In detail

Detailed tax information for large businesses.

Compliance and governance

Detailed compliance and governance information for large businesses.

Key products and resources

Key information products and resources for large businesses.

Tax transparency

Detailed information about tax transparency for large businesses.

Typical questions in a Top 1000 combined assurance review

In a combined assurance review, we need to gather the evidence to assure that you are paying the right amount of tax.

What you need to provide for a GST streamlined assurance review

If we've contacted you about a GST streamlined assurance

What we look for to obtain assurance

What we look for to obtain assurance in a Top 1000 streamlined assurance review.

Top 1000 Program what attracts our attention

Guide for large public and multinational companies covered by the Top 1,000 programs to prepare for engagement with us.

Findings report – Public and multinational business disputes and settlements 2023–24

Key findings and insights for disputes and settlements with public and multinational businesses for 2023–24.

Findings report – Top 1,000 income tax and GST assurance programs

Findings from the Top 1,000 income tax performance, combined assurance review and GST assurance review programs.

Findings report – Top 100 income tax and GST program

Key findings from the Top 100 income tax and GST assurance programs for the income year ended 30 June 2024.

GST streamlined assurance review – what we need from you

If we've contacted you about a GST streamlined assurance review, this is what you need to provide so we can help ensure you're meeting your GST obligations.

Last updated 5 December 2018

We're committed to making sure large multinational and public companies pay the right amount of goods and services tax (GST).

GST streamlined assurance reviews will give greater certainty about meeting your tax obligations.

What we need from you

If your business is under review, we've sent you a letter outlining the details of our meeting. We'll tailor the review to your unique business profile, and work with you to get the evidence to assess whether you're meeting your GST obligations.

The letter we sent requested that you send information to help with our review. Our focus, at this early stage, is on information and documents that should be readily available. The information we need you to provide is listed below.

We will write to you when we have finished our review to explain the outcome.

Structure and business activities

1. Organisational structure

Provide the latest detailed organisational structure for the Australian business representing the economic group.

2. GST group

- Provide the latest GST reporting structure including GST groups and other GST reporters. If applicable, include any trusts.
- Provide a reconciliation of your consolidated accounting group structure (for financial reporting purposes) to your GST reporting structure.
- Provide the ABN of each entity.

3. Business activities

Provide a brief description of the activities carried out by each of the entities of the GST group, and consolidated accounting group, in the organisational structure.

4. Acquisitions, mergers and disposal of entities

- Provide details of acquisitions, mergers and disposals of any business entities within the indirect tax zone in the review period, including:
  - a brief description of the entities acquired, merged or disposed
  - the gross value of the transactions and the respective GST treatments.
- Provide details of any anticipated or planned restructures of the GST group.

Tax governance and risk management

5. Consideration of our Tax risk management and governance review guide

The **Tax risk management and governance review guide** sets out principles for board and managerial level controls relating to income tax, excise and indirect taxes, and what we consider best practice for large public groups and multinationals.

- Describe your approach to the guide, including whether you have
  - conducted a gap analysis of current policies and procedures against our guide and identified compensating controls where applicable

  - applied the self-assessment procedures to test and obtain evidence of the controls operating effectively.

- If the self-assessment procedures have been applied, provide the self-assessment report including all the supporting documentation.
- Provide details of any control deficiencies and identified impact on business activity statements, including actions taken to remediate the identified deficiencies.

6. Corporate governance

Provide a copy of your corporate governance framework, identifying the practices driving and supporting good governance.

If you have recently undertaken a self-assessment/gap analysis there is no requirement to provide this information.

7. Tax governance and controls framework

Provide the most recent documentation outlining your tax governance and risk management, including:

- tax governance manuals, guidelines or policy available to staff
- key personnel and decision makers in the tax/finance team including their areas of responsibility/specialisation
- evidence of staff training on tax governance
- tax compliance outsourcing arrangements and third party preparers
- how tax compliance is incorporated into the governance structure
- an overview of how the use of external advisors is incorporated in the tax governance framework and the circumstances when external advice on a GST issue is sought
- how frequently this documentation is reviewed
- copy of any communications (within the last 12 months) to the board and senior management in relation to escalation of GST issues, including, but not limited to, minutes, agenda items and emails
- Confirm whether you have a periodic program to test the operating effectiveness of your control framework by way of internal or

external reviews. If yes

- provide a copy of the program and details of the scope and outcome of the most recent review.
- was the program and review reports tabled to the board? If yes
  - provide supporting documentation, including but not limited to agenda items, minutes, emails and remedial plans proposed by the board for any tax control failures identified.

If you have recently undertaken a self-assessment/gap analysis there is no requirement to answer this question.

8. Overview of information technology systems

- Provide a business systems architecture diagram outlining how sales and acquisitions flow through the systems.
- Provide flow charts or describe the end-to-end ‘order to cash’ and ‘procure to pay’ process with reference to how financial information is captured and stored to account for transactions.
- Provide an overview of the accounting system (or systems) you use to capture transactional data.
- Provide a list of tax codes and respective rates.
- What are the procedures for changing/updating the classifications of supplies/acquisitions and related master files and tax codes?
- Provide a summary of controls in place to ensure the accuracy and integrity of data input and processing.

9. Business Activity Statement (BAS) preparation process

Provide:

- an overview of the BAS preparation process including flowcharts if available
- a copy of the BAS preparation manual or written procedures including who prepares and reviews the BAS prior to lodgment
- details of staff training provided in relation to the BAS preparation and GST technical matters, data input and processing

- review and authorisation process
- skill and qualification of staff preparing and reviewing the BAS
- overview of the accounts payable and accounts receivable process
- an overview of reconciliations of reported GST figures to relevant general ledger accounts and financial statements.

10. Information technology (IT) systems governance

- Provide a copy of the long term and short term IT strategic policy outlining
  - communication process with the board
  - alignment between business and IT strategy
  - staff roles and responsibilities
  - access controls to logical and physical assets
  - business continuity plan
  - disaster recovery plan
  - outsourcing practices or guidelines.

- Provide the information systems architecture diagram used in accounts receivable (AR), accounts payable (AP), BAS preparation and delivery processes outlining
  - flow of transactional data (both supplies and acquisitions)
  - a brief functional description of each system.

- What IT control framework do you have in place to support
  - your business objectives
  - monitor and evaluate IT performance
  - monitor and evaluate internal controls
  - ensure compliance with external requirements.

- Provide details of any IT project you have implemented affecting AR, AP, BAS preparation and delivery processes or plan to implement in the next 12 months, including

- business process changes
- project management methodology
- make-up of the project team
- post-implementation review results.

11. Tax risks flagged to the market

- Describe your processes to identify tax risks flagged by us (or other bodies) to the market.
- Confirm whether you have entered into arrangements the same or similar to that described in any Taxpayer Alerts, Public Rulings and Practical Compliance Guidelines. If yes
  - identify the relevant Taxpayer Alert, Public Rulings and Practical Compliance Guidelines
  - provide a brief description of the arrangement and the GST position taken
  - provide documentation, including but not limited to risk register, relevant minutes and emails of board's endorsement for GST positions adopted by management.

12. Significant and new business transactions

- Describe your criteria for classifying a transaction as significant
- Detail assurance processes or controls currently in place to identify, process and review significant and new transactions to ensure the correct GST classification is applied
- Provide details of any significant and /or new transactions for the review period, such as
  - significant capital acquisitions
  - restructures
  - new products, services, business lines and divisions
  - international dealings

- financial supplies including capital structures and financing.

13. Alignment between accounting and tax results

- Provide a copy of your most recent externally audited financial statements.
- Detail processes in place to reconcile GST figures reported on your BAS to accounting figures reported on financial statements. If conducted, provide the reconciliation for the most recent accounting year.
- Identify how you monitor BAS reporting trends, including changes in the mix of supply classification and reconciliation of unexpected variances.
- Describe the process to escalate any significant deviations/trends or unexpected variances to senior management.

