have sufficient knowledge and experience to understand the proper use of business assets and seek advice before making personal use of business assets (including cash) to clarify the tax implications (relating to FBT or deductibility, for example).

For private companies, consider the tax treatment of any payments, loans, or other benefits provided to shareholders or their associates. If necessary, ensure loan agreements are in place, correct valuations are made and source documents are kept. Seek advice from an adviser or the ATO where necessary.

See also:

- [What attracts our attention – Private company profit extraction \(including Division 7A\)](#)
- [What attracts our attention – Fringe benefits tax](#)

Remuneration arrangements

- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-privately-owned-groups/Starting-your-business/Remuneration-arrangements/>
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- QC 49168

When starting a business, ensure that all remuneration arrangements are set up correctly and comply with income tax, PAYG withholding and FBT requirements.

Clearly define and document remuneration agreements for business owners and those involved in the business, even if they are family members.

See also:

- [Your workers](#)
- [Fringe benefits tax](#)
- [Division 7A - payments and other benefits](#)

Business expansion

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Business-expansion/>
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- QC 49148

You may face new and more complex tax issues as your business expands. Issues vary depending on what form the expansion takes.

Find out about:

- [Organic business growth](#)
- [Business restructuring](#)
- [Offshore expansion](#).

Organic business growth

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Business-expansion/Organic-business-growth/>
- Last modified: 31 May 2016
- QC 49169

As your business expands, your tax governance processes should also evolve to match the size and complexity of your business.

It's good practice to review of all tax policies and procedures every two to three years to ensure that the business doesn't outgrow its processes and procedures.

Make sure the resourcing and capability of your internal finance and tax function

and your professional tax advisers are keeping up with business growth. Record keeping systems should also be reviewed.

For more simple businesses, a review may find that increasingly complex tax issues require an increase in the budget for external tax advice.

For a more complex business, years of rapid business growth may mean the finance team's resources are focused on accounting and treasury functions, with limited resources available for tax. A periodic review of key tax governance measures would identify if more resources are needed to manage tax risks.

Business restructuring

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Business-expansion/Business-restructuring/>
- Last modified: 31 May 2016
- QC 49170

As your business grows, the business structure you use may no longer be appropriate and you may need to restructure.

For example, you may change your business entity type from a trust to a company, introduce additional entities, or reorganise your existing group. You may need to restructure for reasons such as asset protection, introduction of new business partners or changes in your business model.

Tax policies and procedures may not explicitly cover restructures. It's good practice to adopt tax policies for group restructures long before they occur. Seek external advice – with a second opinion if it 'seems too good to be true'.

Where your own assessments or other advice suggests that the risk associated with your restructure is higher than your acceptable level, you may wish to seek [early informal advice](#) or a formal private ruling from us.

On this page:

- [Mergers and acquisitions](#)
- [Market valuations for restructures](#)

Mergers and acquisitions

Takeovers and mergers of companies, including the sale and purchase of business assets, can give rise to complex tax issues, including implications for income tax and input tax credit entitlements under GST law.

You may need to seek advice from tax advisers to understand the tax issues. You may also wish to [engage directly with us](#) for advice before you lodge your tax return. We can help you reduce uncertainty by clarifying how the tax law applies to your particular circumstances.

See also:

- [Mergers and acquisitions - claiming input tax credits](#)

Market valuations for restructures

The tax laws relating to many restructures involve the concept of market value. Market valuations should be determined close to the time of the restructure, with independent valuations where there are complex or contentious issues.

Tax governance principles should address high-risk market valuations, and provide for independent valuations where necessary. Where the level of risk exceeds your acceptable level, consider seeking informal or formal ATO advice.

See also:

- [Market valuation for tax purposes](#)
- [Private rulings and valuations fact sheet](#)

Example: Major business restructure

Other businesses in your industry have engaged in complex restructures without making any changes to their commercial operations.

You're approached by a consultant offering a complex restructuring opportunity to help you save tax. Your finance team reviews the proposal and is impressed by the tax benefits but is concerned that it may be heavily tax-driven and seems 'too good to be true'.

Your tax governance procedures for major restructures require that your professional tax advisers consider whether proposals comply with tax laws and confirm that their advice is consistent with the ATO's view. You approach your tax advisers who advise that while it might be reasonably arguable that the restructure is compliant, it may also be contrary to the ATO's view and you should consider engaging early with the ATO for advice before undertaking the restructure.

Offshore expansion

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Business-expansion/Offshore-expansion/>
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Expanding into overseas markets is a major step for a growing business and is often accompanied by new commercial and tax implications.

When your business expands offshore, you may encounter new circumstances that require changes to existing governance rules and procedures. International tax issues that attract our attention include attributable foreign income, transfer pricing, profit shifting, non-resident withholding tax, thin capitalisation, and dealing with secrecy and low-tax jurisdictions.

You may need to seek guidance from tax advisers to understand the tax implications. You may also wish to [engage directly with us](#) for advice before you lodge your tax return. We can help you reduce uncertainty by clarifying how the tax law applies to your particular circumstances.

See also:

- [What attracts our attention – International](#)

Consider the following issues when developing governance policies to manage international tax issues.

On this page:

- [Offshore expansion – decision-making process](#)
- [Overseas tax registrations](#)
- [New overseas tax issues](#)
- [Related-party dealings](#)
- [Employing Australians offshore](#)
- [Non-resident beneficiaries](#)

Offshore expansion – decision-making process

Governance principles around decision making should apply when making decisions to expand offshore.

The decision-making process should take into account the need to flag new tax risks. Document decisions made, including the underlying commercial reasons, the proposed initial structuring and any future plans.

The immediate and future tax outcomes from your overseas expansion may depend on your choice of structure and financing arrangements (including the mix of equity, debt and hybrid instruments). The use of interposed holding entities in tax secrecy jurisdictions without a commercial reason or use of artificial financing arrangements to reduce tax may attract our attention.

Example: Expanding your business to a low-tax jurisdiction

You decide your business will expand offshore in a low-tax country and relocate some of its internal functions there.

In line with your tax governance procedures, you document the decision-making process and commercial features of your plans. Your offshore expansion initially attracts ATO attention, but your contemporaneous documentation adequately explains your commercial decision and intentions and the issue is quickly resolved.

Overseas tax registrations

Overseas jurisdictions have their own business registration rules that may vary significantly from those in Australia.

Your tax governance procedures should ensure that foreign business registrations are fully completed and also provide for annual plans to meet offshore lodgment obligations. Procedures should also address appointing overseas tax advisers and auditors where necessary.

New overseas tax issues

When expanding overseas, your tax governance procedures should become increasingly well documented and formalised as the number of tax issues and stakeholders increases.

Your international tax policies and procedures should be updated to fully address the wider range of tax issues that may arise, such as thin capitalisation, attributable foreign income, tax on repatriation of profits to Australia, non-resident withholding tax, foreign trust tax provisions, residency, low-tax jurisdictions and the impact of tax treaties. You may wish to do this in conjunction with your adviser.

Procedures should also cover escalation of cross-border and multi-jurisdictional tax issues to appropriate professional advisers as they arise.

Example: Using tax governance to identify international tax issues

You recently expanded your Australian business to Europe by establishing a foreign subsidiary. To support the new European operations, some intellectual property is transferred to the European subsidiary and licenced back to Australia.

Your tax governance procedures were updated to accommodate your international expansion. The procedures require that all international tax obligations be reviewed, which reveals that withholding tax applies to royalty payments made to your foreign subsidiary. You make a prompt voluntary

disclosure of this to the ATO, which is now aware that you have improved your international tax governance policies, and will take this into account in assessing your future tax profile.

