



FROM THE
COMMISSIONER



A strong and healthy relationship between the Tax Office and large businesses is essential to the efficient and effective operation of Australia's tax system.

The Tax Office aims to consult, collaborate and co-design administrative solutions that make it easier for large businesses to comply with tax law.

The *2006 Large business and tax compliance* booklet outlines what we see as good governance, our expectations of large business, what attracts our attention and how we identify and assess risk.

In fulfilling our commitment to openness and transparency, we have also set out our typical risk analysis and audit processes and what large businesses can expect from our staff.

This companion document is intended to assist company board members and directors better understand and manage their corporation's tax obligations.

I hope it will assist in your governance deliberations.

Michael D'Ascenzo

Michael D'Ascenzo
Commissioner of Taxation

2006 Large business and tax compliance

A governance guide for board members and directors

While the Tax Office does not expect board members and directors of large businesses to be tax experts, boards have a responsibility to ensure their organisation is meeting its tax obligations.

The following extract from the *2006 Large business and tax compliance* booklet is a guide to the two types of governance issues we suggest you consider.

The first issue is how to ensure that your organisation has the accounting and control mechanisms needed to handle day to day tax and reporting requirements.

The second is about how to ensure tax is properly considered as part of board and corporate decision-making processes for major financial transactions, overall corporate strategies and when seeking or considering tax advice.

KEY GOVERNANCE QUESTIONS

OVERALL TAX PERFORMANCE

- Are you confident that your records and control systems enable your group to meet its tax obligations properly?
- Are the amounts of tax you are paying in line with your business results?
- Is there anything to indicate that your group's business results and tax payments are lower than would be suggested by economic conditions?
- If your group is consistently reporting losses, are these real economic losses and can they be satisfactorily explained in terms of the group's overall performance?
- Is your group making the necessary changes to its processes and giving proper consideration to major transactions and strategies to take account of changes in the tax laws?
- Are you aware of any material timing or permanent differences in the group's tax effect accounting and, if so, are you comfortable with the reasons for those differences?
- Are there any areas of major disagreement between your group and the Tax Office? If so, are you satisfied with the way they are being handled? Have any potential additional tax liabilities been adequately provided for?

MAJOR TRANSACTIONS AND STRATEGIES

- What commercial objectives are being sought by the proposed strategy or the ownership and financial structure being proposed for a major transaction?
- If the structure and financing for your group's business or a major transaction is complicated, is this because the business issues are complex?
- What level of confidence do you have in the correctness of the advice you have received?
- How likely is it that the Tax Office will take a different view of the application of the law, and assess the company accordingly?
- If the Tax Office takes a different view and the matter proceeds to litigation, what is the risk of the Federal Court or the High Court deciding the matter in favour of the Tax Office?
- What is the potential downside if the company is unsuccessful in litigation with the Tax Office?
- If there is a dispute with the Tax Office, what is the likelihood of the Tax Office being prepared to settle and, if so, on what terms?
- How likely is it that the Tax Office will identify the issues arising from the proposed course of action?
- Depending on the potential risk, and your need for certainty, would it be desirable to approach the Tax Office for guidance in the form of a private binding ruling?
- Where a position has been taken on tax issues, would it be desirable to be upfront with the Tax Office by identifying the issues before or when lodging the tax return or business activity statement?
- Is the advice based on the actual transaction or on an expectation of how the transaction will be implemented?
- Are you satisfied that the factual basis for the tax advice has been properly checked?

KEY CHECKLISTS

WHAT ATTRACTS TAX OFFICE ATTENTION?

- The factors we take into account in identifying cases for possible audit are:
- financial or tax performance that varies substantially from industry patterns
 - significant variations in the amounts or patterns of tax payments compared with past performance and relevant economic indicators and industry trends – for example, where major transactions have a significant tax impact
 - unexplained variation between economic performance, productivity and tax performance
 - unexplained losses, low effective tax rates, and cases where a business or entity consistently pays relatively little or no tax
 - a history of aggressive tax planning by the corporation, group, board members, key executives or advisers
 - weaknesses in the compliance structures, processes and approaches, and
 - tax outcomes that are inconsistent with the policy intent of the tax law.

WHAT MAY CONSTITUTE A RISK?

- Some risk features we would consider challenging include:
- related party cross-border and tax haven dealings where tax profit returned in Australia does not reflect the economic contribution made here or the taxable nature of imports
 - complex structures and intra-group transactions associated with generating tax benefits unrelated to the economic substance of the commercial activity
 - tax benefits from financial and other arrangements that are disproportionately high compared to the limited financial exposure, or there is a difference between the real and claimed economic substance of the activity
 - arrangements or products that transfer or create tax benefits in circumstances not contemplated by the law
 - characterisation of transactions for tax purposes that are at odds with their economic substance, and
 - distortions and inconsistencies in market valuations.