Jones Day Tax Controversy & Litigation: Australia

The Trends

The Australian Taxation Office ("ATO") continues to receive increased funding to pursue multinational enterprises for additional revenue. Current focus areas for the ATO, where we see large dollar value disputes, are:

- **Intangibles.** Intellectual property and other intangible assets are a key focus area for the ATO, which views such assets as having a high risk of being used in artificial profit shifting. The ATO has expansive views of when payments will constitute a royalty and is increasingly pursuing claims for withholding taxes (including claims that are not consistent with the international consensus).

- **Anti-Avoidance.** The ATO is seeking to use its anti-avoidance powers (including the General Anti-Avoidance Rule and the Diverted Profits Tax) to target multinationals. This includes using anti-avoidance powers in cases that would previously have been viewed as a pricing exercise under the transfer pricing rules; the ATO is no longer content to price the transaction entered into, they now examine whether the "right" transaction was entered into.

- **Transfer Pricing.** Transfer pricing remains a contentious area, with the ATO having a unique approach to aspects of the arm's-length principle. This often leads to disputes, and cases are unable to be resolved through mutual agreement procedure where the ATO also relies upon their anti-avoidance powers.

How We Can Help

Jones Day's Australian tax controversy & litigation team regularly advises on our clients' most significant tax disputes. We can help with:

- **Risk Management and Audit Support.** Having a clear strategy and an understanding of strengths and weaknesses at an early stage is critical to the prevention and early resolution of disputes. We use the knowledge from large-scale disputes to work with clients to try to avoid disputes arising.

- **Conducting Disputes.** We advise throughout the life cycle of a tax dispute, through the audit, objection, litigation, and appeals processes. Having a single team able to run the dispute means that the strategy is always informed by all potential resolution pathways, allows a focus on evidence preparation at an early stage, and allows us to develop a deep understanding of the facts.

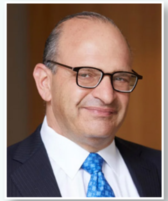
- **Strategic Resolution.** Most tax disputes are resolved through direct negotiation with the ATO. Our experience allows us to understand the ATO's settlement drivers and provide insights to inform an effective negotiating strategy to achieve settlement. This extends to preventing tax disputes, through the advance pricing arrangement negotiations.

Who Will Be Impacted?

Any multinational with Australian operations or customers can be the subject of the ATO's broad compliance reviews and audits. The ATO is increasingly focused on claims against entities outside Australia, whose only connection to the Australian tax system is that they receive payments from related or unrelated entities in Australia.

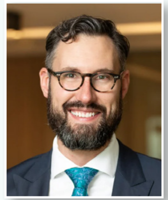
Key Contacts

For further information regarding our Australian tax controversy & litigation practice, please contact your principal Firm representative or one of the lawyers listed below.

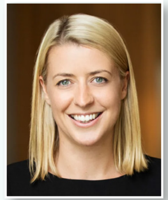


Dr. Niv Tadmore
Melbourne

Lauren S. Moses
Melbourne



Simon J. Bowden
Melbourne



Alexandra W. Fraser
Melbourne