To further manage day-to-day matters, ensure that key staff and advisers have sufficient capabilities to deal with international tax issues. For smaller businesses, this may necessitate further developing your internal accountant's international tax skills, and ensuring any external tax advisers are appropriately skilled. For more complex businesses, this may mean hiring new tax staff, mandating an annual review of international tax issues, and greater use of specialist external advisers.

When your overseas operation is established, responsibility for co-ordinating management of global tax issues, tax functions and multiple advisers should be allocated to a team or key individual. In a more simple business, this may rest with the Australian internal accountant. In a more complex business, this may be a specific role within the Australian tax function assisted by a designated external adviser.

Establish protocols to ensure that accounting and tax information of overseas entities is reliable and supplied to the Australian business in time to prepare Australian tax returns.

Example: Overseas expansion

Your business decides to expand into three new countries over the next 12 months.

Your governance processes require that your Australian financial controller, with the assistance of your tax agent, co-ordinates management of global tax issues, foreign tax filings and ongoing engagement of foreign tax advisers. These clear lines of responsibility have ensured that your financial controller understands all global tax issues, and these issues are fully addressed as part of your first year tax filings for each foreign subsidiary and for the Australian income tax return (including the international dealings schedule).

Related-party dealings

From the start of an overseas operation, governance procedures should ensure that international related-party transactions are priced based on arm's length conditions.

Transactions that are not based on arm's length conditions may attract our attention.

Establishing a sound global transfer pricing policy is important for compliance with

Australian tax laws. Your transfer pricing policy should:

- cover all international related-party transactions
- be prepared or reviewed by experienced external advisers
- be fully documented
- be reviewed annually to ensure it remains up to date.

Accounting and other staff involved in pricing and invoicing international related-party transactions should be aware of the transfer pricing policy and ensure it is implemented.

With transfer pricing at the centre of the current focus on international tax reform and compliance, governance policies should ensure that you're fully aware of your transfer pricing policies and the level of tax risk adopted.

See also:

- [Transfer pricing](#)

Employing Australians offshore

Your international expansion may involve seconding key Australian personnel overseas to establish your subsidiary.

International secondment arrangements can be complex and involve residency, pay as you go withholding, superannuation, fringe benefits tax, transfer pricing and deductibility. We suggest that governance policies ensure adequate documentation is maintained in the Australian jurisdiction to support your arrangements for seconded staff. Most businesses require escalation of complex issues to external advisers.

Corresponding procedures should be established in the secondment country to ensure foreign employer tax obligations are satisfied.

Strong tax governance relating to international secondments not only protects your business from unanticipated tax consequences, but also ensures you comply with tax-related clauses in employment agreements and protects your relationship with key staff and your reputation.

Non-resident beneficiaries

Tax issues can arise when Australian resident individual shareholders, or beneficiaries of Australian resident discretionary trust shareholders, become foreign residents temporarily or permanently. These include liability for capital gains tax (CGT) on becoming a non-resident, residency consequences for corporate entities (including SMSF trustees) and liability for non-resident withholding tax.

To demonstrate good tax governance and help meet the Australian tax obligations of both businesses and non-resident owners, tax procedures may need to address:

- correctly determining and recording the date on which individuals ceased to be tax residents of Australia and documenting why this date was chosen

- managing the CGT consequences of ceasing to be an Australian resident, including making any relevant elections and undertaking any market valuations necessary to protect access to the CGT discount
- determining whether the tax residency of corporate entities or SMSF trustees is affected
- identifying non-resident withholding tax obligations in relation to shareholders and beneficiaries of Australian companies and trusts
- seeking advice where required.

See also:

- [Withholding from royalties paid to foreign residents](#)
- [Working out your tax residency](#)

Funding and finance

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Funding-and-finance/>
- Last modified: 21 Sep 2021
- QC 49149

Robust tax governance practices can manage tax risks that arise around funding your business, such as in relation to:

- funding through private company profits, and Division 7A
- characterisation of funding as debt, and interest deductibility
- characterisation of funding as equity, and dividend franking
- withholding tax on foreign sources of funding
- for international businesses, the impact of transfer pricing and thin capitalisation on interest deductions.

On this page:

- [Funding for less complex business structures](#)
- [Funding for complex business structures](#)

See also:

- [What attracts our attention](#) including [Characterisation of inbound foreign funds](#) and [Private company benefits](#)
- [Private company benefits – Division 7A dividends](#)
- [Gifts or loans from related overseas entities](#)

Funding for less complex business structures

The most common sources of funding for less complex business structures are debt

financing (either internally or externally) and gifting.

It's important to identify the specific entity from which the funding is sourced. The tax consequences can be very different if the funding is sourced from an individual acting in his or her own right, as opposed to an individual acting either as a trustee of the family trust or as the sole director of the family-owned private company.

Example: Loans from a private company to family members

You lend \$100,000 to your sister on interest-free terms to help with her new business venture. This transaction has no immediate tax consequences for you or your sister.

However, your sister has asked you for a further loan. As the director and sole shareholder of a company, you transfer \$100,000 from the company bank account to your sister's bank account. This transaction could result in a deemed dividend from the company being assessed to your sister. However, your family's tax agent has set up basic governance procedures which require that all loans from family companies be subject to loan agreements and an annual tax review. You ensure the correct loan agreement is in place and is reviewed annually. Your governance procedures have prevented an unexpected tax problem occurring.

Governance practices to manage risks around funding and financing can include the following:

- Ensure all loans are properly executed and legally-binding, including any variations. Such documents would only need to cover the main terms of the loan, such as the parties to the agreement, the amount of the loan, the duration of the loan, repayment terms and interest rate. The documents do not need to be complex or lengthy.
- Where funding or finance is sourced from a related company, ensure it's in accordance with the powers and procedures set out in the company's constitution and documented accordingly.
- Where funding or finance is sourced from a related trust, ensure that the trustee acted within their powers under the trust deed.
- Ensure that the terms of the loan meet any tax law requirements that may apply.
- Ensure appropriate accounting for the loan account, including evidence of repayments made.
- Ensure all gifts are properly recorded in the books, and, where appropriate, other contemporaneous evidence of the gifting is kept.
- Separate bank accounts are maintained for different entities in your business structure.

Any funding should be appropriately recorded, with contemporaneous documentation kept to evidence the type of funding, the source of funding and the

relevant terms, such as:

- properly executed loan agreements and variations (if any)
- bank statements showing evidence of the initial payment (loan or gift) and repayments, including interest and capital repayments
- tax working papers, including evidence of deductibility of the interest expense
- loan accounts.

This documentation can be prepared by you or your staff in conjunction with your advisers. We suggest discussing these issues with advisers at pre-determined times during the year and before the tax return is prepared.

Funding for complex business structures

As a business grows in size and complexity, more options and opportunities become available for both debt and equity funding.

Debt finance can be sourced from an external lender, such as:

- financial institutions
- retailers
- suppliers
- finance companies
- factor companies
- family or friends.

Equity finance for a private company is typically sourced from:

- self-funding
- family or friends
- private investors
- venture capitalists or private equity
- crowd funding.

The tax treatment of a funding transaction depends on the circumstances. Adopt practices whereby you consult with your adviser to determine the correct tax position for each major funding transaction. You may also ask us for advice.

Relevant tax laws include:

- the [debt and equity rules](#)
- the [thin capitalisation rules](#)
- the [withholding tax rules](#)
- the [value shifting rules](#)
- [taxation of financial arrangements rules](#).

