



Australian Government  
Australian Taxation Office

# Compliance program 2009 10



*Michael D'Ascenzo*

**Michael D'Ascenzo**  
Commissioner of Taxation

# Foreword

The ATO's objective is to foster an environment that promotes high levels of voluntary compliance with Australia's tax and superannuation laws, including easy access to lawful entitlements, at minimum cost to taxpayers and other stakeholders.

Accordingly the compliance program provides strategies that straddle help and support and ease of compliance as well as those that deter and detect and deal with non-compliance. Increasingly our focus is on prevention rather than cure.

Our compliance model leads us to always seek the appropriate balance in our compliance responses. The public release of this program invites taxpayers and their representative bodies to provide feedback on the risk management choices we have made. After all, it is in the interests of all Australians to ensure that our tax and superannuation systems work as intended and well.

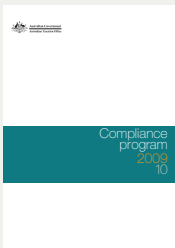
The economic downturn has created a very different and highly volatile risk environment. As a result, we are seeing a greater community need for assistance in meeting day-to-day tax obligations and a climate in which some taxpayers may be more aggressive in seeking to avoid or evade their tax and superannuation obligations, including through offshore arrangements.

This year, our main concern is to protect Australia's tax base by sustaining high levels of participation by giving viable businesses the best chance of survival, and by nurturing engagement and a positive compliance culture as the economy recovers.

This will be balanced by an increased effort to ensure a level playing field for businesses and other taxpayers who are genuinely trying to do the right thing. So we will be vigilant, increasing our visibility in the community and taking firm action against those who choose to avoid or evade their obligations.

Strengthening our strategic partnerships with tax professionals, external scrutineers and the new national Tax Practitioners Board will be a priority. Sustaining strong working relationships with tax professionals, business, external scrutineers and community representatives and others will be critical to Australia's tax and superannuation systems achieving their intent of funding public goods and services, influencing economic and social outcomes and securing retirement incomes for Australians.

## WHY THE COMPLIANCE PROGRAM IS IMPORTANT



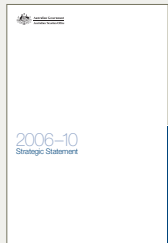
Our compliance program describes how we encourage high levels of compliance with Australia's tax and superannuation laws and details areas of risk to compliance.

## We publish a series of key documents explaining our approaches and priorities

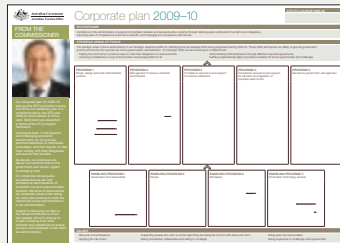
In the **taxpayers' charter** we explain your rights and obligations, and the standards of professionalism that you can expect from us



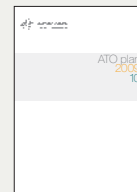
In our **strategic statement** we set our strategic directions and framework for the future



In our **corporate plan** we outline our key corporate priorities for the next 12 months and beyond



Our **ATO plan 2009-10** sets out in the context of the strategic statement 2006-10 our strategies for delivering on our corporate priorities and additional business activities



## We also announce key themes that have attracted our attention and what we will focus on during the year

- Supporting people in financial distress
- Promoting a level playing field
- Paying a fair share of tax whatever your income
- Preventing abusive use of tax havens

## To help achieve our goals we are guided by the principles in our business model



# Contents

Headline issues for 2009–10	3
Introduction	4
Individuals	6
Micro enterprises	12
Small to medium enterprises	18
Large businesses	24
Non-profit organisations	32
Government organisations	34
Tax practitioners	36
Serious abuse of the tax and superannuation systems	40
Snapshot of our 2008–09 activities	42

## FEATURES

Supporting people in financial distress	10
Promoting a level playing field	16
Paying a fair share of tax whatever your income	23
Preventing abusive use of tax havens	31



This year's compliance program has been developed in the context of the global economic downturn, which has already had an adverse effect on revenue collections.

Discussions with other tax administrations confirm common concerns about heightened compliance risks in the current economic environment. We all recognise the extraordinary pressures on businesses and the broader community and the need to play our part in supporting taxpayers through these tough times, while ensuring they do not avoid their responsibilities under the law.

We are drawing on our experience from previous recessions as well as our ongoing analysis of the economic environment to deliver a range of activities to support taxpayers and promote voluntary compliance. Throughout the program you will see many examples of our trademark style of tailoring our approaches to different segments. We leverage influential relationships, recognising that prevention is better than cure and that credible scrutiny acts as a deterrent.

What you will also notice is that we are calibrating these responses to the tough times we are all experiencing. We are making an extra effort to respond in a way that keeps people engaged and participating in the system. More than ever it is important that we detect and deal with those who don't do the right thing so they don't get an unfair advantage over businesses doing the right thing. Experience has shown that this will sustain community confidence in our tax system and help promote faster growth of Australia's tax collections as our economy recovers from the recession.

**Bruce Quigley**  
Second Commissioner, Compliance

# Headline issues for 2009–10

## **Supporting people in financial distress**

Small businesses are the most vulnerable in the current economic conditions. Early identification and engagement with small businesses and others experiencing financial distress improves the prospects for them to remain viable and continue to contribute to Australia's economy. We provide a range of assistance including advice on better record keeping practices, personalised lodgment and payment arrangements. We will also consider remission of penalties and interest and release of debts in cases of genuine hardship.

## **Promoting a level playing field**

The economic downturn has increased competitive pressures on businesses and created an environment in which some people will seek an unfair advantage by avoiding their tax obligations. Examples of this behaviour include under-declaring cash income, engineering serial insolvencies and failing to make superannuation contributions on behalf of employees. We will increase our compliance activities for these risks to ensure that businesses willing to do the right thing are not undermined by unfair practices. This will be balanced by extensions to our outreach assistance programs for small business, especially for new businesses and first-time employers.

## **Paying a fair share of tax whatever your income**

We are expanding our coverage of highly paid executives and directors of both public and private companies and will examine resident executives and directors of foreign companies. We are reviewing remuneration arrangements including checking for correct reporting of shares and options received, remuneration payments received from overseas entities or paid from Australia into overseas accounts. Other priority areas for review include international activities and transactions.

## **Preventing abusive use of tax havens**

The government has provided funding to maintain Project Wickenby, the multi-agency response to the threat of abusive tax haven arrangements. The current economic environment heightens the risk that some taxpayers will move into offshore arrangements to avoid tax, transparency and regulation. We will continue to work with other agencies and cooperate with other revenue authorities internationally to detect and deter abusive activities.

# Introduction

Our primary objective is to achieve high levels of voluntary compliance with Australia's tax and superannuation laws. We:

- collect income tax and goods and services tax (GST) revenue (on behalf of the states and territories), and excise duty
- make payments for a range of benefits (including excise grants and the tax bonus)
- regulate the payment of superannuation contributions and the operation of small superannuation funds.

Income tax (including personal tax, company tax and capital gains tax) is the largest source of federal revenue, accounting for around 75% of total revenue collected last year. GST accounted for about 15%, while excise on alcohol, tobacco and petroleum accounted for about 10%.

Our legal framework is based on self assessment, meaning it relies on the community self-regulating. It is a robust system because Australia has a strong culture of voluntary compliance. The ATO supports this by helping taxpayers understand their rights and obligations, by making it as easy as possible for them to comply (or access benefits) and by deterring, detecting and mitigating risks as they emerge or magnify.

Using the compliance model as our guide, we tailor our strategies, services and interactions for about 12.1 million people, 2.9 million businesses and 26,000 tax agents, as well as other intermediaries such as BAS agents and software developers.

Australia's strong culture of voluntary compliance means our strategies are highly weighted to helping people and businesses comply and can be summed up as, where possible, prevention is better than cure. We aim to help people and businesses get their tax obligations right the first time, offering help in a variety of ways, including by telephone, through publications and our website. When talking with individuals and businesses about meeting their obligations, we will:

- make every effort to understand individual circumstances
- be fair and equitable in the application of the law, processes and policy
- consider each case on its merits
- assist people where possible if they are attempting to do the right thing.

Wherever practicable, we develop products and services in collaboration with the community. By working with tax professionals, consultative forums and businesses we can identify issues and irritants, enabling us to make our products as useful as possible.

Our website has a comprehensive range of help and education products to assist individuals, tax practitioners and business, including a range of online calculators. Telephone assistance includes both self-help facilities and dedicated services covering personal tax, business tax, superannuation and excise enquiries. We also offer a dedicated service for tax practitioner enquiries and facilities for making complaints about the Tax Office and reporting tax evasion.