Other questions

We might ask additional questions about known industry risks or significant issues which may only be relevant to your business (for example financial supplies, GST on low value imported goods, digital supplies).

QC 56546

What we look for to obtain assurance

What we look for to obtain assurance in a Top 1000 streamlined assurance review.

Last updated 30 May 2019

On this page

As part of our **Top 1,000 Tax Performance program**, we carry out income tax streamlined assurance reviews to help us establish justified trust.

To achieve justified trust, we seek objective evidence that would lead a reasonable person to positively conclude you have paid the right amount of tax. We need to obtain assurance over the whole of your business and economic activities connected or linked to Australia.

To do this, we look for the following details from you during our reviews.

Financial information and tax reconciliation

- A detailed statement of taxable income with supporting working papers which indicate the nature of adjustments made to accounting profit to determine taxable income.

- Explanation around the nature of adjustments where income tax adjustments are specific to your industry, business or a particular transaction.
- An explanation of
  - the differences between accounting and tax groups
  - why the starting profit in the tax return differs from the audited financial statements.

Supporting working papers to the tax return, schedules and disclosures

- Tax return working papers which show how disclosures were prepared and any supporting calculations. Supporting work papers include those that are internally produced (hand written or excel spreadsheets) or calculation work papers created using tax return preparation software.
- International dealings schedule working papers which breakdown all related party transactions into their respective types, the relevant offshore counterparty, the actual value of the transactions and how they are priced.
- Thin capitalisation calculations which include a balance sheet for the tax consolidated group (TCG) or multiple entry consolidated (MEC) group which shows how average assets, non-debt liabilities and average adjusted debt is calculated. You should supply working papers that show how debt deductions were calculated.
- A summary of the fixed asset register and any relevant policies and procedures, including
  - how effective lives are determined and reviewed for each major class of asset
  - a reconciliation between the tax and accounting fixed asset register.

Tax effect accounting

- Tax effect accounting working papers.
- An explanation of why deferred tax balances have been recognised and any reconciliation of tax effect working papers to the tax effect disclosures made in the financial statements.

Tax governance and risk management

- Responses that have considered our **guidance** and have undertaken a gap analysis of current policies and procedures against our guide.
- Analysis which explains why policies and procedures differ from our guidance.
- Evidence that controls have been designed and were operating effectively during the review period. This could be shown by internal or external reviews testing the controls, provided the reviews are conducted by a party independent of the tax team.

Group structure

- A diagram or written explanation showing
  - all related entities operating in Australia even if outside of the tax consolidated or MEC group
  - overseas subsidiaries or permanent establishments of the Australian group
  - all intermediary holding companies of the Australian group
  - other offshore related entities who transact with the Australian group.

New businesses and transactions

- Responses which explain the nature of any new business or transactions and the treatment of any income or expenses arising from the new activities.

Restructures

An explanation of

- the nature of any restructures (whether they are domestic or cross border)
- the treatment of any income, or expenses / losses arising from the restructure itself (if any)
- changes in underlying income and expenditure as a result of the restructure.

Acquisition of an interest in another entity

- Where an acquisition results in an entity joining a TCG or MEC group, provide sufficient information which demonstrates how tax values of assets owned by joining entities have been determined.
- Where the acquisition is part of a global acquisition, provide evidence which shows the relative market value of the Australian entity or business acquired.

Asset disposal

- Provide evidence of both the proceeds and how the cost base was determined.
- Where there is a disparity between the accounting gain or loss on disposal and the tax gain or loss on disposal, provide an explanation of why there is a differential.

Funding

- Where funding is vanilla (eg loans with third party banks or ordinary equity), provide a very brief response confirming these facts.
- Where the funding involves more complicated or unusual financial arrangements or related parties, a more detailed response is required, which includes a summary of
  - the relevant term
  - the accounting and tax treatments and
  - the legal documentation.

Taxation of financial arrangements (TOFA)

- A table listing the different types/categories of financial arrangements in place in each review year, and the associated gains and losses recognised each financial year for each type / category.
- Where the TOFA treatment is different from the accounting treatment, provide an explanation of how the gains and losses are identified or calculated.

Tax losses

- A detailed summary of any available and / or utilised tax losses showing year of incurrence / utilisation and whether these are group losses or transferred losses.
- Where losses are utilised during the period of review, but those tax losses arose in respect of income years which have not previously been reviewed by us, an explanation to support the validity of those losses.
- Detailed work papers to support the satisfaction of either the continuity of ownership test (COT) or same business test (SBT).
- Where losses have been transferred in during the review period, an analysis supporting the transfer of the tax losses and any calculation of the available fraction, including
  - how underlying market valuations were calculated or
  - valuation reports.

Controlled foreign companies (CFCs)

- Working papers which support the attribution of income, or explaining why no attribution is necessary, in respect of each CFC.
- Sufficient information about the type and source of income of the CFC to allow confirmation that such income is not eligible designated concession income (EDCI) (listed country CFC's) or that the active income test is passed (or not) and whether such income is passive or is tainted.

Offshore branches or permanent establishments (PE's)

- An explanation of why a PE exists (eg there is a fixed place of business overseas etc).
- Transfer pricing documentation in respect of PE's.
- Advising whether any of the arrangements of the type described in Taxpayer Alert 2016/7 exist in dealings with the PE.

Transfer pricing (TP) documents

- Unless covered by country by country reporting, contemporaneous TP documentation for each year of review. This documentation should cover all offshore related party transactions including financing transactions and dealings with offshore permanent establishments.

See also:

- Top 1,000 Tax Performance Program
- Typical questions in a Top 1000 combined assurance review

QC 58438

Top 1,000 – what attracts our attention

Guide for large public and multinational companies covered by the Top 1,000 programs to prepare for engagement with us.

Last updated 16 July 2021

On this page

We know most large businesses want to do the right thing and we're often asked how they can improve their assurance ratings.

This guide is for large public and multinational companies covered by the Top 1,000 tax performance program. It aims to help you:

- understand what attracts our attention
- prepare for engagement with us
- address recommendations made in assurance reviews
- improve confidence in your tax outcomes.

This guide is based on our observations from Top 1,000 assurance reviews and sets out the standard of information and documentation we typically look for to obtain assurance.

By following our guidance and recommendations in previous assurance reviews, taxpayers are less likely to experience protracted combined assurance reviews or follow-on compliance activity.

We will continue to update this information to address additional issues that attract our attention.

See also:

- **Top 1,000 combined assurance program**
- **Top 1,000 next actions program**
- **Typical questions in a Top 1,000 combined assurance review**
- **What we look for to obtain assurance**

Capital allowances

From our engagements, the most common issues we find with capital allowances claims include:

- Insufficient documentation or information
- Self-assessed effective lives
- Exploration expenditure.

The information below outlines strategies you can put in place to obtain assurance.

Insufficient documentation or information

The most common reason for not achieving assurance for capital allowance claims is insufficient supporting information and documents to show the deductions claimed are correct.

This may result in us seeking further information or escalating the matter for further review.

The documents and information that we look for include:

- detailed fixed tax asset register, including for each asset
  - asset description and name
  - date the asset was installed ready for use
  - cost (including additional costs for the assets)
  - effective life
  - rate of depreciation
  - depreciation method used (diminishing value method or prime cost method)
  - opening adjustable value
  - written down value or closing value
  - decline in value amount claimed for the year
- asset register summaries
- working papers to support specific capital allowances tax return disclosures
- reconciliations between capital allowances tax return disclosures and the fixed asset register

- internal policies and procedures for determining depreciation for tax, including how effective lives are determined and reviewed for each major class of assets
- evidence substantiating the original cost of assets such as invoices, contracts, supplier agreements, independent valuations and audit reports.

During a review, we may ask for a sample of this information to obtain assurance over the capital allowance deductions claimed during the review period. The size of the sample depends on the size of the claim, with larger claims requiring a larger sample to obtain assurance. When requesting information, our case team will advise you what an appropriate sample size is in your circumstances.