As the complexity of your business structure grows, it becomes more vital to implement a greater level of operational control. Effective governance practices can be demonstrated by:

- clearly identifying roles and responsibilities for management and staff
- ensuring responsible staff have the required experience, skill and tax

knowledge to undertake their roles

- specifying what would be considered a significant tax issue where escalation or additional sign-off is required
- maintaining a good record-keeping policy and process for all funding and associated tax outcomes
- maintaining a tax-related issues report
- meeting with your adviser at least annually to discuss the tax-related issues report.

As part of the tax-related issues report, you and your adviser should consider and document any tax positions taken (including any reasonably arguable position where your tax treatment differs from the published ATO view).

Contemporaneous documentation to be kept under your tax governance procedures could include:

Debt finance

- properly executed and legally binding financing documentation, including applications for loans, loan approvals and loan documents
- company minutes or trustee resolutions evidencing approval for the loan
- accounting records for each type of funding, including evidence of repayments
- loan accounts
- financial accounts
- professional advice received.

Equity finance

- valuation report
- completed application for shares
- directors' minutes approving the issue of shares
- updated share register
- documents necessary to meet other regulatory requirements, such as those of ASIC
- for initial public offerings (IPOs), any due diligence committee minutes that consider the valuation report, the due diligence planning memorandum, the prospectus and the underwriter's agreement
- financial accounts (audited or unaudited)
- professional advice received.

It's important to keep any other records of any decisions made by the directors or decision makers demonstrating the commercial purpose or reasoning behind particular transactions.

Example: Raising new finance

Your company recently wrote off significant bad debts due to the liquidation of a large customer. This resulted in cash flow problems and required new finance to be raised.

You have a strong tax governance framework in place that requires escalation of tax issues arising from proposed new sources of finance and strong documentation.

You raise new finance by borrowing from an overseas bank and issuing redeemable preference shares to existing shareholders. Tax governance policies ensure that all decisions are documented, finance staff identify and escalate the tax risks, and professional advice is obtained.

The ATO later reviews the restructure. You provide contemporaneous tax and finance documentation to support your position and show how your tax governance processes successfully managed the tax risks involved. The ATO provides practical certainty on the restructure, and the effective governance displayed is reflected in the company's tax profile.

Gifts or loans from related overseas entities

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Gifts-or-loans-from-related-overseas-entities/>
- Last modified: 13 Dec 2021
- QC 66800

Genuine gifts or loans received from related overseas entities (including family members and friends) are sometimes used to fund business structures or to acquire income producing assets.

In this context, a genuine gift or loan is one where all of the following are satisfied:

- the characterisation of the transaction as a gift or loan is supported by appropriate documentation
- the parties' behaviour is consistent with that characterisation
- the monies provided are sourced from funds genuinely independent of you.

When you receive amounts that are genuine gifts or loans from related overseas entities (including family members and friends) to fund your business or to acquire income producing assets, it's important that you have appropriate documentation that shows the character of the amounts received. Good contemporaneous record keeping practices are desirable should the Commissioner seek to verify whether the amount you have received is a genuine gift or loan.

On this page

- [Documenting genuine gifts from related overseas entities](#)

- [Documenting genuine loans from related overseas entities](#)

See also

- [Taxpayer Alert TA 2021/2](#) *Disguising undeclared foreign income as gifts or loans from related overseas entities*
- [Receiving payments or assets from foreign trusts](#)

Documenting genuine gifts from related overseas entities

Where a genuine gift (including an inheritance) is used to fund your business or to acquire income producing assets, supporting documents can include:

- any contemporaneous declarations the donor has made in their country of residence about the nature of the amounts transferred
- an executed contemporaneous deed of gift prepared by the donor
- formal identification of the donor (such as a copy of their photo identification from their passport or identity card)
- a certified copy of the donor's will or distribution statement for the estate
- a copy of the donor's bank statements showing the gift and the donor's wealth before they made the gift
- financial records reflecting the donor's transfer to you.

In circumstances where there is uncertainty about whether a particular amount you have received is a genuine gift, the Commissioner will form a view based on all the available evidence. A deed of gift may not necessarily be accepted as conclusive evidence that a receipt has the character of a genuine gift. The Commissioner will evaluate it together with other available evidence to determine the character of the receipt.

The Commissioner may also make further inquiries to verify information or documents provided.

Documenting genuine loans from related overseas entities

Where a genuine loan is used to fund your business or to acquire income producing assets, supporting documents can include:

- a properly documented loan agreement that details
 - the parties to the loan
 - the date of entry
 - its terms and relevant conditions, including
 - the amount of the loan
 - the interest rate payable
 - the frequency of repayments and how they are calculated
 - the term of the loan
- correspondence relating to the loan, including pre-contractual negotiations as to the terms and any variations made post agreement
- documents about any security provided or guarantees given in support of the loan
- facility arrangements governing the draw down and transmission of funds

- authorisation to access or draw down loan amounts from the lender's account
- financial records such as bank statements showing the advance of funds and subsequent repayments, including interest and principal payments over the loan term
- financial and accounting records that show how you used the loan amounts, such as
 - ledger and journal entries
 - bank statements
 - credit card statements
 - receipts
- account statements or accounting records and ledgers reflecting
 - the loan balance outstanding
 - the financing costs incurred or paid
- any declarations the lender has made in their country of residence about the provision of the loan
- statements of assets and liabilities provided to a financial institution
- an extract from the lender's financial and accounting records showing the loan balance outstanding
- foreign bank account statements reflecting the transactions relating to the loan and the lender's ability to make the loan
- documents showing payment of withholding tax
- financial plans, cashflow forecasts, net assets position or budgets showing an intention or capacity to repay the loan.

In circumstances where there is uncertainty about whether a particular amount (or amounts) you have received is a genuine loan (or loans), the Commissioner will form a view based on all the available evidence. In this regard, documentation from unrelated parties often provides the best evidence that an amount was received as a genuine loan.

For example, a statutory declaration provided by you or a family member to show that an amount was received as a genuine loan may not be accepted as conclusive evidence of the receipt having that character. In contrast, a personal statement of assets and liabilities provided to a financial institution listing the receipt as a loan is more likely to be accepted as strong evidence of such a characterisation.

The Commissioner may also make further inquiries to verify information or documents provided.

See also

- [Amounts you do not include as income](#)
- [Foreign and worldwide income](#)
- [Funding and finance](#)
- [Private company benefits – Division 7A dividends](#)
- [Taxation Ruling TR 96/7](#) *Income tax: record keeping - section 262A - general principles*
- [Tax governance](#)

Philanthropy

- <https://www.ato.gov.au/Business/Private-ly-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-ly-owned-groups/Philanthropy/>
- Last modified: 31 May 2016
- QC 49150

Private groups often choose to give back to the community through philanthropic ventures. You can either set up an entity specifically for this purpose or donate directly to established organisations.

On this page:

- [Private ancillary funds \(PAFs\)](#)
- [Charities](#)
- [Gifts](#)

Private ancillary funds

When establishing a private ancillary fund, ensure that it's set up correctly under both trust and tax law. In addition, state laws may apply to your fund.

Under tax law, ancillary funds must meet the legislative requirements and comply with the private ancillary fund guidelines. The trust deed must include certain governing rules and clauses. A model deed is available to ensure all the necessary terms are covered.