By encouraging everyone to pay their fair share of tax we support a level playing field. When people wilfully seek to abuse Australia's tax and superannuation system we will apply the full force of the law. Where the law is not operating as intended (whether it results in more or less tax), we refer such matters to Treasury for consideration of legislative change.

## OUR COMPLIANCE PROGRAM

Our compliance program describes the tax and superannuation compliance risks we are most concerned about and what we are doing to address them. We believe that being open and accountable about our compliance activities encourages voluntary compliance and builds community confidence.

The compliance program is structured around major market segments. We use them to differentiate our activities across all taxes and payments, including superannuation and excise. The segments are:

- individuals
- micro enterprises – those with an annual turnover under \$2 million
- small and medium enterprises – those with an annual turnover of \$2 million to \$250 million
- large businesses – corporate groups with an annual turnover above \$250 million
- non-profit organisations
- government organisations.

The program addresses compliance risks in terms of their relevance to these segments. It also outlines how we work with tax practitioners, who perform a vital role in our tax system as intermediaries, and how we tackle serious abuse of the tax and superannuation systems.

While the program explains how we plan to respond to the major risks we have identified it does not attempt to cover every aspect of our compliance work. Our plans are subject to change during the year in response to emerging risks and community feedback.

## OUR COMPLIANCE MODEL

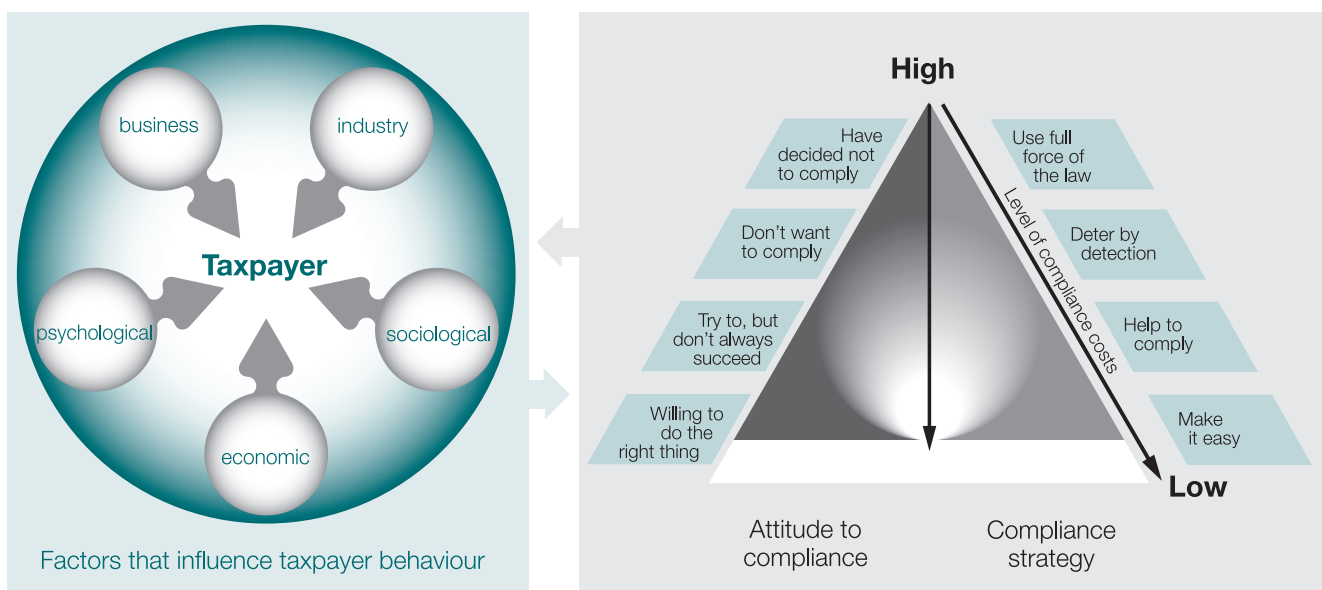
Our compliance model provides a structured way to better understand what motivates people to comply, or not comply. It recognises that taxpayers are not a homogenous group, and that their circumstances can change over time. Importantly, it provides us with insights into factors that influence different compliance behaviours, and assists in deciding what interventions to make.

The left side of the model recognises that a wide variety of factors influence taxpayer behaviour. These include business, industry, sociological, economic and psychological factors, all of which influence whether a person chooses to meet their obligations. The right side of the model reflects the different taxpayer attitudes to compliance, and the corresponding compliance strategy that best responds to each particular attitude.

With the right responses and interventions (including a mix of alerts, audit, penalties, advice, guidance, education, procedural change, etc), we can influence taxpayer behaviour in a positive way.

The model advocates a deeper understanding of motivation, circumstances and characteristics so that assistance and enforcement actions can be tailored to promote better compliance. The ultimate aim is to influence as many taxpayers as possible to move down the pyramid into the 'willing to do the right thing' zone. Analysing compliance behaviour in this way assists us to address the actual causes of non-compliance rather than the symptoms.

FIGURE 1: The compliance model



# 01

## Individuals

Each year, around 12.1 million individuals lodge income tax returns and contribute approximately 43% of overall taxation revenue. Most tax paid by individuals is collected by employers.

Individuals can receive income from a number of different sources:

- around 9.6 million receive salary and wages, of these 1,400 receive remuneration of over \$1 million
- 4.7 million have investments
- 1.5 million receive government pensions and benefits.

Around 73% of individuals use a tax agent to lodge their income tax return. For most individuals, lodging an annual income tax return is their major (and sometimes only) interaction with us.

## OUR APPROACH

We aim to help people get it right the first time, providing individuals and tax agents with the information and services they need to understand and comply with their obligations. Our 'prevention is better than cure' approach includes ensuring that people preparing their tax returns can access information reported to us about their tax affairs. We also use trend analysis to warn people where they need to take extra care in preparing their returns. We access and match a wide range of information from tax returns and external sources to help us identify instances where people have obligations. Where information is left out or incorrect, we give people an opportunity to explain and where necessary we amend the return. In cases of deliberate non-compliance, we take firm action, including prosecution in the most serious cases.

### Helping people comply

People using our *e-tax* service can pre-fill their returns using information provided to us electronically by financial institutions, employers, government agencies and other information providers, as well as data from previous returns. Tax agents access the information through online reports. For 2009 tax returns we have increased the amount of information available for pre-filling. Where we have matched external data to a taxpayer and the taxpayer has not voluntarily lodged their return we may issue a Section 167 default assessment.

We write to people we think are at risk of over-claiming (based on their last year's return) before they lodge this year, providing personalised information about their rights and responsibilities. We send information to people who claimed work expenses for the first time last year and write to first time property investors, advising them how to correctly report rental income and claim deductions.

We will also contact people who have recently lodged a return after a period of absence from the system, to encourage them to remain engaged.

### Safeguarding against identity fraud

While we have some examples of people trying to commit fraud by making up identities, most fraud attempts involve stealing and using someone else's identity information.

We have strict proof-of-identity requirements people must meet when registering for the first time to obtain their tax file number. Our staff are trained to detect fraudulent identity documents and we match information on application forms with data from other sources, including the registers of births, deaths and marriages, to verify details before issuing tax file numbers.

To protect information and the integrity of the system, people must provide proof of identity whenever they deal with us about matters relating to their accounts or those of the people they represent. We check our register of tax file numbers and identify where people do not have an ongoing obligation. Any subsequent activity in relation to these tax file numbers is investigated to ensure it is properly being reactivated and we take further action where there are indications of fraudulent activity.

We work with other government agencies to combat identity-related fraud, sharing intelligence and taking part in whole-of-government approaches.

## Lodging returns

We use risk profiling and data matching to identify people who are not complying with their lodgment obligations, particularly where failure to lodge in full and on time increases other tax risks.

This year we will continue to pay priority attention to people who:

- are expected to have high tax liabilities, based on their history or information available to us
- are in high-profile professions that influence the wider community, such as the legal profession and sportspeople
- are expected to have a capital gains tax obligation.

We are particularly concerned about the risks people are exposed to when they use unregistered tax preparers. We warn people about the dangers and use analytical tools to identify returns prepared by people who are not registered tax agents. In reviewing these returns, we often find major inaccuracies that result in significant increases in tax assessments, along with interest and penalties. Where appropriate, we refer unregistered preparers for prosecution.

## Checking returns

We use information matching to check the accuracy of individual returns. Details of reported income included in tax returns are automatically matched with information provided by financial institutions, employers and government agencies. Where there are discrepancies, we may contact people and ask them to explain.

