

## Australian Tax Office focus areas for large business and multinationals— COVID-19 and beyond

### Briefing Note

On 1 September 2020, Jones Day and the Corporate Tax Association hosted a conversation with Rebecca Saint, Deputy Commissioner, Public Groups and International, Australian Taxation Office.

As the head of the ATO's team focused on administration for large businesses and multinationals, including the design of the ATO's compliance activities for this segment of the market, Rebecca is uniquely placed to provide insights into the ATO's key areas of interest for these taxpayers as Australia moves through and beyond COVID-19.

Over 400 attendees from around the world joined hosts Dr Niv Tadmore of Jones Day and Corporate Tax Association Executive Director Michelle de Niese for the discussion with Rebecca.

Rebecca shared her views on a range of important topics for large businesses, including the ATO's approach to engagement with large taxpayers, the areas she expects will be a focus of compliance activity as the ATO moves to a post-COVID-19 audit and review environment, her views on tax disputes, and the ATO's Justified Trust Project.



Following on from the discussion with Rebecca and Michelle, some key takeaways that large businesses should put on their radar now include:

- New compliance and audit activities that had been planned by the ATO, but deferred because of COVID-19, are going to start over the next few months. The ATO will start that activity with taxpayers they view as having been the least impacted by COVID-19.
- Communication is key to the ATO's approach to taxpayers. In Rebecca's experience, cases that go well are those where there have been open and transparent communications. During the past few months, while the ATO and taxpayers were managing the impact of COVID-19, there had been very positive levels of engagement with large business, and it is hoped that this can be harnessed going forward.
- For large businesses and multinationals, key compliance areas include restructures and migration of intangibles, and hybrids. The ATO also continues to publish taxpayer alerts as an early warning of issues that concern them, including a recent taxpayer alert focused on certain inbound investment structures.
- The ATO considers that its positions on issues should not surprise taxpayers because its views and expectations are set out in public guidance including Practical Compliance Guidelines (PCGs).
- The ATO's Tax Avoidance Taskforce is focused on meeting its various commitments to government for this year, even with the delays and issues caused by COVID-19.
- The ATO is generally pleased with the progress of the Justified Trust program. For both the Top 100 and the Top 1000 taxpayers, about 30% have achieved a high level of assurance, and Rebecca expects that for the Top 100, that will exceed 50% this year with further assurance activities.
- The ATO is focused on primary evidence in its reviews. It is not sufficient to simply meet and explain positions. Taxpayers need to prove what they assert.
- While the vast majority of disputes end in some type of agreed resolution, through settlements or an alternative dispute resolution process, the ATO will litigate cases where there is a strategic or precedential reason to do so.
- The ATO would normally settle within the "green zone" of the PCGs. Settlements outside the "green zone" can occur, but the taxpayer will need to have strong evidence as to why their circumstances are different and result in outcomes outside of the green zone.

In addition, Michelle shared some important insights from taxpayers' viewpoint on behalf of the members of the Corporate Tax Association, echoing the importance of effective communication between the parties:

- The ATO has generally been responsive during critical phases of the pandemic and continued communication will help manage expectation gaps as the ATO returns to business-as-usual practices while businesses manage a fragile global economy.
- Taxpayers expect "justified scrutiny" from the ATO to ensure that their investment in the ATO's Justified Trust program is recognized in planning reviews and audits.

- The ATO has moved from a “tell me” to a “show me” model in terms of its reviews. If taxpayers start with an open engagement with the ATO, they are more likely to get a positive outcome. Taxpayers expect the ATO to discuss and explain its actions, such as why information is being requested, in order to ensure that the relevant issues can be addressed as efficiently as possible.
- Litigation is important to ensure that the law is clear and applied consistently, which may not be achieved when the ATO settles disputes on a confidential basis.

## Observations from the session

The Australian tax environment is complex even at “normal” times, and the post-COVID-19 environment will be underpinned by even more moving parts such as changes within industries and markets, pressure on resources and cash, intensive ATO reviews, and potential tax reform designed to attract foreign investment. As we move into this uncharted territory, certain key points should be front of mind:

- Revenue authorities across the world will be more willing to share information, but may be more cautious when it comes to dividing the revenue pie. After all, revenue authorities the world over will be expected to meet revenue targets.
- ATO scrutiny will continue to be intensive, with stronger emphasis on “don’t tell me, show me”. Taxpayers should ensure that they have strong evidence to support their assertions, and the ATO will increasingly be expecting that this is prepared prior to a review being commenced. The practical reflex of this will be stronger pressure by the ATO on settlement outcomes—weaker evidence will likely translate into higher settlement amounts.
- A proactive approach to working with the ATO will be even more important. Early engagement with the ATO may not guarantee the outcome you want, but typically results in more favorable outcomes, and a better process, than audits.



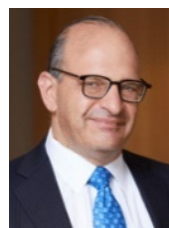
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