In managing issues relating to private ancillary funds, ensure that:

- the trustee has complied with the regulatory requirements set out in the current Private Ancillary Fund Guidelines
- policies are in place to show that the trustee has developed and maintained a current investment strategy, and considered and managed perceived or actual material conflicts of interest in holding particular investments
- documentary evidence shows that all financial dealings with the founder or an associated entity are made by way of an arm's length commercial transaction
- the trustee ensures that the donor or its associates are not provided with any benefit, other than what is allowed by the Private Ancillary Fund Guidelines
- the trustee ensures that distributions are made only to deductible gift recipients, financial statements are audited, and the fund lodges its ancillary fund return by the due date.

See also:

- [Private ancillary funds](#)

Charities

A registered charity must be endorsed by the ATO as a tax concession charity (TCC) to access the following tax concessions: income tax exemption, GST charity

concessions, fringe benefit tax (FBT) rebate and FBT exemption.

Charities are also subject to the rules administered by the Australian Charities and Not-for-profits Commission (ACNC) in order to maintain their entitlement to endorsement as a TCC.

If your organisation is no longer entitled to endorsement, you must notify us. In managing risks relating to endorsement, we suggest reviewing your entitlement regularly. Regular self-reviews form part of a good tax governance model.

The law doesn't specify the time between self-reviews, but we recommend a yearly review. You should also self-review whenever there is a change in your organisation's structure or operations.

Factors that can affect an organisation's entitlement include changes to its purpose and operations, physical presence in Australia, loss of endorsement as a deductible gift recipient (DGR), and where you incur expenditure.

You should maintain records to show that a self-review has been undertaken.

See also:

- [Is your not-for-profit a charity?](#)
- [Review your TCC endorsement](#)

Gifts

To be tax deductible, a gift must be made to an organisation that is endorsed by the ATO as a deductible gift recipient (DGR).

To manage issues around gifts, consider including the following in your tax governance processes:

- before making a gift or donation, check the DGR endorsement status of the organisation at www.abr.gov.au
- ensure that you meet any special conditions that apply to the type of gift you are making
- keep details of the tax-deductible gift including its value and who it was given to (including their ABN)
- if the gift is made to a related party, keep documentation showing that no material benefit or advantage came back to the giver.

See also:

- [Tax-deductible gifts](#)
- [Deductible gift recipients](#)

Succession planning

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Succession-planning/>
- Last modified: 31 May 2016
- QC 49151

For most private groups and family businesses, succession (or transition) planning involves planning for the sale of your business or passing over control to other family members when you retire. It may include realising assets, retirement planning and estate planning. A sound tax governance framework can help you manage tax issues around succession planning.

Though succession planning may not have an immediate tax impact, it's important to include tax considerations in your plan. This will avoid unexpected tax issues arising down the track when you implement your plan.

Find out more:

- [Exiting a business](#)
- [Retirement planning](#)
- [Estate planning](#).

On this page:

- [Transferring your business to family members](#)

Transferring your business to family members

Transferring control of your business to family members may involve restructuring your business operations – changes to share structure, changes to the trustee and appointor of a trust, changes to partnership structures – or transferring assets to family members via the creation of trusts or other entities. All these events have legal and tax implications that need to be carefully considered.

For example, when you dispose of or transfer your business assets there will likely be capital gains tax (CGT) consequences. The sale of a business can also trigger liabilities in relation to GST, wine equalisation tax, fuel tax credits and excise duty.

Where pre-CGT assets are involved, you should also understand and document the tax consequences for you and your beneficiaries. Issues for consideration include whether changes in the business operations impact the pre-CGT status of the assets or shares and the availability of carried-forward losses.

Any significant changes to your business structures or operations (including any asset disposals) should be fully documented, along with their tax impact. Ensure information on your assets (such as acquisition dates and cost base) is properly documented. This will also ensure that any subsequent disposals of the assets can be treated correctly for tax purposes.

Example: Transferring your business to family members

As the owner of a successful family business, you prepared a basic succession plan many years ago, but since then your business has expanded and your children have grown up. Your son works with you in the business and you would like to see him take over when you retire.

You discuss with your adviser how best to transfer the business to your son and transition to retirement. You decide to restructure your business as a family trust, so you can still have some control of the business while reducing your involvement in the day to day operations.

Your adviser explains the tax consequences of this strategy and alerts you to other options and tax considerations. Once you decide on your strategy, you update your succession plan, which now includes a section detailing the tax treatment and tax payable on transfer.

Different strategies will have different tax consequences for the owner and beneficiaries. Consider each strategy and identify the significant transactions.

Whatever strategies you use to transfer your business onto the next generation, make sure your plans are documented and you seek advice from professional advisers where needed.

To reduce the risk of incorrect tax treatment and consequent penalties, consult published ATO guidance and advice and document the reasons for tax positions taken for any significant transactions. Where you adopt a tax treatment that differs from the published ATO view, a documented reasonably arguable position should exist.

You may also wish to [engage directly with us](#) for advice when tax issues are more complex and require certainty.

Exiting a business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Exiting-a-business/>
- Last modified: 31 May 2016
- QC 49156

The tax implications when exiting your business depend on how you go about it. Effective governance can help you manage the tax issues whether you're disposing

or closing your business.

Find out about:

- [Disposing of your business](#)
- [Closing your business.](#)

Disposing of your business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Exiting-a-business/Disposing-of-your-business/>
- Last modified: 31 May 2016
- QC 49173

The sale of a business generally occurs through the disposal of either:

- the shares or other interests in the entity that conducts the business, or
- all of the tangible and intangible assets in the business.

In either case, the vendor and purchaser need to retain documentation evidencing the transaction, including:

- contracts
- minutes of meetings recording why the business was to be sold and decisions relating to the transaction by the directors and other key decision makers
- communications between the vendor and purchaser relating to the negotiations, including any allowance for liabilities
- details of the assets disposed of under the contract, the apportionment of the purchase price to the various assets and the basis for the apportionment
- capital gains tax (CGT) calculations, including the allocation of purchase price to depreciable assets, the basis for this allocation and treatment of consideration held in escrow
- a reasonably arguable position paper or specialist advice detailing why the particular tax position has been taken
- settlement documentation
- asset registers
- trust resolutions creating income or capital entitlements of beneficiaries.

Where the business is disposed of to a related party, it's prudent to get an independent valuation of the business, including the goodwill, assets and contractual rights being disposed of.

Where you dispose of an asset, you need to determine whether it should be treated as a revenue or capital transaction. Information and views relevant to this will be found in documentation such as minutes of meetings, business plans, and

documented discussions with stakeholders and consultants as well as financial statements.

Issues to consider include:

- how and why the small business CGT concessions applied
- pre-CGT implications
- application of the CGT discount
- cost base or reduced cost base
- that excise licences are not transferrable.

On this page:

- [Disposing of part of a business](#)
- [More complex business disposals](#)

See also:

- [Selling or closing your business – things to consider](#)
- [What attracts our attention – capital gains tax](#)
- [Market valuation for tax purposes](#)

Disposing of part of a business

You may partially dispose of your business by:

- creating a new class of shareholders or unit holders
- disposing of a portion of shares
- retiring from a partnership
- admitting a new partner into your partnership.

Key documents such the company's constitution, trust deed or partnership agreement may be amended as a result of any of the above changes, and the rights of the existing shareholders or unitholders may be affected.

Where this occurs, the existing shareholders, unitholders and partners should consider any tax consequences, such as capital gains, value shifting or limitations on future deductions or capital losses.

More complex business disposals

More complex or non-traditional business disposals often give rise to a range of tax issues that attract the ATO's attention and require risk mitigation by way of good tax governance.