We also profile information and compare returns to identify unusual patterns of income and claims. This also helps us identify gaps and unusual transaction patterns. We analyse returns prepared by tax agents to identify trends that indicate risks.

Where we identify a trend of common mistakes or claim patterns outside occupational or industry norms, we contact the agent and individuals to verify information and check the agent's tax return preparation and record-keeping practices.

Many discrepancies are resolved quickly after direct contact with the person concerned, particularly where the amount has been declared in the tax return but in the wrong place. Where someone fails to respond within a specified period, we resolve the issue using the information at hand, usually resulting in an amendment to the assessment to include the omitted income. Where further tax is payable, we charge interest for the period the extra tax should have been paid, along with a penalty, depending on the circumstances.

We will investigate how pre-filling can be used for other purposes such as raising 'default' assessments where taxpayers have not voluntarily lodged their returns.

## Refunds and claims

Before we issue refunds, returns are analysed to detect significant errors or fraudulent activity. Where we identify claims that appear to be outside industry or expected norms, we may check all aspects of the person's return such as income statements, claims for work expenses and claims for offsets, including matching the return information with data supplied by financial institutions, employers and government agencies.

Depending on the circumstances, we may:

- contact an individual or their tax agent to get more information
- contact a person's employer to verify employment details
- undertake more detailed investigations
- impose penalties if we adjust a return and believe that reasonable care was not taken.

## HEADLINE ISSUES

### Executives and directors

As part of our attention to executive and director remuneration payments, we will continue to expand our information matching activities to support our reviews. This includes checking that shares and options received as remuneration are correctly reported. Other priority areas for review include income-splitting arrangements and international activities and transactions. The program initially focused on public company directors and executives, but has been expanded to examine private companies, resident executives and directors of foreign companies.

We have concerns that Australian resident employees of multinational companies who receive benefits from overseas employee share or bonus schemes may not be reporting all benefits received as income.

Last year we reviewed the affairs of over 410 high risk executives and directors. Adjustments were required in approximately 56% of all cases, with people choosing to make a voluntary disclosure in 70% of cases. Voluntary disclosure attracts a more lenient application of penalties. Around \$44 million in liabilities have been raised.

We write to executives, directors and other employees who may have received share scheme benefits from takeovers to encourage them to correctly report income related to shares and rights acquired from share schemes. These letters are yielding good results. Last year, one of our pre-lodgment advice letters directed to employees of one employee share scheme resulted in 93% of recipients correctly returning the income in their tax return. We are following up with the other 7% to ensure the income is returned correctly.

### Refund fraud

Refund fraud is on our radar this year and we are using new technologies to help us identify this fraud on the community.

To complement our normal checks, returns lodged through *e-tax* and other channels will be reviewed using automated analytic models designed to identify potentially unregistered preparers and cases of identify theft.

A significant concern to us is people who prepare returns for others without being a registered tax agent. We have found that where an unregistered preparer claiming to be a tax agent is used to prepare income tax returns, there is an increased likelihood of the return containing inaccurate information leading to inflated refunds. Consequently, these people are a high priority target for detection and investigation. Charging a fee when not lawfully registered with the Tax Agents' Board is a breach of the law and can result in prosecution in a criminal court.

## Expanding information matching

Last year, over 408 million transaction records were reported by third parties and used by us. This year, we plan to data-match or analyse a similar volume of transactions, including details of:

- employment, welfare, investment and health insurance
- property and share ownership and disposals
- superannuation information, including member contribution statements, lost member reports and self-managed superannuation fund annual returns
- significant cash transactions from AUSTRAC, including a focus on haven-related transactions
- indicators of wealth, such as asset ownership information (for example, luxury motor vehicles, marine vessels and aircraft)
- partnership and trust income, including managed funds.

This year we are increasing our information matching activities to look at more taxpayer returns for:

- employee share schemes
- health insurance policies that do not provide sufficient private patient hospital cover to exclude the member from having to pay the Medicare surcharge levy
- eligibility for tax offsets and the Medicare levy exemption.

We are following up over 500,000 reported income discrepancies and issuing 100,000 letters advising taxpayers where we have some concerns with the income reported.

## SPECIFIC COMPLIANCE ISSUES

### International dealings

We match information supplied by overseas revenue agencies and AUSTRAC against income tax returns to identify unreported foreign income. This includes bank interest, dividends, pensions, salary and wages. We work closely with financial institutions to identify those involved in abusive tax haven-related arrangements. We encourage individuals with unreported offshore income to report it to us under our offshore voluntary disclosure initiative. The details are available on our website. To date, under this initiative we have received over 2,600 voluntary disclosures, involving over \$168 million in omitted income.

### Work expense claims

Work expense claims require our continued attention. Deductions for work expenses have increased by 11% since 2006 and represent one of the largest categories of claims made in tax returns.

Last year we conducted more than 5,900 audits and reviews resulting in \$7.6 million in adjustments.

This year we are focusing on:

- occupations with a pattern of large and/or rising claims
- returns which do not fit the pattern for a particular occupation
- claims in returns lodged by tax agents that are outside the norm for their client base.

As a result of our analysis of previous claim patterns and behaviours, we will look at people employed as:

- truck drivers
- sales and marketing managers
- sales representatives
- electricians.

The most common incorrect claims by people in these occupations include:

- insufficient documentation available to support motor vehicle and travel expenses
- claiming for the living-away-from-home allowance when the claimant does not qualify for the allowance
- motor vehicle expenses on the basis that the claimant is carrying bulky equipment required for work
- home offices, mobile phone and internet expenses.

## Investors

### Capital gains and losses

One of the likely impacts of the economic downturn is that there will be an increasing number of people claiming losses on sale of investments. We are putting together practical tips detailing when people can claim losses and how to correctly calculate them.

We will write to people who purchased investment properties, shares or units in a managed fund last financial year to inform them of capital gains tax obligations if they dispose of these assets. We will also write to those who appear to have had a capital event, alerting them to their reporting obligation.

### Retail investment products

We regularly review retail investment products in the marketplace, including managed investment schemes, to identify arrangements that promise tax benefits that may not be available under the law. Where we have concerns, we issue warning products such as taxpayer alerts. This helps investors make informed decisions about the tax consequences of potential investments.

We also review tax returns to identify claims related to retail investment products to ensure such claims are properly available under the law.

We are particularly concerned about products that feature:

- bringing forward deductions for financing costs, including interest pre-payment in the first year
- non-arm's length financing, including non-recourse or limited-recourse lending and uncommercial long interest-only periods
- 'round-robin' payment arrangements
- artificial reductions in risk exposure
- generation of excessive franking credit entitlements in comparison with real income received.

We encourage promoters of retail investment products to apply for product rulings that provide investors with certainty about the tax effects of these arrangements. These rulings are listed on our website. However, a product ruling is not an endorsement of the commercial viability of the relevant product. Where a product ruling has not been issued, we encourage potential investors to apply to us for a private ruling on the tax implications of the investment. Investors should be aware they are not protected if the scheme is not implemented as described in the relevant ruling.

We also check that managed investment schemes and other retail financial products are implemented as described in their product rulings. We identify schemes that have proceeded without product rulings to ensure that the entities behind such arrangements have not contravened the promoter penalty laws.

### Dodgy schemes

Tax exploitation schemes are aggressive arrangements that are created mainly to obtain a tax benefit not intended by the law, often with little or no economic substance. The promoter penalty laws provide significant legal consequences for the entities behind such schemes if they are contravened.

We follow up intelligence on schemes as soon as we become aware of them, and issue taxpayer alerts to provide early warnings of our concerns. People are becoming more wary of schemes, especially offshore ones, and are increasingly likely to bring suspect schemes to our attention. If you see a suspect scheme, contact us on **1800 060 062**.

Our brochure, *Don't take the bait*, and fact sheet, *Tax planning – investigate before investing*, provide simple tips for investors. When we identify aggressive tax planning schemes, we encourage participants to come forward early to take advantage of the provision that allows significant reductions in penalties for those who make full and true voluntarily disclosures of their involvement in such schemes.

### Superannuation

As part of the 2009 Budget, the government will reduce the concessional contributions caps for contributions made in 2009–10. Our focus will be on implementing and raising community awareness of these changes and ensuring those that exceed the caps are identified and addressed in a timely manner.

We will also implement and raise awareness of the Budget announcement to temporarily reduce the matching rate and maximum co-contribution for personal contributions made this year.

