

# Increased ATO focus on private wealth groups

Starting in early December 2019, the ATO will be contacting tax agents to let them know which of their clients form part of the ATO's Top 500 or High Wealth Private Groups programs.

## Tax Avoidance Taskforce

The ATO's Tax Avoidance Taskforce (**Taskforce**) has been operating for several years targeting various taxpayer sectors, including private wealth groups, to ensure 'the right amount of tax' is paid in Australia.

In April 2019 it was announced an additional \$1 billion in Federal funding would be applied to extend and expand the scope of the Taskforce.

Consistent with this increased funding, in November 2019 the ATO announced the:

- the expansion of its Top 320 program to be a Top 500 program focusing on Australia's largest private wealth groups
- a new program targeting High Wealth Private Groups which control wealth of more than \$50 million
- a new program intended to target Medium and Emerging Private Groups – being groups with a value of between \$5 million and \$50 million, or with a turnover of more than \$10 million.

These programs are essentially risk reviews of taxpayers that are seen to be valuable contributors to tax revenue. What is new is the methodical approaching of every affected taxpayer in advance, enhanced use of data analytics and the expanding pool of resources being dedicated to the Taskforce.

## Top 500 program

As noted above, the Top 500 program is an expansion of the Top 320 program to include an additional 180 of Australia's most wealthy private groups.

The program is intended to facilitate regular one on one engagement with taxpayers that fall within this program.

### Tax types

- income tax
- capital gains tax
- GST

### Tax practice areas

- tax advisory services
- tax audits and reviews

As part of the engagement the ATO will seek to understand the group's structure, financial position and importantly its tax governance. This is part of the ATO's 'justified trust' concept – i.e. that if private groups can establish that they have their tax affairs in order and appropriate systems in place to manage tax risk, the ATO is less likely to undertake in-depth audits after tax events have occurred.

## High Wealth Private Groups

This program expands on the previous ATO programs with Wealthy Australians and private groups.

The program will use sophisticated data matching and analytic models to identify wealthy individuals who control combined wealth of more than \$50 million, including through associated trusts, companies and partnerships.

The adoption of a group approach allows the ATO to:

- better understand the choices and behaviours of the controlling mind behind a group structure
- effectively risk-assess compliance behaviours at a holistic, group level.

Several thousand taxpayers will fall within this program. ATO engagements under this program are intended to be tailored to encourage early engagement to provide greater certainty on significant transactions and events.

## Medium and Emerging Private Groups

This new program is focused on using data analytic tools to identify tax risks within Medium

and Emerging Private Groups, which will include more than a hundred thousand taxpayers.

Similar to the High Wealth Private Groups program, the program will adopt a group approach so that the ATO can understand businesses better.

The actual engagement is likely to be similar to the other programs and involve the ATO seeking information on how the private group is structured and how it operates regarding its tax and financial affairs.

### What should tax agents do if they receive a letter?

Tax agents who receive ATO letters from the ATO notifying them that some of their clients form part of the expanded programs may wish to:

- notify clients they fall within the identified Taskforce program
- explain why the client has been identified
- explain that the client should expect the ATO to engage with them in coming months to more fully understand their tax affairs
- ask if the client requires assistance in conducting an internal review of its tax risk management systems and ensure tax positions that have been taken are able to be substantiated and supported with appropriate documentation.

### What does this mean for affected private groups?

If your private group has been identified as part of any of the expanded Taskforce programs, then it should not cause immediate alarm. The proposed engagement is part of the ATO's intended collaborative approach to ensuring tax obligations are appropriately managed.

However, it is a timely opportunity for private groups to conduct internal reviews to identify any potential issues and manage exposure to potential penalties. If concerns are identified regarding tax positions taken then legal advice should be sought. Legal advice will generally be protected by legal professional privilege.

Our publication 'Identifying and managing tax audit risk' provides further details on steps private groups can take to appropriately manage tax audit risk.

### Voluntary disclosures

There is a possibility that the notification letters sent to tax agents in December 2019 could impact on the availability of penalty concessions for voluntary disclosures.

An 80% reduction in penalties applies if voluntary disclosures of tax shortfalls are made before the ATO notifies a taxpayer of a review. Even if this 80% concession is not available, penalties may still be able to be reduced depending on the circumstances of the taxpayer.

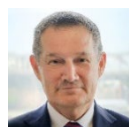
If the ATO considers the December 2019 notification letters to tax agents to be a notification of review, then the 80% voluntary disclosure concession to reduce penalties may not be available.

Practically we expect this risk will become a non-issue if further ATO letters addressed to specific taxpayers as part of the programs notify the Taxpayers that they have a specified period from the date of the ATO letter to make any required voluntary disclosure.

However often the specified period is two weeks, which may not be sufficient time for affected taxpayers to properly consider and seek advice.

We therefore recommend tax agents and their affected clients should take steps to prepare for ATO engagement as soon as possible after the tax agent is notified of which clients fall within the expanded Taskforce programs.

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