Self-assessed effective lives

Maintain a detailed analysis to support any effective lives which you have self-assessed. This should include why you have chosen to use an effective life that is different to the Commissioner's published effective life, and evidence to support your conclusions.

Exploration expenditure

Documents and information that can help support our assessment of assurance relating to exploration expenditure include:

- project and tax level governance frameworks consistent with PCG 2016/17 – a governance process which highlights expenditure that may be considered high risk may indicate a more robust governance framework
- contemporaneous documentation that evidences the tax characterisation process and claiming of deductions.

See also:

- PCG 2016/17 *ATO compliance approach – exploration expenditure deductions*
- TR 2019/5 *Income tax: effective life of depreciating assets*
- Uniform capital allowance system – Changing a depreciating asset's effective life
- Record keeping for capital expenses

Research and development

The most common issues we find with research and development (R&D) tax incentive claims include:

- Eligibility of R&D tax incentive activities – notional deductions
- Ineligible expenditure and inappropriate apportionment methodology
- Poor corporate governance
- Contract expenditure
- Salary expenditure
- Other matters.

The information below outlines strategies you can put in place to obtain assurance.

Eligibility of R&D tax incentive activities – notional deductions

The R&D tax incentive is jointly administered by the ATO and AusIndustry.

For assurance of eligibility, we look at expenses claimed as a notional deduction under the R&D tax incentive to the extent that the expenditure is incurred on 'R&D activities' (section 355-205 of the ITAA 1997) and those activities are registered with AusIndustry.

In some cases, we may also refer activities for review to AusIndustry where concerns are identified.

You can only register eligible R&D activities. If you are unsure whether your activities constitute R&D activities, we strongly encourage you to contact AusIndustry.

See also:

- Eligible activities.

Ineligible expenditure and inappropriate apportionment methodology

We check whether the notional deductions claimed by you under Division 355 of the ITAA 1997 are:

- actually incurred on one or more R&D activities (as defined), and
- allocated using a methodology that is reasonable (see **Methods of apportionment**).

Expenditure claimed must be incurred on registered R&D activities and not related to ordinary business activities. Claimants need to:

- distinguish between expenditure incurred on eligible R&D activities and expenses that relate to ordinary business activities
- demonstrate the required nexus exists between the registered R&D activities and expenditure claimed.

There must also be sufficient evidence to demonstrate that the methodology used to apportion expenses (such as overhead expenditure and fixed costs) between eligible R&D activities and non-eligible R&D activities is appropriate.

Poor corporate governance

Due to a lack of adequate corporate governance, some taxpayers claim R&D offsets for activities that are not eligible R&D activities.

We recommend that good corporate governance include controls to:

- review your registered activities and the claims you make for the R&D tax incentive
- distinguish ordinary business activities from your eligible R&D activities
- identify when R&D activities have transitioned to ordinary business activities.

Contract expenditure

We may review a sample of 'contract expenditure'. The contracts need to show the nature of the work and its relation to the R&D activities.

We may need to review further records to understand how work under the contract relates to the R&D activities. For example, we may ask for minutes of any meetings between the client and contractor and progress reports from the contractor. If certain activities undertaken by the contracting company were not eligible R&D activities (or specifically excluded activities), we will need to understand how the contracted amount is apportioned between eligible and ineligible expenditure and the basis of the apportionment methodology.

See also:

- Expenditure you incur under contract to other parties.
- Contract expenditure you incur to an RSP

Salary expenditure

We review salary amounts to ensure that this expenditure is only claimed to the extent that it is incurred on eligible R&D activities.

If you have an employee working on eligible R&D activities, we will accept expenditure on the actual time spent on R&D activities as a proportion of the employee's actual hours worked, and the employee's actual salary.

Overinflated salary claims can also be a result of poor governance practices and apportionment methodologies.

See also:

- Amounts you can claim – Salary expenditure.

Other matters

The Research and Development Tax Incentive reforms announced in the 2020–21 Budget that will apply from the first income year commencing on or after 1 July 2021 are outlined in Better targeting the research and development tax incentive.

See also:

- Apportionment
- Other R&D expenditure
- Keeping records and calculating your notional deductions
- TA 2017/5 *Claiming the Research and Development Tax Incentive for software development activities*
- TA 2017/4 *Claiming the Research and Development Tax Incentive for agricultural activities*
- TA 2017/3 *Claiming the Research and Development Tax Incentive for ordinary business activities*

- TA 2017/2 *Claiming the Research and Development Tax Incentive for construction activities*
- TA 2015/3 *Accessing the R&D Tax Incentive for ineligible broadacre farming activities*
- TR 2013/3 *Income tax: research and development tax offsets: feedstock adjustments*TD 2014/15 *Income tax: when is Design Expenditure incurred by an R&D entity included in the first element of the cost of a tangible depreciating asset for the purposes of paragraph 355-225(1)(b) of the Income Tax Assessment Act 1997 (and therefore not able to be deducted under section 355-205)?*

Tax losses

The most common issues we find with tax losses include:

- Continuity of ownership test
- Business continuity test
- Consolidated groups – transfers of tax losses and available fraction calculations
- Origin of tax losses.

The information below outlines strategies you can put in place to obtain assurance.

Continuity of ownership test

We frequently review the utilisation of carried forward losses. The continuity of ownership test (COT) is our primary test for the deduction of prior-year losses.

The most common reason for not obtaining assurance is that the COT analysis information and documents provided to us are incomplete, insufficient or cannot be verified.

Assurance often cannot be obtained due to the taxpayer's inability to trace through the shareholdings of interposed entities to verify ultimate beneficial shareholders. This is a common issue when a nominee company has a stake in a taxpayer company and limited information has been obtained regarding the nominee company's shareholders.

The documents and information we look for include:

- a detailed and complete COT analysis detailing the legislative provisions relied on to determine the ownership test period or ownership test times, as applicable
- contemporaneous supporting information and documents to substantiate your COT analysis, including
  - working papers
  - share registers
  - Australian Securities & Investments Commission (ASIC) notices regarding changes to member and share structure details
  - memoranda and agreements regarding corporate change events, as defined in **Section 166-175** of the ITAA 1997 (if relevant)
  - other relevant information or documents produced in, or relevant to, majority shareholdings during the applicable ownership test period or ownership test times
- additional information (including publicly available information) that will assist us in verifying your analysis, supporting documentation and underlying facts, and assumptions including annual reports, financial statements, industry reports.

If you have utilised any transferred losses, you will need to provide the analysis performed to transfer the losses into the tax consolidated or multiple entry consolidated (MEC) group and the working papers used to calculate the available fraction for each bundle of losses (see Consolidated groups – transfer of tax losses and available fraction calculations).

Business continuity test

We review the application of the business continuity test (BCT) (formerly known as same business test) in connection with the utilisation of carried forward losses. Taxpayers may apply the BCT to deduct prior-year losses where the COT is failed, or it is not practicable for the taxpayer to meet the conditions of the COT.

The most common reason for not achieving assurance is that the BCT analysis information and documents provided to us are incomplete, insufficient or cannot be verified. It is difficult to obtain assurance that taxpayers have satisfied the BCT, as this requires a rigorous qualitative assessment of a taxpayer's BCT analysis and verification of the facts or assumptions underlying the analysis.

When reviewing whether the BCT has been satisfied, we look for:

- a detailed and complete BCT analysis which has regard to the legislative provisions relied upon and the factors outlined in
  - TR 1999/9 *Income tax: the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132*
  - LCR 2019/1 *The business continuity test – carrying on a similar business*
- contemporaneous supporting information and documents (including publicly available information) to substantiate your BCT analysis, including
  - working papers
  - financial statements
  - correspondence
  - reports
  - ASX disclosures
  - ASIC documents
  - investor relation announcements
  - other information or documents relevant to your business operations.

If you have utilised any transferred losses, you will need to provide the analysis performed to transfer the losses into the tax consolidated or MEC group and the working papers used to calculate the available fraction for each bundle of losses.

Consolidated groups – transfers of tax losses and available fraction calculations

We review whether the COT or BCT (or modified COT or BCT) has been satisfied in the context of the transfer of losses into tax consolidated groups and MEC groups.