The risk of illegal early release of superannuation is likely to increase as promoters of illegal release schemes target individuals with pressing debts resulting from the economic downturn. We work with Australian Securities & Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA), large superannuation funds and financial institutions to identify such schemes. Our response includes freezing bank accounts, raising income tax assessments with penalties against those who withdraw their benefits early, and referring promoters for prosecution.

The economic downturn will also affect the capacity of some employers to meet their superannuation guarantee obligations. We follow up complaints from employees about employers not paying the correct superannuation guarantee contributions or not offering choice of superannuation fund. We write to each complainant to inform them of the progress of our investigation.

## SUPPORTING PEOPLE IN FINANCIAL DISTRESS

The economic downturn has directly affected the viability of businesses and other taxpayers, placing some in serious financial distress. The government has provided us with additional funding over the next four years to increase our support for people and businesses to meet their reporting and payment obligations through earlier contact and more targeted assistance programs.

Historically, micro businesses are the most vulnerable to deteriorating economic conditions. During the last major economic downturn in the 1990s, taxable income of micro businesses fell by over 40% and there was a 25% higher micro business company exit rate, with those of low profitability most at risk. Many of the businesses affected were unincorporated entities, which often resulted in personal assets, including property, being put at risk.

Based on this experience, we are providing a range of practical support for businesses and others aimed at assisting them during the tough times and keeping them engaged with the tax system wherever possible. Keeping viable businesses and people in the tax system also supports returning the Budget to surplus as income levels improve. This would be much harder to achieve had people and businesses begun operating outside the system.

Our practical assistance may include:

- fast tracking refunds
- giving businesses more time to meet activity statement and other lodgment obligations without penalties
- allowing extra time to pay tax debts without any general interest charge
- allowing taxpayers to pay their tax debt by instalments over an extended period of time
- remitting penalties and interest.

In June 2009, the Commissioner announced a range of new measures to help micro businesses having difficulty paying their tax debt. These include:

### ■ **Twelve month interest free payment arrangements**

We are providing a 12 month general interest charge (GIC) free payment arrangement for businesses with turnovers of up to \$2 million which are struggling to meet their obligations. In many cases these businesses will be facing a significant loss of income or be unable to access affordable credit as a result of the economic downturn.

### ■ **Interest-free deferral of the payment due date on activity statement liabilities**

We are also providing a deferral of the payment due date on activity statement liabilities. This initiative aims to provide relief to businesses facing financial difficulties while keeping them in the tax system.

## ■ **Cash flow relief for business – pay as you go (PAYG) instalments**

The government announced in the Budget that it will provide cash flow relief for small business by reducing PAYG instalments for the 2009–10 income year. It will apply to all taxpayers who pay quarterly PAYG instalments based on their previous year's tax adjusted by GDP growth (that is, clients who have chosen the amount option).

## ■ **Cash flow relief for business – GST quarterly instalments**

Consistent with the reduced uplift factor for PAYG instalments, and having regard to economic forecasts and the difficulties facing many businesses, the Commissioner is reducing the GDP uplift factor used to calculate GST quarterly instalments<sup>1</sup> for the 2009–10 income year to 2%.

## ■ **PAYG instalment variations**

We encourage people to vary their instalments downwards in line with their likely end-of-year tax performance. People can be confident that the variation shortfall penalty will be remitted if reasonable steps are taken to get the variation right.

We have developed some new online resources to help taxpayers experiencing payment difficulties. Our web page, 'Economic downturn – frequently asked questions,' provides taxpayers with a single point of reference for questions about the downturn. We have also developed an online calculator allowing taxpayers to calculate various scenarios for meeting their tax liabilities. The calculator assists taxpayers to create a proposal for an affordable payment arrangement with us.

We are complementing our direct assistance programs by supporting a range of businesses and community organisations that provide assistance to people facing financial and related difficulties.

The earlier we engage with taxpayers, the better the chances of finding a suitable solution. We encourage businesses that are struggling to contact us early to discuss assistance options.

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<sup>1</sup> The GST uplift factor is a matter for the Commissioner to determine and does not require legislative change. The Commissioner has reduced the uplift factor from 9% to 2%.

# 02

## Micro enterprises

There are around 2.7 million micro businesses and 397,700 self-managed superannuation funds in the micro enterprises market. Micro businesses range from owner-operators to entities with significant numbers of employees. Many operate in innovative ways, with electronic and international trading becoming more common.

While micro enterprises participate in industries across the economy, more than 60% are in property, trades, construction, finance, professional and technical services, primary production and retail. They pay around 11% of all tax we collect and employ more than 21% of all people employed in Australia. About 95% of micro enterprises lodge their returns through tax agents.

As employers, micro enterprises face additional compliance obligations including managing PAYG withholding, superannuation guarantee and FBT obligations.

Micro enterprises account for about two-thirds of outstanding collectable tax debt at any point in time.

## OUR APPROACH

While most micro enterprises try to meet their tax obligations, they are often hampered by a lack of time and resources.

Our outreach program of seminars, workshops and visits is designed to assist time-poor businesses to understand their tax obligations, including Australian business number (ABN) registration requirements. Our free online services and support tools such as the business portal, self-help calculators, record-keeping tools and a range of other information products provide guidance on specific tax and superannuation topics. The online payment arrangement calculator can help businesses explore payment arrangement terms including instalment amounts, timeframes and potential general interest charge amounts.

Many micro enterprises depend on business activity statement (BAS) agents and tax agents for tax advice and assistance. Our support programs recognise the important role played by these and other intermediaries and include a flexible lodgment program for returns and statements lodged through tax agents.

Given the large number of micro businesses, we rely heavily on information matching. Sophisticated profiling tools are used to identify potential tax risks such as businesses operating outside industry or economic norms, and micro enterprises that pose the highest risk of not lodging or lodging late. To identify unreported transactions, such as undisclosed income and capital gains, we match information from other organisations against that reported by the business.

Our compliance activities are tailored to the circumstances and level of risk, and may involve mail and phone contacts, visits, reviews, audits, assessments, penalties or prosecutions. In all of our dealings with businesses about their tax or superannuation obligations, even when we are taking firm action, we make every effort to:

- understand their situation and individual circumstances
- be fair and equitable in the application of the law, processes and policy
- consider each business's case on its merits
- assist where possible if they attempt to engage with us and do the right thing.

## HEADLINE ISSUES

### Helping businesses stay on track

We understand that micro and small businesses can have cash flow problems and fall behind on payments. We also know that the economic downturn and recent natural disasters have placed greater stress on many micro enterprises and we are providing extra help to viable businesses to ensure they can meet their obligations.

Our small business assistance program offers a range of services that encourage new businesses down the right path, and help existing businesses get back on track and stay there. It includes:

- tax seminars and workshops in all capital cities and many regional areas
- business assistance visits in which tax officers answer questions and help with ways to manage records and paperwork, employer obligations, connect to the business portal and lodge correct activity statements on time

- phone calls to new and existing small businesses at key times of their business life cycle, offering assistance and practical guidance. For example, contacting those newly registered for an ABN or employing for the first time.

Experience has shown that earlier identification and engagement with businesses experiencing financial difficulty can improve prospects for the business's viability. We have introduced a range of temporary penalty and interest concessions in recognition of the difficult financial environment. We have also increased our efforts to ensure that micro businesses are aware of the full range of assistance available to them through these programs. Our most recent initiatives to assist taxpayers in these tough economic times are discussed in the feature on page 10.

We are also implementing new measures and activities that will affect micro businesses including the small business and general business tax break. Small businesses with a turnover of less than \$2 million may be able to claim an additional tax deduction of 50% of the cost of an eligible new tangible depreciating asset, acquired and first used or installed ready for use between specified periods.

Our assistance programs reflect our 'prevention is better than cure' approach to compliance, but we respond firmly where businesses choose not to engage with us or fail to meet promises to pay. This may involve garnishee notices, director penalty notices and statutory demands, and liquidation or bankruptcy proceedings.

### Meeting employer obligations

Every employer plays a critical role in Australia's tax and superannuation systems. Last year, more than 800,000 employers paid around \$116 billion to us on behalf of their employees. This represents about 45% of net tax revenue. Employers make superannuation guarantee contributions for employees and have fringe benefits tax obligations where they provide non-cash benefits to employees.

Ensuring employers meet their obligations is a key priority for us. We are concerned that businesses may be tempted to cut corners to keep their business afloat. Not only is it not their money, it is also a very fast way for a business tax or superannuation guarantee debt to spiral out of control.

Compliance issues with smaller employers often stem from inefficient business practices, such as inadequate record keeping, poor cash flow management, and not having any back-up when unexpected problems arise – such as personal issues or the loss of a key staff member. Our small business assistance program provides support at critical points in the business lifecycle, such as when a business first takes on an employee. This year we are phoning new employers to help them understand how to comply with their obligations.