Where your business and tax affairs are complex, additional tax governance requirements for complex business disposals may be necessary to provide us with assurance that these risks are being identified, assessed and managed.

The transaction structure and its commercial business drivers should be carefully considered and documented. We suggest you get specialist in-house or external business and tax advice.

You may also wish to [engage directly with us](#) for advice before entering the transaction. We can assist you in reducing uncertainty by clarifying how the tax law relates to your particular circumstance.

More complex business disposals may include features that attract our attention, such as:

- [earn-out arrangements](#)
- [CGT rollovers](#)
- [scrip-for-scrip rollovers](#)
- [share buy backs and capital reductions](#)
- [restructures](#)
- [listing on a stock exchange](#)
- [exit from a consolidated group](#)
- the use of a demerger to facilitate the disposal of the business
- multiple events and transactions that occur just before or on the date of the business disposal.

There may also be an impact on the interest that can be deducted if the disposal of an interest in a business results in a change to the entity's debt to equity ratio, which may need to be recalculated at the relevant time.

Earn-out arrangements

The disposal of a business that includes an earn-out arrangement can take a number of forms. Governance practices can include:

- retaining the sale contract and other relevant agreements
- considering changes in the law examining the terms of the earn-out arrangement and identifying the contingent and non-contingent rights
- considering if there is a reverse earn-out arrangement
- estimating the value of the earn-out right and retaining documentation to support the estimate
- getting tax advice and preparing the capital gains tax calculations for the income year in which the disposal occurred
- comparing the amounts actually received under the earn-out clauses to the amount estimated.

CGT rollovers

A rollover only applies if the CGT event would have resulted in a capital gain.

If the seller seeks to claim a rollover, they, and in some instances the purchaser, must ensure that all of the requirements are met.

The seller will also need to consider if a full or partial rollover applies. A partial rollover occurs if the capital proceeds of the shares or trust interests being disposed of include something other than the shares or trust interests.

The seller may need to get tax advice.

Scrip-for-scrip rollovers

In some instances, a scrip-for-scrip rollover applies. Generally, this occurs where a seller exchanges a share or trust interest in a company for a share or trust interest in another entity.

Effective governance involves retaining key documentation to provide you with certainty. It should be readily accessible in the event that we review the transaction. Such documentation includes:

- minutes of decisions to proceed with the transaction and executed contract documents
- evidence of the interests exchanged (such as share certificates or unit registers)
- details of the CGT profile of interests, such as cost base and any pre-CGT status
- valuations
- other workings, papers or advice setting out the conditions and how they have been satisfied.

Listing on a stock exchange

Where a business owner is looking to dispose of the shares in a business via listing on a stock exchange through an initial public offering (IPO), back-door listing or reverse take-over, tax governance practices may include:

- considering Australian Securities Exchange (ASX) and Australian Securities and Investments Commission (ASIC) requirements and their tax consequences
- getting advice on the CGT treatment of any disposal of shares held by the existing shareholders
- considering whether the CGT discount and a full or partial CGT rollover apply
- considering how any additional amounts to which the existing shareholders are entitled after the event (such as additional shares or earn-out amounts) will be treated for tax purposes.

A back-door listing generally involves the disposal of an entity's shares or assets to a company that is currently listed on the ASX. Interests sold between related parties through back-door listings should be subject to independent market valuations.

Exit from a consolidated group

Where a consolidated group disposes of a partial or the full interest in a subsidiary member, resulting in it leaving the group, effective governance practices include:

- retaining the sale contract and agreements
- preparing a statement of financial position in accordance with accounting standards as at the date of exit
- ensuring that the assets and liabilities appearing on the statement of financial position reflect market values
- undertaking allocable cost amount exit calculations
- calculating the capital gain or loss resulting from the disposal of the interest in

the subsidiary member

- getting a valuation to determine the subsidiary's market value where the purchaser is a related party
- notifying the ATO of any changes to membership.

See also:

- [Consolidation](#)

Closing your business

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Exiting-a-business/Closing-your-business/>
- Last modified: 03 Jul 2020
- QC 49174

You may decide to close an entity in your private group or your entire business or private group structure.

The disposal of assets, liquidation or vesting of entities may give rise to tax issues that attract our attention. This is particularly in relation to capital gains tax, extraction of wealth from private companies, tax consolidation, abuse of trusts and lodgment of returns.

Effective tax governance when closing a business helps mitigate risk and provides practical certainty for stakeholders.

On this page:

- [Companies](#)
- [Trust vesting](#)
- [Partnerships](#)

See also:

- [Selling or closing your business – things to consider](#)

Companies

The following example illustrates the documentation to be retained for tax governance purposes where a business is wound down, liquidated and deregistered.

Example: Winding up a company

Spin Records has been a profitable company for many years. However, due to a change in consumer demand and the economy, its company directors believe it is no longer viable to continue to carry on the business.

The directors decide to liquidate and deregister Spin Records before it becomes unprofitable, rather than dispose of the business. They agree to engage a liquidator to start winding up the company in three months, allowing it to fulfil its final contracts with customers.

Before commencing liquidation, a dividend is declared and paid to the shareholders. The assets of the company are then sold, with proceeds and cash reserves used to pay creditors. Loans provided to shareholders are forgiven. A final dividend is declared by the liquidator and paid to shareholders before the company is deregistered with ASIC.

The documentation Spin Records needs to retain for tax governance purposes includes:

- minutes of meetings documenting key decisions relating to the winding up, liquidation and deregistration
- minutes of directors' meetings relating to the dividends declared and paid
- minutes of meetings conducted by the liquidator
- analysis of the tax consequences of the sale of assets and the forgiveness of loans to related parties
- the final tax return and details of payment of tax liabilities.

The company's shareholders also need to keep documentation to substantiate the cost base of shares in the company for capital gains tax purposes.

See also:

- [Deregistering a company](#)

Trust vesting

The trustee intending to vest a trust should carefully examine the trust deed to ensure adherence to its terms.

The trustee should:

- make written trust resolutions to record the trustee's decisions throughout the vesting process. This is particularly important where the trustee has the discretion to exclude the distribution of income or capital from the winding-up process to one or more beneficiaries, unit holders, or classes of unit holders
- document forgiving or assigning related entity loans receivable and payable, and determine the tax consequences of forgiving a loan
- examine the rights attached to each unit class, where the trust is a unit trust.

This will determine which unit classes are eligible to receive distributions if the trust is being wound up

- record the decision made if the trust deed provides for the trustee to transfer assets to a beneficiary or unit holder in order to satisfy a distribution of income or capital where the trust is being wound up
- consider getting a valuation of the asset. This will show that the asset being transferred does not exceed the amount to which the beneficiary or unit holder is presently entitled. A transfer of the asset could potentially result in a capital gains tax event to the trust. The trustee should consider the tax consequences
- notify beneficiaries and unit holders of their share of the income or capital of the trust so they can determine and report their tax obligations.

Partnerships

Where a partnership ends, a final partnership distribution will be necessary.

Each partner will need to retain documentation to substantiate the cost base of their respective interest in the partnership for capital gains tax purposes.

Retirement planning

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Retirement-planning/>
- Last modified: 31 May 2016
- QC 49157

To invest for retirement, many private group owners operate self-managed super funds or use the small business CGT concessions.

Find out about:

- [Self-managed super funds](#)
- [Small business CGT concessions](#)

Small business CGT concessions

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Retirement-planning/Small-business-CGT-concessions/>

- Last modified: 27 Nov 2020
- QC 49172

Small business entities are eligible for a range of tax concessions on capital gains that arise on the disposal of business assets. The concessions, which may be relevant to you, include:

- 15-year exemption
- 50% active asset reduction
- retirement exemption
- small business roll-over.