For transfers of tax losses, it is difficult to obtain assurance where there is a significant period between the transfer of losses into a consolidated group and the utilisation of those losses. To achieve assurance, you need to provide sufficient analysis and corroborating information and documents to verify that the relevant transferred losses were in accordance with the relevant provisions.

See continuity of ownership test and business continuity test for information and documentation required to substantiate the application of the modified COT and BCT on transferred losses.

We also review taxpayer's available fraction calculations. The most common reason for not achieving assurance is deficiencies in or, an absence of, information and documents to verify a taxpayer's calculations – for example, no analysis to support the joining entity's market value.

The documents and information we look for include:

- the calculation of the available fraction for each bundle of losses transferred to the (provisional) head company of the tax consolidated or MEC group, including any adjustments to the available fraction after joining the consolidated or MEC group under subsection 707-320(2) of the ITAA 1997
- sufficient contemporaneous supporting information and documents to substantiate your available fraction calculation including working papers, valuation reports and advice
- additional information (including publicly available information) that will assist us in verifying your calculation, supporting documentation and underlying facts and assumptions including annual reports, ASIC disclosures, ASX announcements, financial statements and industry reports
- verification of any apportionment of the transferred losses which were utilised in the joining or formation year.

Origin of tax losses

When reviewing how carried-forward losses are used, we may look for the origin of the losses.

The documents and information we look for include:

- a detailed explanation of the source of the relevant losses

- sufficient contemporaneous supporting information and documents to substantiate your explanation of the validity of relevant losses, including annual reports, financial statements, and other relevant information or documents produced in, or relevant to, the years the relevant losses were incurred.

See also:

- Keep records longer for losses
- Claiming business tax loses from previous years
- Loss carry back tax offset

Consolidations

We assess your compliance relating to issues that commonly arise in relation to tax consolidated groups and multiple entry consolidated (MEC) groups.

There are typically tax consequences when a tax consolidated group or MEC group:

- is formed
- acquires or disposes of the membership interests (for example, shares) in an entity resulting in it joining or leaving the group
- acquires another tax consolidated group or MEC group
- is restructured.

The most common issues we find with consolidated groups include:

- Tax cost setting on entry
- Tax cost setting on exit
- Valuations for calculating the entry ACA and TCSAs
- Restructures involving MEC groups.

Tax cost setting on entry

The most common issues we encounter when obtaining assurance on the tax cost setting process on entry include:

- no entry allocable cost amount (ACA) calculation was provided

- no supporting documentation to verify the amounts included in the ACA calculation – for example, failure to provide the share purchase agreement disclosing the amount paid for the shares in the joining company or the completion accounts showing the accounting liabilities held at the joining time
- intangible assets that are not CGT assets, such as customer relationships and customer lists, being incorrectly recognised, or failure to recognise and value of other intangible assets that are CGT assets, such as trademarks or pre-1 July 2001 mining rights
- non-recognition of the goodwill of the acquired joining entity, without sufficient explanation or supporting documentation to support this position
- inadequate or no documentation provided to substantiate the market value of reset cost base assets.

To obtain assurance, we recommend that you provide:

- the entry ACA calculation and tax cost setting amount (TCSA) working papers supporting your allocation across retained and reset cost base assets
- the executed share purchase agreements and any purchase price adjustment working papers
- if you did not recognise goodwill in the joining entity, an explanation with relevant documentation to support this position
- financial statements (balance sheet) of the joining entity at the joining time
  - ensure the financial statements contain sufficient information for us to verify every step (such as Step 2 accounting liabilities, including those that are deductible and excluded from Step 2) relevant to your entry ACA calculation
  - ensure the values in the ACA calculation broadly align with the asset valuations in your financial statements.

Tax cost setting on exit

The most common issues we encounter when obtaining assurance on the tax cost setting process on exit include:

- no exit ACA calculation was completed
- only a draft or incomplete exit ACA position was available
- when we can't verify the amounts included in the exit ACA, such as the terminating values of all the assets at leaving time, due to incomplete working papers and insufficient supporting documentation
- when we can't verify the amounts on exit due to being unable to assure the leaving entity's initial entry ACA and TCSA calculations for its assets on joining the consolidated group.

In order to obtain assurance, we recommend you provide the final exit ACA calculation and TCSA working papers, including financial statements (balance sheet) for the leaving entity at the exit time.

Valuations for calculating the entry ACA and TCSAs

The most common reasons we are unable to provide assurance in relation to valuations connected with entry or exit ACA, and TCSA calculations are:

- no contemporaneous valuation documentation was provided
- no valuation advice or documentation was provided to support the related party transaction.

To obtain assurance, we recommend that you provide:

- valuation documentation for all (significant) reset cost base assets of the joining entity (for which comparable sales evidence of the market value at the joining time is not publicly available), unless you are eligible to use one of the valuation short-cut options (see **Market valuation for tax purposes**)
- valuation documentation to support the entry or exit ACA calculations if a joining entity was acquired from, or an existing entity was sold to, a related party.

Restructures involving MEC groups

The most common reasons we are unable to provide assurance in relation to restructuring involving MEC groups include:

- the commercial rationale for the restructure, or relevant steps in the structure was not provided

- the commercial rationale provided for the restructure was not substantiated with contemporaneous analysis, information and documents
- the arrangements involved were complex and more information is required to understand the income tax implications
- we are unable to review the restructure holistically in the assurance review.

The documents and information that we look for include:

- a copy of the restructure step plan, including details of the date and the actual transactions undertaken in each step of the restructure
- documents outlining the potential tax implications and rationale for the structure or arrangement implemented
- copies of any advice, reports or documents produced in connection with the restructure
- group structure diagrams for the period before and after the restructure.

See also:

- TR 2004/13 *Income tax: the meaning of an asset for the purposes of Part 3-90 of the Income Tax Assessment Act 1997* (taking into account the amendments made by *Tax Laws Amendment (2012 Measures No 2) Act 2012* (the Prospective Rules)
- TR 2005/17 *Income tax: goodwill: identification and tax cost setting for the purposes of Part 3-90 of the Income Tax Assessment Act 1997*
- TR 2006/6 *Income tax: Recognising and measuring the liabilities of a joining entity under subsection 705-70(1) of the Income Tax Assessment Act 1997* (taking into account the amendments made by *Treasury Laws Amendment (Income Tax Consolidation Integrity) Act 2018* (the deductible liability amendments)
- TR 2007/7 *Income tax: consolidation: errors in tax cost setting amounts of reset cost base assets*
- TA 2020/4 *Multiple entry consolidated groups avoiding capital gains tax through the transfer of assets to an eligible tier-1 company prior to divestment*

- Market valuation for tax purposes
- Consolidation reference manual

Valuations

The most common issues we encounter when obtaining assurance on valuations include:

- missing valuation reports
- valuation instructions
- valuation process
- valuation report detail and substantiation.

Missing valuation reports

A common reason for not achieving assurance on valuations is due to the absence of a valuation report to substantiate a value.

The absence of a valuation report may result in us seeking further information or escalating the matter for further review.

To ensure you don't receive a low assurance rating when a tax outcome has relied on a valuation, we recommend you provide complete valuation reports that have been prepared in accordance with relevant professional standards.

See also:

- Market valuation for tax purposes

Valuation instructions

Inappropriate valuation report purpose and valuer instructions can reduce the level of assurance associated with valuations. From our engagements, we have identified the following common issues with valuation report purpose and instruction:

- incorrect valuation date (the 'as at' date of the valuation)
- incorrect valuation subject – the subject for which a value has been determined within a valuation report was inconsistent with the tax asset for which a value was required

- inappropriate restrictions to the scope of the valuation, including restrictions that
  - impact the type of valuation service undertaken by a valuer
  - reduce the valuer's freedom to employ the most appropriate valuation methodology
- erroneous valuation assumptions, including assumptions that don't accord with the provisions of the law under which the valuation is required
- insufficient verification of key valuation inputs.