In the current economic environment there is an increased risk that some employers will fail to withhold, report and remit employee entitlements. We are concerned about employers who choose to operate outside the PAYG withholding system and do not make superannuation guarantee contributions for their employees. This can be deliberate non-compliance by paying cash wages and can also involve using the ABN to mask employment relationships.

Recent checks in this area show that employers are still not getting it right. Of more than 4,300 high risk employers selected since July 2008, over 3,350 had not complied with their PAYG withholding obligations and over 2,000 had not met their superannuation guarantee obligations.

We complement our outreach and assistance programs with a strong verification program, and use information matching to detect cases where obligations reported appear incomplete or inconsistent, such as where:

- information reported by employers in activity statements does not match the credits claimed by their employees in their tax returns
- employer PAYG withholding annual reports do not match amounts reported in their activity statements
- an employer is registered under a state or territory workers compensation scheme but does not appear to be registered for PAYG withholding.

In our reviews, we bring the employer's reporting up-to-date and make arrangements for them to pay outstanding amounts, adapting our approach to support those who are willing to comply and identifying and dealing firmly with those who abuse the system. After review, most employers demonstrate improved compliance. We continue to monitor their compliance and where there is a risk they may not stay on track, we conduct a follow-up review.

Calls to our tax evasion hotline (**1800 060 062**) are running at about 120 a day. We review all such complaints and our follow-up of unfair business practices.

## Superannuation guarantee

Although most employers comply with their superannuation guarantee obligations, experience tells us that as the economy shrinks, superannuation payments for employees may be one of the first payments that businesses fail to meet. Many employees do not complain about unpaid superannuation until they have left their job. With unemployment forecast to rise, we expect the number of complaints to increase this year. We review all complaints and act where there is evidence of non-compliance. This year we will action over 20,000 employee complaints about unpaid superannuation.

We identify industries at high risk of not meeting their superannuation guarantee obligations. This year we are conducting a communication campaign aimed at increasing compliance in the road freight transport, automotive repair and electrical services industries.

## Cash economy

The economic downturn has increased the risk that more people will seek an unfair advantage by failing to record and report all their transactions, especially where cash payments are involved. We are identifying additional sources of data to match with information supplied by people in their returns and activity statements, identifying possible cash economy participants and selecting cases for follow-up. Our program of reviews and audits focuses on regional cash economy hotspots and business-to-consumer transactions.

The large numbers of micro businesses mean that reviews and audits alone will not reach all businesses at risk, so encouraging self management is an essential element in our approach. We work with the broader community while focusing on those whose lifestyles don't match the income

they report or whose businesses continue to operate with income levels below what would be expected.

We continue to develop support tools for businesses and their representatives. Benchmarks provide guidance on whether what they are reporting is in line with what might be expected. They provide the opportunity to assess their record-keeping practices and identify if there is a need to make changes. We think it is important for the community to understand some of the audit tests so they can review their records. We may use the benchmarks in our case selection and, in the absence of other information, to raise default assessments.

During audits we use custom-designed computer software to analyse taxpayer records that are held electronically. This allows us to easily undertake analysis of margins and yields and compare sales against tax and banking records and has proved highly successful in identifying under-reported sales. Last year our response to the cash economy raised over \$140 million through audit and other verification activities.

The government has provided additional funding over the next four years to increase our visibility in the community. More information on our approach to the cash economy is in the feature story on page 16.

## SPECIFIC COMPLIANCE ISSUES

### International dealings

Audits and risk reviews have confirmed that globalisation, and the ease with which funds can be transferred and invested in overseas jurisdictions, has made it easier for Australians to conceal assets and income offshore. However, for the reasons outlined below, this is unlikely to be as prevalent as in some other countries.

We match data and information supplied by overseas revenue agencies and AUSTRAC with income tax returns to identify unreported foreign income. We also match data from payment service providers to identify Australian residents involved in foreign transactions. We are also working with financial institutions to identify those involved in abusive tax haven-related arrangements. We pay particular attention, through reviews or audits, where there are discrepancies identified in the matched data.

### Property assets and investments

This year, our main focus areas are property transactions and shares.

Our activities include:

- helping people understand their obligations by issuing tips and traps alerts on common errors and providing fact sheets and property checklists
- writing to businesses who appear to have sold property or shares or made a capital gain and alerting them to their reporting obligations for both GST and CGT
- contacting taxpayers and conducting reviews or audits where we identify:
  - a risk that a capital gain or loss has been omitted or calculated incorrectly
  - small business concessions have been incorrectly applied.
  - GST treatment of property transactions has been incorrectly applied.

## Property

We are improving our understanding of the property sector and the associated compliance risks particularly in relation to GST and CGT.

The GST treatment of property transactions remains a significant compliance issue. This year we are looking at:

- unreported property sales
- incorrect application of the margin scheme
- businesses that try to avoid their obligations by not lodging activity statements or registering in the system.

For income tax, we check reporting of property transactions capital gains, paying particular attention to:

- sales of property
- creation and attribution of capital losses
- correct use of capital gains tax small business concessions.

We work with developers and builders through industry consultative forums to learn more about the industry and the effects of the economic downturn. Through these forums we can provide timely information to businesses directly affected by changes to the law.

## Shares

The volatile share market may present a risk that some people will treat their share losses on revenue account rather than on capital account to offset these losses against other income.

We examine shares and correct accounting for capital gains tax when operators are exiting a business.

## Data matching and information exchange

To enable a more targeted and differentiated approach, we have expanded our use of data and information matching, using information on asset transactions from state revenue offices, land titles offices, share registries and other sources.

We are investing significantly in our relationship with the state revenue offices to maximise the exchange of information in relation to property transactions.

## Refund fraud

All claims for GST refunds are subject to credibility checks to verify claims while seeking to minimise the impact on businesses cash flow. Doubtful refunds are verified by telephone interviews or by field visits. We may also contact third parties to substantiate claims. Potential fraud cases are referred directly to our investigations area. All claims for the R&D tax offset are also subject to credibility checks at lodgment.

We examine risks emanating from misuse of tax return labels, and will be increasing our scrutiny of trading stock reporting and company losses. We write to businesses that appear to have made an error and conduct reviews and audits as required.

## Partnership and trust distributions

Micro enterprises include around 905,000 partnerships and trusts. Last year we found that 40% of high risk taxpayers reviewed had incorrectly reported their partnership and trust distribution, while 25% did not return their partnership and trust distribution at all. We are strongly urging people to take care to avoid this simple error and working with tax practitioners to improve partnership and trust distribution reporting.

This year we are expanding our data matching of distributions from partnerships and trusts and beneficiary returns to ensure they have been correctly disclosed. Partners and beneficiaries who have not complied with their obligations may be subject to audit.

## Dodgy schemes

We focus on identifying promotion of tax exploitation schemes and provide early warning to participants to highlight our concerns about specific schemes and arrangements.

Our brochure, *Don't take the bait*, and fact sheet for investors, *Tax planning – investigate before investing*, provide some simple tips for investors who may be tempted by a tax 'minimisation' scheme.

The promoter penalty laws provide for significant remedies against promoters of tax exploitation schemes. We encourage participants to come forward early to take advantage of significant reductions in penalties for those who make full and true voluntary disclosures.

## Self-managed superannuation funds

Many micro businesses also choose to manage their own superannuation through a self-managed superannuation fund. The increased number of self-managed superannuation funds in the superannuation system and their access to concessional tax treatment has seen a corresponding rise in our compliance activities.

We protect retirement investments by focusing on regulatory issues, such as loans, in-house assets, borrowings and non-arm's length transactions. We will contact over 3,000 trustees of self-managed superannuation funds relating to these issues to determine their compliance. We will look more closely at the level of compliance with income tax obligations of self-managed superannuation funds. We will also ensure that funds fulfil their obligation to lodge timely and accurate information and meet their own taxation obligations. Active compliance activities will cover at least 10% of all new funds during the year.

Trustees who travel and work overseas for extended periods of time need to ensure their self-managed superannuation fund meets the definition of an Australian superannuation fund. A taxation ruling has been issued and provides guidance to trustees in these circumstances and we assist those who need to consider this issue.

We also monitor approved auditors to ensure they fulfil their role properly. The approved auditor compliance program provides assistance to improve the skills and knowledge of auditors and works closely with the professional organisations. We identify auditors who fail to adequately perform the duties of an approved auditor and work with the relevant professional associations to improve their performance.