Analysis and documentation

If you apply any of these concessions in relation to your business assets, ensure you have understood and applied the concessions correctly and kept the required documentation. As always, where you're uncertain, it's good practice to get advice.

To manage risks around the small business CGT concessions, consider these suggestions:

- Retain documentation for each CGT asset for which the small business CGT concessions were claimed, documenting details such as
 - the asset you sold
 - the date on which you sold it
 - the sale price
 - the date on which you purchased it
 - the buyer.
- If there are any affiliates or connected entities, analyse how this has affected the application of the concessions.
- Get an independent third-party valuation of the relevant assets where they were sold to a related party or connected entity. If there was an earn-out clause or equivalent in the contract of sale, get a third-party valuation of the earn-out.
- Keep records that show how you satisfied the conditions for the small business CGT concessions. If the [small business entity](#) test was met, show how you determined your aggregated turnover. If the [maximum net asset value test](#) was met, record details of the net market value of assets connected with yourself and the business and those of any affiliates and connected entities just before the CGT event.
- Where the CGT asset disposed of was shares in a company or an interest in a trust, further details need to be kept, such as the full name and date of birth of each CGT concession stakeholder and their participation percentage.
- If you're required to roll over an amount of capital gain to your superannuation fund in order to make use of the concession, ensure that the correct amount is calculated and contributed to your superannuation fund. You'll also need to make a capital gains tax election and provide it to the fund's trustee.

See also:

- [Small business CGT concessions](#)

Self-managed super funds

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Retirement-planning/Self-managed-super-funds/>
- Last modified: 31 May 2016
- QC 49179

Setting up a self-managed super fund (SMSF) is one option when planning for your retirement.

SMSFs are an effective and flexible vehicle for individuals to manage their retirement savings and investments. However, SMSFs must be maintained for the sole purpose of providing retirement benefits to members or to their dependents if the member dies. As the trustee of a SMSF, you are responsible for ensuring that the fund complies with the requirements of the income tax laws and the *Superannuation Industry (Supervision) Act 1993* (SISA) and SIS Regulations.

Having effective governance practices in place can help you manage your obligations as a trustee and avoid exposure to compliance action and penalties for regulatory breaches.

See also:

- [What attracts our attention – Self-managed super funds](#)
- [How we deal with non-compliance](#)

On this page:

- [SMSF governance](#)
- [Work collaboratively with your auditor](#)
- [Seek advice when making decisions](#)
- [Document decisions and keep good records](#)
- [Accurate and timely reporting](#)
- [Manage risks to ensure your SMSF remains complying](#)

SMSF governance

An SMSF is a complex undertaking with unique regulatory obligations. When managing an SMSF you need to apply a high level of governance to meet the requirements of both the income tax and super laws.

You must ensure that your fund meets the definition of an SMSF at all times and remains complying. This includes meeting requirements around the fund's structure,

members and trustees, and governing the fund's compliance with rules for contributions, investments and payment of benefits.

Where your SMSF auditor or other advisers identify issues with your fund's compliance you should take immediate steps to correct them. Where the issues are particularly complex or significant, engage with us for advice.

To help you understand your obligations refer to our online [information for SMSFs](#).

Effective tax governance for SMSFs includes:

- [working collaboratively with your auditor](#)
- [seeking advice when making decisions](#)
- [documenting decisions and keeping good records](#)
- [accurate and timely reporting](#)
- [managing risks to ensure your SMSF remains complying](#)

Work collaboratively with your auditor

SMSF trustees are required to appoint an approved SMSF auditor to audit the fund each year. The SMSF auditor must be independent and registered with ASIC.

The fund's financial statements and regulatory compliance need to be audited before the SMSF annual return is lodged. An audit is required even if no contributions or payments are made in the financial year. Ensure all documents are provided to the SMSF auditor with sufficient time for the audit to be completed within the legislated timeframe.

Trustees are encouraged to work closely with the SMSF's advisers and auditor. The auditor will give the trustee a report on the SMSF's regulatory compliance including any contraventions. Any material contraventions must be reported by the auditor to the ATO.

Where breaches of superannuation law are brought to the attention of the trustee, whether required to be reported in the auditor's contravention report or not, a well-governed SMSF will act promptly to correct them.

See also:

- [Appoint an SMSF auditor](#)
- [Auditor compliance - Issues of concern](#)
- [SMSF auditor – Help and resources](#)

Seek advice when making decisions

Consider appointing other professionals such as accountants, tax agents, fund administrators, lawyers and financial advisers to assist with governance of the fund. Make sure these professionals have sufficient SMSF knowledge and experience to assist you to correctly apply income tax and SIS laws.

Consult published ATO guidance and rulings to understand your obligations and

how the laws apply to you. If you or your tax adviser are not able to find the ATO view on how the law applies to your circumstances, or are not certain how it applies, you can [get help from us](#).

See also:

- [Consider appointing professionals to help you](#)

Document decisions and keep good records

Adopt practices that ensure key decisions are documented at the time they are made. Records of decisions can form crucial evidence to support your tax treatment of significant transactions and may prove valuable should we later review your SMSF.

Ensure that key documents are kept and are easily accessible, including:

- fund establishment records
- trust deed and amendments
- declaration by new trustee
- consent by trustee to act
- application for fund membership
- election to be regulated by the ATO
- investment strategy.

The trust deed should be reviewed annually to incorporate any changes in income tax and SIS law. The investment strategy should also be regularly reviewed to ensure it reflects the purpose and circumstances of the fund and its members.

Example: Maintaining SMSF records

You and your spouse are individual members and trustees of your SMSF. In the minutes of a previous SMSF meeting, you documented a decision to invite your daughter, Jade, to become a member and trustee of the fund.

Jade accepted, so you arranged for your solicitor to update the SMSF trust deed to include her as a trustee. Jade signs a consent form to act as trustee and a trustee declaration form stating she understands her duties and responsibilities as an SMSF trustee. Within 28 days of admitting Jade as a member and trustee, you complete a change of details form to notify the ATO.

The title to each of the fund's assets is updated to include Jade's name as trustee for the fund.

You hold another SMSF meeting to review the fund's investment strategy to ensure it reflects the circumstances of all three members. You ensure that the minutes of the meetings, the amended trust deed and the various signed forms are retained on file for the required time and are readily accessible to the SMSF auditor when they next audit the fund.

Accurate and timely reporting

Set timelines that allow sufficient time for the annual accounts and statements to be prepared and audited before lodgment is due. Ensure all documents are provided to the SMSF auditor with enough time for the audit to be completed within the legislated timeframe.

As part of the year-end compliance process with superannuation and tax advisers, ensure any compliance issues are considered. If you prepare early, you'll have more time to take appropriate action if a compliance issue is identified.

See also:

- [Administering and reporting](#)

Manage risks to ensure your SMSF remains complying

Trustees should also periodically verify that the SMSF satisfies the requirements of a regulated superannuation fund, including requirements around contributions, investments and paying out benefits.

We suggest formulating an [exit strategy](#) so you're prepared for the time you no longer want an SMSF and need to wind it up. Consider matters such as disposal of assets, paying out or rolling over benefits, the final audit, lodging the final SMSF annual return, paying outstanding tax, closing bank accounts and cancelling ATO registrations.

Trustees should ensure there are governance procedures in place for accepting contributions, including *in-specie* (asset) contributions. This includes monitoring any contributions made during the financial year to ensure contribution caps, both concessional and non-concessional, are not inadvertently exceeded. Consider seeking advice on large contributions or asset contributions that may be unusual or involve an element of risk.