See also:

- Market valuation for tax purposes

Valuation process

From our engagements, we have identified the following common issues that restrict our ability to understand the process followed by the valuer:

- inadequately documented valuation process – a valuation should be replicable, in effect, this means the valuation should be documented and explained well enough that another person or valuer can understand how the value was determined
- insufficient use of supporting valuation methods (cross-checks)
- deviation from professional standards.

See also:

- Market valuation for tax purposes

Valuation report detail and substantiation

From our engagements, we have identified the most common issues with valuation reports, as well as strategies you can put in place to avoid a low assurance rating.

The valuation report detail we look for can include:

- a clearly defined and characterised subject (or subject asset)

- detail of objective evidence relied upon by the valuer for the substantiation of key valuation inputs and assumptions, including
  - sources relied on for cost estimates where a cost approach is utilised
  - detail of any market-based evidence where a market approach is utilised
  - basis and reasoning for assumed growth rates in forecast earnings

- relevant appendices, including
  - valuer engagement letter
  - schedule of market-based evidence where applicable
  - relevant financial statements where applicable
  - third-party advice relied upon in the valuation where applicable
  - valuation calculations.

See also:

- Market valuation for tax purposes

Making a voluntary disclosure

We encourage you to review your tax affairs regularly and make a voluntary disclosure to us as soon as you identify any errors, omissions or false or misleading information in returns or statements you've lodged.

You can make a voluntary disclosure at any time but disclosing as soon as possible will reduce your penalty exposure.

If you make a voluntary disclosure before we have contacted you about an issue, we will generally exercise our discretion to remit any applicable shortfall penalty to nil, unless you have acted recklessly or intentionally disregarded the law.

We may recommend that you make a voluntary disclosure if we find potential errors or omissions or identify tax risks as part of a Top 1,000 assurance review.

When tailoring our engagement with you, we look at what steps you've taken to address our previous recommendations.

Reduced penalties during a review

We are likely to exercise our discretion to reduce any shortfall penalties by at least 80% if you voluntarily:

- disclose an error or omission to us during your Top 1,000 assurance review
- action the recommendations from your Top 1,000 review before a Next Actions review has commenced.

A penalty reduction may not be available once you've been notified that a Next Actions review or an audit will commence.

How to avoid a delay

To ensure that your voluntary disclosure is considered as quickly as possible, it should be provided in the **approved form**.

Avoid delays in having your voluntary disclosure assessed by providing:

- detail of any amendments to your income tax returns, schedules and activity statements to correct the error or omission, including
  - relevant time periods
  - original amount
  - amount of the adjustment
  - which label on the return, schedule or activity statement you are amending
  - a detailed breakdown if a label is being amended for multiple issues

- detailed analysis of the original amount or omission, including
  - how it was worked out
  - why it is incorrect
  - whether it impacts on related parties or entities
  - supporting documentation

- how the new amount is worked out and supporting documentation to verify the new amount
- any information or documents to help us consider remitting penalties or interest charges.

How to submit a voluntary disclosure

To submit a voluntary disclosure:

- email **Top1000NextActions@ato.gov.au** using the **approved form**, or
- contact the tax officer conducting your Top 1,000 assurance or Next Actions risk review.

If you need to amend a return, see **Objections and amendments** (for large business).

See also:

- Make a voluntary disclosure
- Voluntary disclosures in the approved form
- Interest and penalties
- Request remission of interest or penalties
- Miscellaneous Taxation Ruling **MT 2012/3** *Administrative penalties voluntary disclosures*

QC 63069

Findings report - Public and multinational business disputes and settlements 2023–24

Key findings and insights for disputes and settlements with public and multinational businesses for 2023–24.

Published 8 November 2024

About this report

This is the second year we are publishing our insights on settlements with public and multinational businesses.

This report broadens the scope reported last year (which focused solely on settlements for 2022–23) to include information on disputes and expand on the information included in the ATO annual report.

This report outlines our key findings and observations on income tax and GST disputes completed or undertaken in 2023–24 in relation to our:

- audit program[1]
- independent reviews
- objections
- mutual agreement procedures (MAP)
- litigation
- settlements.

Key highlights

- We've observed increasing levels of tax compliance by public and multinational businesses.
  - An additional $2.2 billion was paid voluntarily as a result of ATO preventative compliance intervention.

- We continue to see a consistent number of audits each year.
  - During the year, 24 matters were escalated and endorsed for audit. These matters are ongoing.
  - Throughout the year, we issued income tax assessments to 124 public and multinational businesses raising $2.76 billion in liabilities. Of this, $2.5 billion was raised in respect of 24 different taxpayers following intensive audit and review activities. Separately, total liabilities for GST raised were approximately $363 million.
  - We continue to apply penalties in the appropriate cases. During the year we raised liabilities for penalties of approximately $177 million. Some of the penalties relate to audits finalised in 2022–23. We're still considering penalties for most audits completed in 2023–24.
- Global profit shifting risks continue to be a major focus in our audit program. Global profit shifting arrangements are often complicated, both legally and factually. They typically involve related parties located in low or no tax jurisdictions around the world.
  - Around 65–70% of current income tax audits involve global profit shifting issues.
  - Transfer mispricing, mischaracterisation of business activities and capital flows and withholding tax avoidance issues are among some of the key profit shifting risks currently being investigated.
  - Common dealings under audit include related party finance, intangible migration, embedded royalties, in-bound distributor arrangements and disposal of assets by foreign investors.
  - Nearly 80% of income tax litigation decisions relating to public and multinational businesses handed down in 2023–24 involved issues related to global profit shifting, including transfer mispricing and the application of the general anti-avoidance provisions.
- We continue to investigate arrangements where tax avoidance is a concern.
  - The application of general anti-avoidance provisions, including the diverted profits tax, is being considered in approximately

30% of current income tax audits.

  - Increasing concerns (and audits) related to the mischaracterisation of business dealings is in part driving the increased application of the anti-avoidance provisions.
  - In appropriate cases, the anti-avoidance rules may be applied in preference to or as an alternative to the transfer pricing provisions.

- Where appropriate, and consistent with the Commonwealth's model litigant policy, we seek to resolve disputes by way of settlement.
  - Across all client groups, public and multinational businesses accounted for more than 20% of all parties to settlement agreements (67) and around 92% ($1.8 billion) of the tax revenue secured.
  - Our total settlement variance for public and multinational businesses was around 31%, which means we secured 69% of the disputed amount that we considered payable under our starting position before settlement.
  - The 5 year average variance of 39% for settlements with public and multinational groups is broadly consistent with (or slightly less than) the 5 year average of other key taxpayer segments.
  - Income tax was the predominant revenue type settled. Around 65% of settlements with public and multinational businesses involved global profit shifting risks.

Large business tax contribution

Public and multinational businesses play an important and integral role in the functioning of Australia’s corporate tax system. In 2022–23, they reported:

- $96.6 billion in corporate income tax (70% of total company tax)
- $48.2 billion in GST (62% of total GST liabilities).

Corporate tax is highly concentrated with:

- the largest 10 businesses paying 30% of all corporate tax
- the largest 100 companies paying 55%

- large businesses (corporate groups with over $250 million turnover) paying around 69%.

Our **annual corporate tax transparency report** provides insights into how much income tax is paid by our largest taxpayers.

Large business also collects and remits a significant amount of GST, collecting and remitting over 57% of total GST revenue.

We are responsible for ensuring that large businesses are meeting their Australian tax obligations. We do this primarily through the work of the Tax Avoidance Taskforce and specific GST compliance programs.

Reducing the tax gap

Our tax gap analysis for large corporate groups shows that around 93.5% of income tax is paid without ATO intervention. This increases to 95.8% following ATO intervention. Our **Annual tax gap findings** offer more detail on this.

Our primary objective is to sustainably reduce the tax gap. We invest significant effort in helping large businesses get it right on lodgment. This provides for a better tax system and overall is a much more cost-effective way of administering the tax system. We do this through our assurance programs, providing certainty through public and private advice and guidance and working with advisors. See the **Top 100 justified trust program findings report** and the **Public and multinational business advice and guidance program findings report**.