We will continue to pay attention to schemes designed to illegally release superannuation earlier than allowed for in the law. Superannuation is a long-term investment with rules around preservation age to ensure that the super nest-egg is available for retirement.

Our response to this illegal activity includes freezing bank accounts, raising income tax assessments with penalties, and referring the individuals and promoters for prosecution.

## PROMOTING A LEVEL PLAYING FIELD

The present economic climate has increased competitive pressures on small businesses and created an environment where some will seek an unfair advantage. It is important that we support honest businesses by taking firm action against those seeking an unfair advantage.

When many in the business community are doing it tough, it is even more important that the system is seen as fair and equitable. Our approaches to managing risks in the cash economy include:

- development of industry benchmarks putting people on notice of what is likely to attract our attention
- letters to taxpayers who may participate in the cash economy
- extensive use of information matching and computer-assisted risk profiling.

We remain committed to the idea that prevention is better than cure and therefore continue to develop support tools for businesses and their representatives.

Over the last 12 months, in collaboration with trade and industry associations, we have continued to develop and publish industry benchmarks. They are based on the inputs used in particular trades and indicate the expected income range for these businesses. The benchmarks provide guidance to business and their representatives on whether what they are reporting is in line with what might be expected. It gives them the opportunity to assess their record-keeping practices and identify if they need to make changes.

In the 2009 Budget we received extra funding to expand our efforts in this area. We will develop new benchmarks from information supplied in the income tax returns from particular industry groups. These will assist more businesses to identify tax risks by comparing their business ratios to the financial norms of similar businesses in a similar turnover range. They will also better guide our audit activities. We also use benchmarks for case selection purposes.

We have worked with tax practitioners and their small business clients to produce a personal living expenses guide. The guide provides examples and sample worksheets to business and their representatives about the information we look at when analysing a taxpayer's living expenses as part of a cash economy audit. It has information to assist business operators assess their risk of audit scrutiny. We will use benchmarks as part of our case selection and may undertake a personal living expenses guide analysis during audit activities.

The expansion of our information matching programs is improving our ability to identify people whose reported income is out of step with their personal expenditure. We have added property sales records and AUSTRAC to the list of data that we can cross-match with our information and we are continuing negotiations to expand the data available to us.

Where our extensive data-matching and computer risk-profiling identifies taxpayers whose expenditure is inconsistent with their reported income, we apply our full suite of compliance remedies, including default assessments with penalties and interest. Where we identify people in the cash economy who deliberately evade tax, we respond vigorously by working closely with law enforcement agencies to investigate and prosecute those who cheat.

We select businesses for greater scrutiny on the basis of risk assessment. There are several business sectors attracting our attention:

- the home renovations sector – we noticed that in times of tough economic conditions some householders change their plans from selling their homes and buying other premises to maintaining and upgrading the accommodation they already have
- some sections of the retail industry – such as small value, high turnover retailers – will get our attention as shoppers move towards cheaper goods
- certain sections of the hospitality industry – particularly those establishments offering lower cost products.

In the current economic climate, we understand that we must help sustain high levels of participation in our tax and superannuation system. This means providing the latitude and support that gives viable businesses the best chance of survival.

Helping viable and honest businesses through hard times also involves our ongoing efforts to promote a level playing field. We remain vigilant, increasing our visibility in the community and taking firm action against those who choose to evade their obligations at the expense of others.

# 03

## **Small to medium enterprises**

There are around 140,000 enterprises in Australia with an annual turnover of between \$2 million and \$250 million. These small to medium enterprises consist mainly of privately held groups. The segment also includes more than 1,669 highly wealthy people who, with associates, effectively control \$30 million or more in net wealth.

Small to medium enterprises pay around 15% of the total tax we collect. They contribute a further 12% of total tax collected through amounts they withhold from payments to employees. More than 28% of people employed in Australia during the year worked for small to medium enterprises.

## OUR APPROACH

Small to medium enterprises range from very simple businesses with high turnovers to businesses with complex structures involving multiple entities, including subsidiaries of large multinationals.

Generally, smaller businesses cannot access the same resources and expertise as large businesses, although they may deal with equally complex tax issues. Private companies present us with particular compliance challenges because:

- disclosure requirements for private companies are relatively lacking
- controllers have a personal connection with their businesses.

We undertake similar support and compliance approaches for small to medium enterprises as for other businesses.

We understand that small to medium enterprises are affected by the global economic downturn and we are supporting them through:

- increased communication about the risks we are seeing
- advice on good governance to help avoid problems
- offering greater flexibility for those facing lodgment and payment difficulties, particularly for businesses with good compliance histories.

Where we identify an emerging compliance issue, we respond quickly to ensure a level playing field for all businesses.

When conducting risk assessments and other compliance activities we focus on the economic group (including related companies, superannuation funds, trusts, partnerships and controlling individuals) rather than individual entities. We look at the transparency of business transactions between associated entities and their tax effects.

Our compliance monitoring takes into account the tax risks associated with different stages of the business life cycle, such as growth spurts, succession planning and business disposals.

When it comes to wealthy taxpayers we take a similar approach where we profile and assess the risk of all groups associated with these people. This involves compiling a tax history of the individual and their group, together with information on business structures, financial and offshore arrangements and family connections, and details of specific transactions. Understanding the compliance behaviour of this sector requires a holistic approach which brings all associated entities, both business and private, into the analysis. If our intelligence and preliminary risk review identifies a problem we will conduct a comprehensive risk review. If some risks cannot be satisfactorily explained during the review, we may move to audit/investigation work.

## HEADLINE ISSUES

### Income tax compliance

This year we will:

- engage with small to medium enterprises and their advisors to discuss what we are seeing in terms of their tax and economic performance

- develop new information collection and data matching tools to help us identify potential high-risk taxpayers – for example, using external data on share transactions and property sales
- progress our four-year program of risk assessments for all taxpayers with turnovers between \$100 million and \$200 million
- conduct more reviews and audits, including initiating more than 300 new reviews.

### Wealthy individuals

We are identifying a greater population of potentially wealthy individuals and contacting them to confirm their wealth status and structure.

These are two areas attracting our particularly close attention this year:

- as the global economic downturn affects wealthy Australians we expect to see associated tax risks emerge – for example, improper use of losses
- where tax outcomes from property development transactions are inconsistent with economic outcomes.

We are extending our compliance activities to more closely examine the tax affairs of individuals with a net wealth of between \$5 million and \$30 million. This year our focus is on the identification and risk review of potential cases, with verification activities to follow next year.

This year we expect to undertake at least 120 audits and 420 reviews of highly wealthy individuals. We are expanding our use of external data such as records of property sales, share transactions and media reports and will increasingly contact individuals before they lodge to ensure the appropriate tax treatment is applied. We will share more information with other jurisdictions to help identify high-risk international transactions, including abusive dealings with tax havens.

## SPECIFIC COMPLIANCE ISSUES

### Paying tax liabilities

We have seen increases in the number of small to medium enterprises with tax debts and in the average value of these debts. The debt is mainly business activity statement debt. Many of these businesses have not previously had a tax debt. The current economic conditions have added pressure to cash flow and business turnover. Consequently some businesses are finding it difficult to pay their tax liabilities on time.

We want to support viable businesses and assist them in meeting their obligations. Where taxpayers are having difficulty paying we will work with them to find a solution, for example, negotiating a payment arrangement that fits their individual circumstances.

We will continue to garnishee businesses where we identify that they are deliberately choosing not to pay and there is an indication that funds are available.

### Lodgment

Some small to medium enterprises appear to be using non-lodgment or partial lodgment as a means of circumventing our compliance programs.

This year we are focusing on improving on-time lodgment rates and ensuring lodgment obligations (including business activity statements and income tax returns) are met for:

- entities with turnovers between \$100 million to \$250 million
- highly wealthy people
- industries and sectors with higher rates of non-lodgment and late lodgment
- previously compliant businesses that no longer meet lodgment obligations
- self-managed superannuation funds (SMSFs).

## Income tax and fringe benefits tax compliance activities

We are concerned about income tax and fringe benefits tax (FBT) compliance issues, including lodgment, capital management, international transactions including transfer pricing and the abusive use of tax havens, capital gains, tax planning around business exits, trusts, losses, prescribed private funds and phoenix arrangements. This year we will conduct 650 reviews and 370 audits of small to medium enterprises, focusing on other compliance issues relating to income tax and fringe benefits tax.

We will contact 2,000 small to medium enterprises to verify specific income tax and FBT issues.

