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Global Tax Alert

Australian Tax Office issues new guidelines on tax corporate governance

Executive summary

On 20 July 2015, the Australian Tax Office (ATO) publically released a new *Tax Risk Management and Governance Guide* (the ATO Guide) making the ATO's expectations for tax corporate governance explicit, emphasizing the importance of the involvement of company Boards and directors in managing tax risk, and introducing new concepts for taxpayers to operationalize tax corporate governance.

Corporate governance and associated controls are a factor in the ATO's risk rating of taxpayers, and are considered in the context of compliance activities relating to taxpayers. In this regard, the ATO Guide requires corporate taxpayers and Boards to actively manage tax risk and assure themselves they have robust processes in place.

Detailed discussion

The ATO Guide

The ATO Guide promotes self-assurance of tax risk management by prescribing specific governance elements that corporate taxpayers must have in place.

The ATO Guide is divided into two parts:

- Part 1 defines what constitutes a tax corporate governance framework and gives examples of formal policies and procedures that would evidence to the ATO that a taxpayer meets the requisite standards.
- Part 2 provides guidance on how to test controls, to assist taxpayers and their advisors to assess whether their frameworks meet the ATO's expectations.

What has changed?

As compared to the ATO's previous guidelines for tax corporate governance, the new ATO Guide is longer, more prescriptive and contains express requirements for company directors.

The ATO has incorporated the following specific elements or requirements into their new guide:

- The "leveraging" of comparable governance principles of other Australian regulators which include the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Australian Securities Exchange (ASX)
- Higher expectations of company directors including formal tax risk responsibilities and endorsement of documented tax risk management strategies
- Formal and regular Board reporting for significant tax issues and risks
- Formally documented tax corporate governance policies and controls that are operationalized and executed by management including for:
  - Significant tax transactions
  - Record retention for tax
  - Staff responsibilities for tax risk
  - Formal tax escalations channels
  - Tax corporate governance policies for specific taxes
- Management of tax risks associated with technology, software, data entry risks and systems controls
- Training for tax risk management

A new requirement for assurance: testing controls

For the first time, the ATO has also mandated self-assurance processes for tax corporate governance.

The ATO Guide provides methods to assess the effectiveness of tax strategy and operational controls either internally (by internal audit) or externally (by external audit or a tax advisor).

The ATO may rely on evidence of this testing in lieu of carrying out its own reviews and audits.

What does this mean?

The ATO is continuing its focus on tax corporate governance. It is anticipated there will be renewed focus by the ATO on the testing of frameworks and associated controls. In addition to the ATO seeking assurance as to the effective operation of governance frameworks, ATO reviews could extend to direct testing of controls.

If the framework and associated controls are found by the ATO to be lacking, this is likely to:

- Affect the ATO's risk rating of the taxpayer
- Impact on the taxpayer's capacity to claim the Board Workpaper Concession (PSLA 2004/14)
- Increase the likelihood of further ATO attention on the taxpayer

Next steps

Now is the time for taxpayers to review their tax corporate governance framework to test whether it meets the ATO's updated expectations. Considerations include:

- If a tax corporate governance framework does not exist, or is inefficient, implement any necessary formal documentation and operationalize this in the organization
- If controls are lacking, carry out systems testing and improvements
- Establish the strategy for communicating governance expectations (which may include periodic training and confirmation that the framework is operational)

These new demands on corporate taxpayers mean that directors and senior management (including heads of tax) will need to understand how their organization manages tax risk and take an active interest in overseeing the management of significant tax matters.

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