While the tax gap indicates that large business has some of the highest levels of tax compliance of all taxpayer groups, there'll always be the need to have a well-resourced and robust audit program. The economic characteristics of Australia (i.e. a net capital importer with a high tax rate), means that we are susceptible to profit shifting. The high reliance on corporate tax and high levels of concentration within the very largest entities, means that if tax risk proliferates it can have significant consequences for government revenues.

Through our justified trust programs, we aim to continually monitor the largest businesses in Australia via the Top 100 program and review the tax affairs of the largest 1,000 businesses at least once every 4 years. We also have sophisticated data and analytics programs that enable us to detect tax risk across public and multinational businesses. Where we detect material tax risk, we will undertake an audit to intensively investigate the tax issue and, if necessary, correct the tax outcome. We will also apply penalties in appropriate cases.

Large business compliance outcomes

A look at the revenue impact from large businesses successfully complying with their tax obligations.

Tax Avoidance Taskforce

We receive significant funding from government for the Tax Avoidance Taskforce to ensure large businesses meet their tax obligations. Since the Taskforce commenced in June 2016, we have raised $22.8 billion in liabilities from public and multinational businesses (as at 30 June 2024). Around $12.3 billion of this is attributed to the additional funding provided through the Tax Avoidance Taskforce, with the balance primarily attributable to base funding.

Preventative compliance actions

When determining the total revenue impact we have in a given year, we include the additional tax paid voluntarily as a result of our prior interventions. Common ways this can occur for our interactions with public and multinational businesses include the following.

- Additional tax paid due to our past compliance actions having a lasting effect. Typically, this will be the additional tax collected in later years as a result of locking in go-forward outcomes under settlements, or the elimination of prior year tax losses.
- Estimated additional tax paid voluntarily where we have influenced tax outcomes through our preventative actions, where there is a clear causal connection with our engagements. This can include influencing the tax outcomes of transactions before lodgment in programs such as Top 100 justified trust, private rulings and advance pricing agreements.

For 2023–24 preventative compliance activities resulted in an additional $2.2 billion in tax revenue. The vast bulk of this revenue is due to locking in go forward outcomes through settlements. This is on top of additional revenue that may have been raised via our audit program or reported as settlement collections.

Public groups audit program

Our key compliance programs in relation to public and multinational businesses are run by the Public groups business line. The Public groups audit program typically has between 100 and 150 audits underway at any given time (in addition to other compliance activities). As at 1 July 2024, there were 111 public and multinational business audits in progress. Of these 107 involve income tax issues.

The vast bulk of our audits continue to relate to large businesses included in the Top 100 and Top 1000 programs. Of the audits on hand 40 relate to taxpayers in the Top 100 population and 54 relate to taxpayers in the Top 1,000 population. Almost all of these audits relate to income tax. Some of these taxpayers may be part of the same global economic group, and some taxpayers may be subject to multiple concurrent audits.

During 2023–24, 24 matters were escalated to audit, with around the same number of audits concluding. Of these 24 escalated matters, 9 matters related to taxpayers in the Top 100 population and 11 matters related to taxpayers in the Top 1000 population. Again, some of these taxpayers may be part of the same global economic group, and some taxpayers may be subject to multiple concurrent audits.

Around two-thirds of our income tax audit program is directed at investigating issues related to global profit shifting.

For the purposes of this report, 'global profit shifting' means arrangements that shift profits away from Australia (commonly to low or no tax jurisdictions) and includes common issues such as:

- transfer mispricing
- withholding tax avoidance and minimisation
- mis-characterisation
- thin capitalisation
- treaty shopping
- tax avoidance.

Around two-thirds (50) of the audits relating to global profit shifting involve at least one transfer mispricing related issue, including:

- 9 cases involving related party financing
- 14 cases involving sales, marketing and procurement

- 11 cases involving intellectual property and royalties.

These audits are an intensive investigation of a taxpayer's affairs that can cover one or more issues and income tax years, and can take a number of years to conclude. In over one-third (27) of these audits we are considering the application of our general anti-avoidance rules to determine if there is a purpose of avoiding tax. This may be in addition to considering other provisions such as the transfer pricing or anti-hybrid provisions.

During 2023–24, we issued income tax assessments to 124 companies raising $2.76 billion in liabilities. The bulk of the liabilities ($2.5 billion) was raised against 24 different taxpayers following intensive audit and review activities. Total liabilities for GST raised was approximately $363 million.

Global profit shifting accounted for approximately 80% of liabilities. This reflects 2 things:

- audits related to profit shifting make up a significant part of our audit program,
- while profit shifting adjustments can vary, some cases are materially significant (particularly if adjustments span multiple years).

Among audit assessments, transfer mispricing was prevalent, accounting for 33% of taxpayers, Part IVA (tax avoidance) assessments represented 13%, with capital gains tax and thin capitalisation each reflecting 8%.

As we consider penalties following the conclusion of an audit, we are yet to determine penalties for most audits concluded in 2023–24. We anticipate that penalties will be applied in a number of these cases.

GST audits are not as prevalent in our program as income tax. For 2023–24, 68% of GST liabilities were raised through voluntary disclosures made through the justified trust programs and targeted industry risk reviews, and assessments raised through our focus on international GST issues (such as low value imported goods and digital products).

The following tables show the trend of tax liabilities, interest and penalties over the past 3 years. Total income tax liabilities have grown over the past 3 years, with GST showing more variability.

Interest is calculated as per the statutory formula. Not all amended assessments will attract a penalty under the law. In certain circumstances, penalties may be doubled for taxpayers that are significant global entities. As we typically consider penalties following the conclusion of an audit some of these penalties will relate to audits concluded in 2022–23. Similarly, as noted above, we are still determining penalties for most audits concluded in 2023–24.

Table 1: Income tax liabilities, interest and penalties raised in 2021–22 to 2023–24

Financial year	Tax liability	Interest	Penalties	Total liabilities
2024	$2.52 billion	$0.10 billion	$0.14 billion	$2.76 billion
2023	$1.81 billion	$0.32 billion	$0.50 billion	$2.59 billion
2022	$1.43 billion	$0.44 billion	$1.00 billion	$2.87 billion

Table 2: GST liabilities, interest and penalties raised in 2021–22 to 2023–24

Financial year	Tax liability	Interest	Penalties	Total liabilities
2024	$317 million	$7 million	$39 million	$363 million
2023	$190 million	$6 million	$6 million	$202 million
2022	$377 million	$33 million	$3 million	$413 million

Notwithstanding the 3 year increasing trend of income tax liabilities, generally we are observing a reduction in the materiality of many of our audits compared to past years. This is the result of us already having addressed some large arrangements (for example related party finance). However, new emerging issues and business models as well as one-off events such as business disposals, are producing material income tax adjustments.

Tax in dispute

Most taxpayers are typically not required to pay a tax liability following an audit if they are disputing the assessment. However, large business and other high-risk taxpayers are expected to pay all or part of the liability owing. Large business taxpayers are expected to enter a 50:50 arrangement whereby they pay 50% of the tax liability, and fully pay any DPT assessments.

Where the dispute is resolved in favour of the Commissioner (for example via litigation) the remaining 50% of primary tax, interest charges and any tax shortfall penalty are payable to us. If the objection decision is wholly favourable to the taxpayer, any primary tax paid is refunded to the taxpayer together with interest.

In 2023–24, $2.76 billion in total liabilities were raised and $533 million was not disputed and paid. The balance of $2.22 billion is disputed, and $1.09 billion of this disputed amount was also paid upfront under 50:50 arrangements in the same year.

Review of audit decisions

Where taxpayers don't agree with the outcomes of their audit, they can request a review or object.

Independent review

Large businesses may request an independent review of proposed audit adjustments if they meet certain eligibility criteria (see ATO Large Market IR Guidelines). These reviews occur before an audit assessment is issued. There is no legal right to an independent review pre-assessment. Independent reviews are conducted by our Objections and review branch.