Sometimes schemes are offered to small and medium enterprises. We will continue to monitor existing and emerging aggressive tax planning behaviour in the current economic climate and provide early warnings through our taxpayer alerts to those who are considering participating in such schemes of concern. Taxpayers and tax professionals provide valuable assistance to ensure we become aware of schemes as they appear in the marketplace.

## Employer obligations

This year we are focusing on correct FBT treatment for motor vehicles. We work with vehicle-leasing and salary-packaging organisations to ensure their clients are:

- aware of their responsibilities for record-keeping and vehicle usage for FBT purposes
- identifying the compliance issues surrounding the expanding range of salary-packaging items on offer to employees.

Superannuation guarantee issues generally relate to partial compliance such as late payment and incorrect calculations. Due to the economic downturn, some employers may find it difficult to meet their superannuation guarantee obligations. We will increase support for small business employers through targeted education and closely monitor compliance so we can take action early if necessary.

## Capital management

Indicators suggest that our focus on business owners who try to extract funds from their private companies has led to improved compliance over the past year. To support this improvement, in 2009–10 we will look at business owners who use loans, payments and debt forgiveness to distribute private company profits to shareholders or their associates without paying the correct amount of tax.

We examine the relationship between private companies and trusts, particularly compliance with the untaxed private company distribution provisions where funds are advanced

from a private company to an associate, especially to a related trust or partnership.

We monitor transactions between private companies and shareholders, or shareholders' associates, to ensure compliance with the law relating to payments, loans and debt forgiven.

## International transactions

We are monitoring the effects of the economic downturn on the performance of entities with international transactions. We have a range of initiatives to make it easier for people to comply with their international tax obligations. We are designing a tool to assist people to complete schedule 25A (reporting of international dealings) and reviewing the advance pricing arrangements (APA) program to make it easier for companies with turnovers up to \$250 million to use an APA to manage their transfer pricing obligations.

We monitor compliance and undertake reviews and audits. We use internal and external data to verify that transactions are legitimate and target high-risk AUSTRAC transactions.

This year our support and compliance activities will focus on:

- Australian residents deriving foreign source income or claiming deductions and exemptions in respect of cross-border transactions
- financial and structural arrangements that rely on the secrecy laws and lack of transparency offered by some international jurisdictions, focusing on concealed assets and income that are subject to tax in Australia
- foreign residents deriving Australian income, to ensure they meet their income tax obligations
- payments subject to non-resident withholding tax (overseas payments of interest, dividends and royalties)
- transfer pricing arrangements where there is a significant risk of profit shifting to other jurisdictions, in particular, companies with a history of profitability falling consistently below industry averages
- thin capitalisation and the correct application of the safe harbour rules.

## Capital gains tax

We will monitor reactions to the economic downturn to identify those needing guidance on the correct application of tax rules. This will include guarding against attempts to offset capital losses against income. Our information products will be revised to increase awareness of capital gains tax (CGT) record-keeping requirements.

Property and share data matching help us identify those not lodging returns, not disclosing or not including the correct gains. Activities will include:

- writing to those developing properties, before they lodge their returns, to help them determine how to report their assessable income so they don't incorrectly claim the CGT discount
- monitoring disposals of interests in taxable Australian property by foreign residents
- reviewing claims for rollover exemption and pre-CGT status on share disposals
- raising awareness through tax agents of the implications of issuing shares at a discount, triggering the general value-shifting integrity measures.

## Tax planning for business exits

We examine business restructures, focusing on exit and succession-planning arrangements where the primary objective is to receive a tax advantage. We also investigate to ensure the correct treatment of pre-CGT assets when a business is sold.

The economic environment is likely to bring an increase in the number of owners choosing to wind-up their businesses instead of selling. We will help these people meet their tax obligations and also scrutinise voluntary liquidations as an exit strategy to ensure correct treatment of liquidation distributions.

## Trusts

We focus on optimising voluntary compliance of entities controlling or benefiting from trusts. We use data matching to identify recently-formed trusts that are not yet registered in the tax system. We also identify trusts that hold lifestyle assets to determine how those assets have been used and accounted for. While we encourage all taxpayers to review their affairs and voluntarily comply, our greatest attention is on high-risk cases.

We examine hybrid trusts and how they are used to alter tax outcomes for some beneficiaries, following up Taxpayer Alerts TA 2008/3 and TA 2008/4, as well as Tax Determination TD 2008/D16.

We are concerned about compliance with the untaxed private company distribution provisions. We will work with tax agents to identify areas of greatest risk and target our review activities.

## Losses

A basic feature of the tax law is the entitlement to carry forward losses and deduct them against income earned in later years. Most claims are straightforward, though we have seen some incorrect claims resulting from calculation errors.

However, in other cases, the correct application of the same-business test is a key compliance concern, so we check claims for significant losses when they depend on meeting this test. We also monitor other loss claims including foreign losses, including the incorrect application of legislative changes that removed the quarantining of foreign losses from domestic gains.

## Phoenix arrangements

Attempts to evade tax through deliberate, systematic and sometimes cyclical liquidation of related corporate trading entities remain a focus. This year we will continue to emphasise early intervention by:

- more effectively identifying and tracking phoenix operators through better systems and intelligence
- discouraging new or emerging phoenix operators from repeat behaviour by identifying and contacting them earlier
- targeting facilitators and promoters of such behaviour.

We take firm action against the more flagrant phoenix operators. Where we have evidence of offences that may warrant prosecution, we work with the Australian Federal Police and Commonwealth Director of Public Prosecutions (CDPP). As phoenix arrangements sometimes involve

non-compliance outside the tax jurisdiction, we work with other government agencies, especially Australian Securities and Investments Commission (ASIC).

We continue to engage with key industry associations on strategies to address phoenix risks and work with Treasury to address more systemic issues.

## Goods and services tax

### Refund fraud

All claims for GST refunds are subject to credibility checks to verify claims while seeking to minimise the impact on the cash flow of businesses. We verify questionable claims for refunds through telephone interviews or field visits. We may also contact third parties to substantiate claims. We refer potential fraud cases to our investigations area.

### Property transactions

Property transaction audits for GST focus on:

- unreported property sales
- correct application of the margin scheme
- correct GST treatment of commercial residential premises, residential premises and retirement villages
- disengaged clients who avoid their obligations by not lodging activity statements or not registering in the GST system.

We are working more closely with the state revenue and land title offices to enable our data-matching program to match sales data with BAS lodgments. Last year we detected many errors in this way.

### GST schemes

We issue taxpayer alerts where we detect aggressive tax planning schemes and we will act against promoters of tax exploitation schemes. We obtain client lists of those who have implemented schemes or received advice from others regarding GST schemes. We have detected some property development businesses with complex structures designed predominantly to obtain improper GST advantages. We will audit taxpayers discovered in these circumstances and dismantle the structures to remove the advantages, ensuring the GST is properly accounted for and borne by the correct entity.

### Financial supplies

We continue to find cases where businesses making financial supplies incorrectly claim GST credits. This year we will assist people to understand the law through public rulings as well as conducting reviews and audits.

We also focus on correct GST treatment for:

- initial public offers, capital raisings and share buy backs
- costs incurred by credit card and charge card issuers, including acquisitions made under a loyalty reward program
- securitisation and asset financing, including hire purchase.

### International

We also focus on businesses with cross border transactions. We look at the material risks posed by:

- businesses failing to correctly apply GST on supplies made to non-residents but provided in Australia to resident entities not entitled to claim full input credits (including unregistered entities)

- non-resident businesses which fail to correctly apply GST on supplies connected with Australia where the recipient is not entitled to claim full input tax credits
- registered businesses which fail to correctly apply GST on the acquisition of imported services (where the businesses are not entitled to full input tax credits on the acquisition of those services).

We follow up with reviews and audits.

### **Integrity of business systems**

We conduct reviews and audits of businesses where deficiencies in their risk management and governance processes lead to errors in capturing and reporting GST information. We focus on errors resulting from:

- incorrect treatment of taxable supplies due to one-off transactions outside normal business dealings or incorrect law interpretation
- inaccurate processing of transactions following a change in business structure, change in accounting system or transfers between associated entities
- poor internal controls and business activity statement reconciliation procedures.

### **Out-of-scope payments**

Some taxpayers have sought to reclassify taxable transactions as 'no supply' or 'out-of-scope' of GST legislation to claim refunds. We scrutinise refunds and work to provide certainty by:

- clarifying the law through private and public rulings
- conducting compliance activities on industries with high-risk transactions
- working with industry groups, individuals and tax agents to clarify the law
- conducting litigation where appropriate.