Example: Large contributions

You sold your business and received tax advice that the sale is eligible for the small business capital gains tax (CGT) concessions. You want to contribute the sale proceeds to your SMSF without breaching the contribution caps.

In line with your SMSF governance procedures that require you to get professional advice for large and unusual contributions, you're advised that key legislative requirements need to be met so that your contribution doesn't count towards the non-concessional contribution cap. This includes the need to ensure the contribution is below the CGT cap amount and that an election is to be made in the approved form before or at the time of making

the contribution.

Applying specific governance procedures can help to manage risks around investments, especially those involving related-party transactions. Income derived from the investment may not qualify for concessional tax treatment where certain requirements are not met.

The procedures should require the trustee to first determine:

- whether the transaction complies with the investment strategy and is permitted under the SIS laws and the SMSF's trust deed
- whether the investment will cause the fund to fail the [sole purpose test](#)
- whether the transaction is on an [arm's length basis](#) (see [Valuation guidelines for SMSFs](#))
- whether future income such as rent, dividends or trust distributions from the transaction will be characterised as [non-arm's length income](#)
- the application of the [in-house asset rules](#) and rules relating to loans, borrowings, unpaid present entitlements and acquisitions from related parties.

The following examples outline some income tax and regulatory issues that might arise when a SMSF enters into a transaction with a related party.

Trustees should consider having governance procedures in place to avoid any income tax and regulatory breaches when dealing with related parties.

Trustees need to be aware that fund assets can't be used to benefit members or their relatives either directly or indirectly.

Example: Indirect financial assistance to related party

Your relative has requested a loan from your SMSF. While you know that your SMSF can't lend the amount directly to your relative, you wonder whether you could lend the money to an unrelated entity on commercial terms, who might then facilitate a loan to your relative on commercial terms.

In line with your SMSF governance procedures that require you to get advice on any related-party transactions, you're advised that the transaction could breach the financial assistance rules as the loan to your relative has relied on the resources of your SMSF.

When acquiring property from a related party, trustees need to be aware of the contribution caps and business real property rules.

Example: Acquisition of real property from a related party

You want to transfer a factory you own into your SMSF and then lease it back to your business. In line with your SMSF governance procedures that require you to get advice on any related-party transactions, you're advised that your fund may acquire this property if, at the time of acquisition, it's being used wholly and exclusively for business purposes and is acquired at market value.

Your SMSF can pay consideration for the property or it can be transferred as an *in-specie* contribution providing your fund-capped contributions limit is not exceeded. You also discover that the rental charged by the fund on the lease back to the business must be at market value. Any rental income received by the fund in excess of the market value could be considered non-arm's length income, and if the rental income is below market value there may be a breach of the arm's length dealing rules under the super laws.

Trustees seeking to take advantage before retirement of arrangements for the purpose of obtaining further taxation concessions need to be aware of the potential application of the general anti-avoidance rules.

Example: Acquisition of shares from a related party

Before retirement you're contemplating transferring shares in your private company (through which your family business operates) into your SMSF so the fund can receive franked dividends and take advantage of franking credit tax offsets.

While you're confident that the proposed acquisition will not amount to a regulatory breach, as the shares will be acquired at market value by the fund from a company exempt from the in-house asset provisions, your SMSF governance procedures require you to seek advice for any related-party transactions.

Because the circumstances are similar to the arrangement outlined in [Taxpayer Alert 2015/1](#), as part of effective governance you decide to apply to the ATO for a private binding ruling. This will give you certainty as to whether the proposed acquisition is allowed under super laws and if it could cause any adverse income taxation consequences involving the dividend stripping operation provisions or general anti-avoidance rules.

Borrowings create special risks for SMSFs. Borrowings must be on arm's length terms, including interest rates, repayment schedules and security. Good practice is to seek specialist advice and assistance with SMSF borrowings.

Example: Limited recourse borrowing arrangements

Your SMSF has insufficient money to acquire some listed shares so you as trustee decide to borrow money from yourself personally via a limited recourse borrowing arrangement (LRBA).

In line with your SMSF governance procedures that require you to get advice on related-party transactions and LRBAs, you're advised that the shares are not a prohibited asset and that the fund can borrow money from you so long as the shares are held on trust for the fund and registered in the name of the holding trust.

The fund has a right to acquire legal title to the shares on completion of the repayments, and the right of recovery on the loan is limited to the shares. The terms of the loan must also be commercial to avoid any non-arm's length income generated from the shares or breach of the arm's length dealing rules.

Payment of benefits is a major compliance risk for trustees. Concessional tax treatment can be lost if the release of benefits fails to comply with the preservation rules and conditions of release.

Pensions can also be complex to administer as there are both regulatory and income tax requirements to be met. It's good practice for trustees to have documented policies that ensure payments are planned, funded, correctly accounted for and meet SIS requirements.

Example: Exempt current pension income

You've just reached preservation age and are thinking of commencing a [transition to retirement income stream](#) (TRIS), a type of pension you can receive while still working, once you've reached your preservation age.

In line with your SMSF governance procedures that require the trustee to get advice on starting a pension, you're advised that before the pension starts the trustee must set aside an amount to pay the pension, and calculate the taxable and tax-free components.

To ensure any earnings from the amount set aside to pay your pension remain exempt from income tax in the fund, your annual pension payments must be within the minimum and maximum amounts allowed for a TRIS based on a percentage of your account balance. You must also ensure that either separate assets are set aside to support the pension (segregated method) or that an actuary's certificate is obtained to verify the portion of the fund's income that is supporting the pension (unsegregated method).

See also:

- [Winding Up](#)
- [Contributions and rollovers](#)
- [Investing](#)
- [Paying benefits](#)

Estate planning

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Tax-governance-guide-for-private-owned-groups/Estate-planning/>
- Last modified: 31 May 2016
- QC 49160

Estate planning involves developing a strategy to deal with your assets after you die – the legal instruments and structures, such as a will, you put in place to transfer your assets in the event of death.

Tax is a major consideration in estate planning, and strong governance relating to the tax aspects of estate administration can help manage the risks.

Ensure you or your staff have sufficient knowledge and skills to meet your responsibilities. Be prepared to seek assistance from external advisers on more complex tax issues.

On this page:

- [Developing an effective strategy](#)
- [Preparing a valid will](#)
- [Administering a deceased estate](#)
- [Testamentary trusts](#)
- [Capital gains tax](#)
- [Superannuation and death benefits](#)

Developing an effective strategy

Estate planning may be considered as part of your overall succession plan for your business. You may need to seek specialist advice on the most appropriate estate planning strategy.

Have a process in place to periodically review your strategy in conjunction with your advisers, including your legal, tax, superannuation and financial advisers.

Beware of schemes that claim to have estate planning purposes but are merely tax avoidance arrangements. An effective tax governance framework includes processes for evaluating various arrangements and the tax risks involved.

Preparing a valid will

If someone dies without a valid will, this is called 'dying intestate', and their assets are distributed according to the inheritance laws of the states and territories of Australia. In this case there is a risk that the undocumented intentions of the deceased person in relation to their estate may not be fully acted on.

Depending on the marginal tax rates of different beneficiaries, intestacy could potentially lead to an overall imbalance in the distribution of an estate due to higher rates of tax payable by some beneficiaries.

Planning ahead can avoid this result. When preparing a will, the will maker and their advisers can assess opportunities to manage the tax implications for beneficiaries.