The independent review service is generally not offered for audit matters that relate to transfer mispricing or which involve the application of general anti-avoidance rules.

In 2023–24 for public and multinational businesses, only 2 matters proceeded to independent review. One application was withdrawn during the independent review, and one matter was still in progress at the end of the year.

The low number of independent reviews in part reflects that many audits involve transfer pricing or the application of the anti-avoidance provisions and are therefore not eligible for this process. Some matters may also be ineligible if they are considered through other processes, such as the General Anti-Avoidance Panel.

Objections

Generally, taxpayers have the legal right to object to some decisions we make. This includes, for example, amended assessments we issue following an audit or private binding ruling decisions. Alternatively, a taxpayer may object against their own self-assessment, seeking a review into lodged tax returns (referred to as self-objections).

Objections lodged

In 2023–24, 171 new objections were lodged by public and multinational businesses. Out of the 171 new objections lodged, 92 were objections to ATO decisions and 79 were self-objections.

Of the 92 objections to ATO decisions, 24 of these related to objections against amended assessments issued through audits by Public Groups. Some of these objections related to audit assessments issued in 2022–2023. Other significant categories of objections included:

- penalties (29)
- audit related assessments issued by other business lines (15)
- private ruling decisions (8).

The following table shows the total liabilities in dispute for assessments issued in the past 3 years that are still in dispute, and the number of cases subject to objection or litigation as at 1 July 2024.

We expect the number of objections related to assessments issued in 2023–24 to increase as some taxpayers had not yet lodged their objection by 30 June 2024 but are expected to (these taxpayers may already have entered into a 50:50 payment arrangement). Some taxpayers may also have multiple objections in progress at any one time.

Table 3: Remaining tax in dispute for assessments issued from 2021–22 to 2023–24 (as at 30 June 2024)

Year audit assessment issued	Number of matters in objection	Number of matters in litigation	Tax in dispute as at 30 June 2024
2023–24	14	0	$2.22 billion
2022–23	17[2]	0	$1.58 billion
2021–22	12	2	$1.91 billion

Objections for disputes involving public and multinational businesses can often take years to determine. This is partly due to the factual and legal complexity of the matters. Some matters will also be put on hold pending other processes such as the mutual agreement procedure under double tax treaties.

Taxpayers are legally able to and typically do provide substantial additional information as part of the objection process. Similarly, we may seek additional information through this process. New information can impact the outcomes reached at audit. We continue to encourage taxpayers to provide all relevant information as part of the audit process to ensure that this can be considered and factored into our position as early as possible.

Objections resolved

In 2023–24, 82 objections to ATO decisions for public and multinational businesses were determined. Of the objections to ATO decisions that were resolved, around 44% involved income tax issues, 20% GST and 29% penalties.

Of the 82 objections, 18 were in respect of investigations conducted through the Public Groups compliance programs. Of these 18, 9 were determined either wholly or partly in favour of the ATO, while 2 were determined in favour of the taxpayer. The balance of 7 were either found to be invalid or withdrawn for various reasons including settlement.

These statistics suggest that the decision of the audit team is being at least partly upheld in most cases either through final resolution as part of a settlement or determination of the objection itself.

Dispute resolution

Settlements and litigation are both important components of our dispute resolution strategy. We look to settle disputes where appropriate, alternatively we pursue other matters in court.

Settling disputes with large businesses

Settlements contribute to a well-functioning tax system, providing overall fairness and the best use of our resources. Settlements secure revenue that may otherwise be at risk or difficult to pursue due to time and cost.

Our approach to settlements with public and multinational businesses

We only settle disputes when it is appropriate to do so. We are guided by the **ATO's Code of Settlement** and our obligations under the Legal Services Directions, including the obligation to act as a 'model litigant'.

When deciding whether to settle disputes, we weigh up litigation prospects, the cost of the dispute continuing and the overall value for the Australian community. We may engage experts and senior legal counsel to assist in determining the prospects of success and whether settlement is appropriate. See **Managing disputes with large corporate groups**.

Settlement statistics for public and multinational businesses 2023–24

In 2023–24, we settled 29 separate cases with 67 public and multinational businesses. This includes settlements across all parts of the ATO not just Public Groups.

It is common for disputes with public and multinational businesses to involve several legal entities within an economic group. As a result, settlements will typically have multiple counterparties as signatories to the settlement deed.

These 67 parties to settlement agreements accounted for more than 20% of parties to settlements across all client groups and around 92% of the total tax revenue secured.

Settlements with public and multinational businesses secured around $1.8 billion of tax revenue. This is consistent with the 5-year average. Given the size and differences in disputes, there can be volatility in amounts. However, the 5 year average suggests that we are securing approximately $1.8 billion each year via settlements with public and multinational businesses.

Figure 1. Five-year trends for tax revenue secured from settlements with public and multinational businesses

Figure 1. Five-year trends for tax revenue secured from settlements with public and multinational businesses

Where relevant our settlements also secure outcomes for future periods. This means that in addition to resolving past years, we can achieve future behavioural change and increased tax collections through the settlement process. This creates greater certainty for the tax system and government revenues. More than 75% of all public and multinational business settlements in 2023–24 included future-year obligations.

Types of issues settled

In 2023–24, income tax was the predominant revenue type settled which accounted for around 96% of all settlements with public and multinational businesses. GST and other miscellaneous issues represented the balance of settlements.

Around 65% of cases involved global profit shifting risks. This is consistent with the proportion of these cases we observe in the audit program.

Global profit shifting cases are typically highly fact-dependent in nature, potentially involving the consideration of complex valuation, pricing and economic issues. Further, there may be considerable risk in litigating these cases, so settlement may sometimes be a desirable resolution pathway for both parties. The ability to 'lock in' future satisfactory pricing (rather than potentially having to re-audit and then re-litigate) is also a strongly desirable feature.

In appropriate cases we will seek judicial guidance to obtain law clarification. Where this risk is systemic in nature spanning multiple years, for example related party loans, we will only settle these cases if the taxpayer agrees to changes in their tax behaviours moving forward.

Stage at which matters settle

Settlement can occur at any stage, including before an audit commences, during an audit, objection or litigation. However, we will not settle a case until we have sufficient information to understand the facts and issues.

In 2023–24, around 78% of all public and multinational business settlements occurred before or during an audit. A further 9% of settlements occurred during an objection and 13% at the litigation stage.

Settlement variance

Settlement variance reflects the amount that we have conceded in reaching settlement as compared with our starting position.

In 2023–24, our total settlement variance for public and multinational businesses was 31%. This means we secured 69% of the disputed amount that we considered payable under our starting position.

Given that the size of some public and multinational business disputes (and therefore settlements) can be particularly significant, the settlement variance may move sharply from year to year. Our 5 year average of settlement variance is around 39% (that is, on average around 61% of revenue is secured). This is broadly consistent with (or even slightly lower than) the average variance in other client segments.

Figure 2. Five-year trends for public and multinational business settlement tax variance

Figure 2. Five-year trends for public and multinational business settlement tax variance

The nature and extent of adjustments made in our settlements depend on the facts and legal issues in dispute. The variance from our starting position does not necessarily represent an amount that would have been collected had the dispute continued. For example, the taxpayer may provide further and better evidence to support their position over time.

Rigorous processes are in place when we decide our settlement positions. When deciding our settlement position, we will consider advice by legal counsel and experts, as well as the surrounding circumstances of each case.

For our significant settlements, our decision-making process is considered in an independent review by a former federal court judge when assessing whether a significant settlement was fair and reasonable as outlined below, see **Independent assurance of settlement outcomes**.

Ensuring compliance for the future

To create certainty for both ourselves and the taxpayer, our settlements will often secure future tax outcomes by setting the basis on which a taxpayer will lodge in future years.

Where a settlement provides for ongoing or future treatment of an arrangement, we monitor subsequent tax return lodgments to ensure compliance with the terms of the settlement.