Administering a deceased estate

As executor of a deceased estate, you need to understand your tax obligations, including:

- notifying us that you've been appointed as executor
- lodging a final return, and any outstanding prior-year returns, for the deceased person
- lodging any trust tax returns for the deceased estate
- providing beneficiaries with the information they need to include distributions in their own returns and, in certain cases, paying tax on their behalf
- paying tax on the income of the deceased estate.

See also:

- [Deceased estates](#)

Testamentary trusts

A testamentary trust is a trust established under a valid will, but it's not the same trust as the deceased estate. A testamentary trust functions in a similar way to a discretionary family trust, with certain provisions of the will operating like a trust deed.

Like any trust, a trustee of a well-governed testamentary trust will:

- properly understand the tax profile of potential beneficiaries in the light of intended tax outcomes
- lodge a tax return for every financial year that it is in existence
- maintain proper trust account records (such as trustee resolutions, detailed financial statements and reconciliations), especially where a trustee is streaming capital gains or franked dividends
- fully document capital gains tax events, cost bases, and rollovers and other concessions claimed.

Depending on who is appointed as the trustee and appointor of the testamentary trust, there may need to be a high level of co-operation between family members to

ensure that necessary tax, financial and other information is shared for the trust to operate effectively.

A well governed testamentary trust will ensure that tax outcomes are achieved and, more importantly, complex family or legal disputes can be prevented.

Capital gains tax

Special capital gains tax (CGT) rules apply to the transfer of any CGT assets from a deceased estate. You should seek specialist advice in relation to the CGT implications of passing on or disposing of the assets of a deceased estate.

Keep complete records of CGT assets. These will be needed by the executor and any beneficiary who receives a CGT asset from the estate.

See also:

- [CGT on deceased estates](#)

Superannuation and death benefits

Ensure you understand the tax issues around estate planning and superannuation.

For example, the tax impact of distributions made under a binding death nomination is usually one of the major considerations in estate planning.

Assets held by a person in their superannuation fund are not automatically included in their estate. In the absence of a binding death benefit nomination, the trustee has the discretion to pay the benefits of the deceased to any of their superannuation dependents instead of the estate (rather than according to the will, which only deals with the estate assets), and of deferring tax consequences. Where a nomination is in place, the benefits will be paid to the nominated beneficiaries.

It's good practice to regularly review the need for any nominations to ensure your superannuation benefits will be passed on to your nominated beneficiaries, and that the nominations are valid and effective. Seek advice on the tax implications.

Example: Reviewing your strategy as circumstances change

As part of your estate planning strategy, you make a binding death nomination to provide for your under-age children who would receive the benefit tax free. You get advice to ensure that the nomination is valid and effective.

You provide for your older children, who would be taxed on receipt of superannuation death benefits, in your will.

After some years, when all of your children are older, you review your strategy and make a new nomination that better suits your family's tax situation.

Because your personal circumstances change from time to time, it's important that you regularly review the estate planning and income tax consequences when it comes to the distribution of your superannuation assets to your beneficiaries. Areas that warrant attention include:

- the distinction between a 'superannuation dependent' and a 'tax dependent'
- interaction with testamentary trusts
- effecting the reversion of a pension to spouse
- realising fund assets for payment to beneficiaries

Seek professional advice where necessary.

See also:

- [Superannuation death benefits](#)

Information system risk assessment tool

- <https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/Tax-governance/Information-system-risk-assessment-tool/>
- Last modified: 01 Dec 2021
- QC 59348

The Information system risk assessment (ISRA) tool is available for privately owned business clients. It helps you to self-assess the integrity of your Information Technology (IT) systems.

On this page

- [What the tool does](#)
- [Using the tool](#)
- [Report results](#)
- [Self-assess your systems](#)
- [Download the ISRA tool](#)

What the tool does

The tool establishes if the IT systems have appropriate controls to help businesses meet tax and super reporting obligations.

The ISRA tool will help you to:

- self-assess the potential risks and integrity of your IT systems for effectiveness of internal controls to manage financial information and reporting

- put recommended actions in place to reduce any determined IT system risks
- reassess your IT governance after new controls have been developed.

The ISRA tool is based on the guidelines and assurance frameworks set out by the Information Systems Control Association and the IT Governance Institute published at the time that the ISRA tool was developed.

Using the tool

Under the [Top 500 private groups tax performance program](#), the ISRA tool has been used in some engagements that commenced prior to 1 July 2020 to support with assessing private group's tax governance framework. For any new engagements under this program commencing from 1 July 2020, this tool is not used. For the approach used in this market, refer to:

- [How we assess tax governance for Top 500 privately owned groups](#)
- [Seven principles of effective tax governance](#)

The ISRA tool is not used as part of tax governance reviews for public and multinational businesses. For the approach used in this market, refer to:

- [Top 100 GST assurance program](#)
- [Top 1,000 GST assurance program](#)
- [Top 1,000 combined assurance program](#)
- [Reviewing tax governance for large public and multinational businesses](#)

Tool set up

The ISRA tool is set up with a series of questions that you answer across five key auditable units, which are:

- Systems inventory to assess the size and complexity of the inventory of IT systems
- Interface inventory to understand the extent of the data manipulation and the complexity of data mapping
- Customisation inventory to assess the level to which systems have been customised to determine the risk level
- IT projects and methodologies to establish the maturity level of the IT systems and the business processes they support
- IT governance to gauge the adequacy of internal policies, procedures and methodologies for effective and productive management of the IT function in the business.

Report results

Once you answer these questions, the tool provides you with a report that shows your risk rating against each question. You will receive a risk rating of:

- green, which is a low-risk rating
- orange, which is a medium-risk rating
- red, which is a high-risk rating.

It is important to record the evidence that supports your answers after each question. For instance, where a risk is mitigated record the reason and how the risk has been mitigated.

What a medium or high risk rating means

Medium or high-risk ratings mean your systems may not have the right internal controls to support the accuracy and completeness of your tax and super reporting and lodgment activities.

If you have a medium or a high-risk rating for a particular question, the report will give you a link to relevant information on our website with recommendations on how you can reduce the risk.

High-risk ratings are an indication of potential risks that you may wish to explore further to determine if stronger controls are required to mitigate the risk.

You may choose to:

- look into the processes and controls to see if you can improve them or mitigate the risks by introducing additional controls
- talk with your management team or board of directors to explore options to manage or address the risk
- consult your tax adviser to decide next steps
- do some research into processes or programs that can mitigate the risk. For example, manual data reconciliation would be a high risk however this can be mitigated where the reconciliation process is automated.

Self-assess your systems

The ISRA tool will help you to:

- self-assess the overall integrity of your IT systems for effectiveness of internal controls. This will assist you in managing financial information and reporting
- put recommended actions in place to reduce any determined risks to comply with taxation and reporting obligations
- reassess your IT governance after new controls have been developed.

Download the ISRA tool

The ISRA tool runs on a Microsoft Access database.

To use the tool you must have Microsoft Access and Microsoft Word available on the computer or device you are downloading the file to.

Follow the below steps to download the ISRA tool database:

- Download a copy of the [ISRA tool Microsoft Access database \(ACCDB 2.9MB\)](#).
- Select save to save the tool.
- A macro single step box will pop up – select X in the corner.
- Select Enable content from the bar.

- Make this a trusted document pop up by selecting Yes.

The ISRA database is now ready for you to use.

We have created detailed instructions in the ISRA tool manual to help you use the ISRA tool.

You can download the [ISRA tool manual \(PDF 668KB\)](#)  .

See also [Tax governance for privately owned groups](#).

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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