Taxpayers are required to disclose annually via the **reportable tax position (RTP) schedule** whether they have complied with the terms of a settlement agreement in place for the year and whether there have been changes in the relevant and material facts on which the settlement was based. We provide information on the aggregated disclosures made by large public and multinational businesses through Category C of the RTP in our RTP Findings Report.

During 2023–24, there were 3 disclosures made in relation to material changes to settlement positions. We engaged with each taxpayer and confirmed all are taking active steps to ensure compliance with the terms of the settlement deeds or future compliance arrangement. See RTP Findings Report.

We may also verify compliance with settlement terms as part of our engagement with our Top 100 taxpayers, Top 1000 taxpayers through the Justified Trust program or as part of a specific engagement.

Transparency and settlements

We are committed to being transparent about our approach to collecting revenue and delivering results for the Australian community.

The details of specific settlements are covered by confidentiality provisions and the tax secrecy requirements of the taxation law.

Recognising the public interest in significant matters, we encourage large businesses to publicly disclose when they enter settlements with us, and in particularly sensitive cases may require a public disclosure as part of the settlement agreement. In some cases, we will also issue a media statement following a public disclosure of a settlement.

Sharing settlements with other jurisdictions

International Exchange of Information (EOI) is the key mechanism used to share taxpayer-related information between Australia and other jurisdictions to administer and enforce Australia's tax laws. Settlement information may be exchanged with our treaty partners where they are relevant to the administration and enforcement of each other's domestic tax laws.

External scrutiny of our settlement decisions

Our settlement practices have been subject to external scrutiny by the Australian National Audit Office (ANAO), see The Australian Taxation Office’s Use of Settlements. The ANAO found that our practices are effective, and that settlements have been entered into, negotiated and followed up in line with our settlement policies and procedures, including the principles outlined in the **ATO's Code of Settlement**.

The ANAO found, when compared to other national revenue authorities, that we provide the highest level of public reporting around settlement activities. Since then, we have further increased our reporting and transparency.

Independent assurance of settlement outcomes

Under our **Independent Assurance of Settlements (IAS) Program**, we engage a former federal court judge to independently assure our largest and most significant settlements. The former federal court judge will assess whether the settlement is fair and reasonable for the Australian community.

Settlements satisfying the following criteria will be subject to assurance by a former federal court judge:

- where a pre-settlement starting position is greater than $50 million
- a settlement amount greater than $20 million, or

- the settlement variance is greater than $20 million.

Deputy commissioners can also refer a settlement for review under this program, even if it does not meet the standard materiality criteria. Examples of where this has occurred include, where there is likely to be public interest in the settlement, a former ATO assistant or deputy commissioner is representing the taxpayer in the settlement process, or the settlement is the first dealing with particular matters and we want to test our approach.

Outcomes from the IAS program are reported in our annual report. During 2023–24, 13 settlements with public and multinational businesses were independently reviewed under our IAS Program. All 13 settlements were found to be a fair and reasonable outcome for the Australian community.

As independent assurers review settlements only after they have been finalised, they may not be reviewed in the same income tax year in which they were settled. We expect 13 settlements with public and multinational businesses to be reviewed in 2024–25 which related to settlements in prior years.

Public and multinational business litigation

Litigation is an important part of our dispute resolution strategy and we aim to have appropriate matters pursued in court. Typically, this will be where it is appropriate to clarify the operation of the law, where we want to send a strong signal about unacceptable behaviours (such as tax avoidance) or where there are significant intractable disputes.

In recent years, we have pursued important international tax issues in court, including related party financing, marketing hub and embedded royalty arrangements. The courts have provided important judicial precedent for example, Chevron v Commissioner and Singtel v Commissioner, both of which were found in favour of the ATO. However, we don't succeed in every matter, such as in Glencore v Commissioner and Mylan v Commissioner.

Table 4: Significant litigation cases handed down in 2023–24

Matter	Issues	Outcome

Singtel v Federal Commissioner for Taxation [2024] FCAFC 29	Related party financing and transfer mispricing.	A favourable case for the Commissioner at the Full Federal Court. The High Court denied SingTel special leave to appeal.
PepsiCo, Inc. v Commissioner of Taxation [2024] FCAFC 86	Embedded royalties and withholding tax avoidance, and diverted profits tax.	An unfavourable outcome for the Commissioner at the Full Federal Court. The Commissioner has applied for special leave to appeal to the High Court.
Mylan Australia Holding Pty Ltd v Commissioner of Taxation (Commissioner) (No 2) [2024] FCA 253	Restructure and push down of debt into Australia and tax avoidance.	An unfavourable outcome for the Commissioner.

In 2023–24, all litigation outcomes (IT, GST, FBT and PRRT) involving public and multinational businesses were favourable 53% of the time and unfavourable 47% of the time. Of these outcomes, 74% were related to income tax issues with nearly 80% of those dealings involving profit shifting related issues.

For income tax decisions, 50% of the decisions were favourable and 50% unfavourable.

We carefully consider all litigation outcomes and adjust our compliance approach and guidance to reflect the courts' decisions and interpretation of the law. To further guide large business, we issue decision impact statements to ensure taxpayers understand our view of the decision.

Mutual agreement procedure

Australia's network of double taxation treaties provides taxpayers with a right to request a mutual agreement procedure (MAP) if they consider that they are not being taxed in accordance with a tax treaty.

Where we take action in relation to cross-border dealings, for example raising an amended assessment, this may give rise to the taxpayer being assessed on the same income, profit or gain twice – once in Australia, and once in the other jurisdiction. In practice, the taxation of the amount included in the other jurisdiction may be at much lower rates than Australian corporate rates, so is unlikely to result in total tax being double that payable in Australia.

Nonetheless, if there is a tax treaty between Australia and the other jurisdiction, the taxpayer may request a MAP to relieve taxation caused by double inclusion. We will also receive MAP applications generated from compliance activities of treaty partner jurisdictions (known as inbound MAPs).

Under a MAP, Competent Authorities (CA) of the relevant jurisdictions engage to resolve the treaty issues and double taxation. In most cases we can reach agreement with the other jurisdiction to resolve the MAP. The taxpayer is not involved in these negotiations and is not legally bound by them, although in practice will usually observe the outcome of the negotiations, particularly where both countries have comparable corporate tax rates.

Some treaties provide taxpayers with the ability to request mandatory arbitration, if an agreement has not been reached by the jurisdictions in the specified time period (usually 2 years). If this occurs, the jurisdictions will be required to progress to arbitration. To date, Australia has not participated in any mandatory arbitration processes. We anticipate a similar practical challenge with mandatory arbitration, in that the resolution is not necessarily binding on the taxpayer.

As at 30 June 2024, we had 24 open MAPs arising from ATO Public group audit activities. During 2023–24, we received 8 new MAP requests resulting from ATO audits. During the year we concluded 6 MAPs (all commenced in prior years) related to ATO disputes (in most cases closed due to a relevant Australian court decision). More commonly agreement is reached, and Australia has received several awards from the OECD for the management of the overall MAP program across multiple taxpayer segments.

Common issues of these MAPs reflect issues in the audit program, that is, intangibles migration, inbound distribution and commodity exports.

For the avoidance of doubt, we note that this data does not include MAP requests received as a result of other jurisdictions' compliance activities or requests not arising from compliance actions (for example, requests for residency determination).

The following table shows details of concluded MAPs (15 in total) following ATO audit actions and treaty counterparts.

Table 5: Concluded outbound MAP cases for financial years 2022 to 2024

Financial year	Closed cases	Primary Issue	Countries
2022	2	Transfer pricing	France Singapore
2023	7	Transfer pricing	Germany India Ireland Japan Singapore
2024	6	Transfer pricing, royalties	China India

1. Note: all audit related data reflects compliance activity conducted by the Public groups business line. Public groups is the business line responsible for compliance of public and multinational businesses. Occasionally some other business lines may conduct audits relating to entities classified as public and multinational businesses. These tend to be small in number and materiality. Data in relation to other business lines has not been included in this report.

2. This relates to 15 taxpayers.

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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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