### **Section 13 Transition Act and refund exploitation**

We received a large number of notifications last year from people claiming refunds from transactions made more than four years ago, on the basis that these transactions were GST-free. Reviews of these notifications indicate that 85% were invalid.

This year we will continue to liaise with taxpayers and their advisers and conduct compliance activities, including audits. While the provisions in the *Tax Administration Act 1953* in respect of the four year limits and restrictions of refunds have been amended to prevent windfall gains occurring, there is a continuing risk for transactions prior to 1 July 2008.

### **Dodgy schemes**

Our aim is to deter promotion of tax exploitation schemes by financial service providers and law and accounting firms through:

- early identification of schemes
- early warnings (such as taxpayers alerts) to participants to highlight our concerns about specific schemes and arrangements
- encouraging participants to come forward early to take advantage of the provision that allows reduced penalties for those making full voluntary disclosures
- interacting with promoters to review their activities to stop promotion of tax exploitation schemes and apply appropriate remedies.

We will continue to look at any abuse of the ruling system by promoters who are marketing tax exploitation schemes for income tax or GST. This may occur where a promoter markets a scheme on the misleading and incorrect basis that a ruling will protect investors, but the ruling applies to different circumstances or arrangements; or the scheme is implemented in a materially different way.

We will continue to collaborate with other regulators to enhance our approach to consumer protection issues and the conduct of intermediaries regarding financial services and products.

## **Saving for retirement**

### **Self-managed superannuation funds**

Given the increasing importance of self-managed superannuation funds (SMSFs) in the superannuation system and their access to concessional tax treatment, we are working to ensure high levels of lodgment compliance. We focus on regulatory matters such as loans, in-house assets, borrowings and arms-length transactions. We also monitor closely the income tax compliance of the funds.

To gain a broader level of assurance on the auditing of SMSFs, we monitor the activities of approved auditors and promote engagement through industry liaison and education.

### **Australian Prudential Regulation Authority (APRA) regulated funds**

We ensure that corporate, industry, public sector and retail superannuation funds meet their reporting and superannuation simplification obligations, including:

- accepting personal contributions only where they hold a member's tax file number
- ensuring timely and correct reporting of release authorities
- not accepting directly rolled-over employer termination payments
- correctly reporting member contributions and lost accounts
- paying unclaimed superannuation money to us.

### **Excise**

We work closely with Australian Customs and Border Protection Service to ensure that tariffs and duties are paid. We expect to conduct 175 reviews and audits of small to medium enterprises this year.

### **Fuel tax credits**

Eligibility for fuel tax credits was expanded from 1 July 2008, allowing many businesses to claim a fuel tax credit for the first time and giving many existing claimants an additional entitlement. We work with industries and businesses that are new to fuel tax credit entitlements to ensure they understand how to claim their correct entitlement.

### **Wine equalisation tax**

We have identified arrangements designed to avoid or improperly reduce wine equalisation tax (WET) liability or to exploit the WET producer rebate. You should take care when considering entering these arrangements. We will be following up taxpayer alerts by working with those affected and ensuring the industry is aware of our view.

## PAYING A FAIR SHARE OF TAX WHATEVER YOUR INCOME

As Australia's economy recovers from the economic downturn, risks may emerge or magnify as companies seek to increase market share and maximise profits, particularly in the large and medium business markets. Areas of concern include:

- cross-border financial arbitrage, for example, the use of hybrid financial instruments to take advantage of differing tax regimes to the detriment of Australia's tax system, including the abusive use of tax havens
- profit shifting through the use of transfer pricing, thin capitalisation, and other tax driven business structures such as marketing hubs whose charges are non arm's length
- significant transactions related to corporate restructures, mergers, acquisitions and divestments including failure to declare capital gains or inappropriate generation and use of revenue and capital losses
- inappropriate asset infrastructure and investment claims, such as using consolidation and cost base uplift to update depreciation claims, or claiming investment allowance on used assets.

We will increase our risk review and audit program for medium and large businesses over the next four years.

We have a taskforce for managing compliance by highly wealthy individuals, broadly defined as people with a net wealth of \$30 million or more. We are now seeing a material level of non-compliance among some wealthy Australians who fall below this threshold but engage in many of the same tax minimisation strategies. Areas we will focus on include:

- dividends disguised as loans
- use of group property for private purposes
- undeclared and understated capital gains
- concealed income and assets in tax havens and jurisdictions that lack effective exchange of tax information.

Compliance by some highly paid company directors and executives is an area that could be improved. We have been strengthening our information matching capability to identify unreported income and obligations by employers, investors and highly paid executives in public, private and foreign-owned companies. This year we are expanding our verification activities, focusing on under-declaration of remuneration payments received from overseas entities or paid from Australia into overseas accounts, and incorrect reporting of shares and options received as part of their salary package. We have also increased our focus on private company executives where a variety of risks are examined.

# 04

## **Large businesses**

There are about 1,100 business groups in Australia with an annual turnover of more than \$250 million. These large businesses contain about 32,500 entities. Around 66% are public companies and about 60% are Australian-owned. This segment includes 75 superannuation funds with around 16 million member accounts.

Large businesses pay about 36% of the total tax and 53% of GST we collect. As well as making a significant direct contribution to revenue, large businesses also have significant tax and superannuation obligations as employers of about 24% of Australia's workforce.

## OUR APPROACH

The value, volume and complexity of transactions undertaken by large businesses have inherent risks for tax compliance. Even if the likelihood of non-compliance is low, the large size of the businesses makes the consequences significant. We work closely with large businesses, reflecting their critical importance in the effective operation of the tax system. The higher level of scrutiny in this segment is seen in the relatively high proportion of large businesses subject to review or audit. Large businesses are likely to have obligations relating to income tax (company tax), GST, capital gains tax, FBT, withholding taxes and superannuation. Many also have obligations relating to excise.

Our overall approach is to closely examine significant transactions and business results that show inconsistencies between tax outcomes and the economic and financial outcomes. We review and verify companies with large book-to-tax reconciliations and companies that exhibit low tax performance, particularly where it appears at odds with their economic performance. All businesses within this market are subject to some level of risk analysis and we anticipate profiling all these taxpayers over the next 12 months.

We work with large business to provide certainty of tax outcomes for large complex transactions as they occur. We have offered to work on this immediate basis with the top 50 groups in Australia to jointly manage the tax risks that emerge. We plan to increase our coverage of annual compliance arrangements (ACAs) this year.

These ACAs provide greater certainty for all involved.

We collaborate and share information and intelligence under our treaties with foreign tax administrations and with our Joint International Tax Shelter Information Centre (JITSIC) partners on international tax risks as they emerge. We work through international organisations such as the OECD, the Commonwealth Association of Tax Administrators and the Study Group on Asian Tax Administration and Research to support effective tax risk management around the world. Australia is at the forefront in seeking cooperative relationships among revenue agencies and corporates, encouraging self-regulation and good corporate governance.

We encourage large businesses to review their PAYG instalment rate for each instalment to ensure the rate fairly reflects their current business position. Where a variation to the rate is made on a best endeavours basis and the variation is reasonable in light of available information, variation shortfall penalties will be remitted. In the same spirit, if circumstances were to change for the better, large businesses could reflect this in future quarter instalment variations.

We promote open dialogue and strong corporate governance, focusing on how businesses manage tax risks that could stem from weaknesses and deficiencies in business systems or approval processes. We provide businesses with a range of products, advice and assurance services to assist them to reduce their compliance risk and their compliance costs.

## HEADLINE ISSUES

### Complex business arrangements that look tax driven

We will closely review complex tax-driven structures and arrangements that objectively make little sense other than for a dominant purpose of obtaining a tax benefit in Australia. We will take particular interest in apparent differences between a business's economic and commercial performance and its tax outcomes.

We monitor risks in 100% of our market and then focus our compliance activities on those businesses that have high tax consequences or appear to have complex tax-driven structures and arrangements that objectively make little sense other than for a dominant purpose of obtaining a tax benefit in Australia. A particular signpost for us will be apparent differences between the business's economic and commercial performance and its tax outcomes.

This year, in the area of income tax, we plan to cover about a third of the large business market through a range of compliance activities and products such as risk reviews and audits. This will be an increase on last year's compliance activities and reflects the government's provision of additional funding for this work which is focused on promoting a level playing field in the tax system. We also assist businesses to comply through the provision of pre-assessment guidance on complex transactions and advice through our rulings programs.

When conducting a risk review in relation to a transaction, we usually examine the business's internal controls and governance systems to ensure the accuracy of major line items, tax payments and refunds. We also examine issues identified from current risk and intelligence activities and focus on identifying instances of tax avoidance or deliberate non-compliance.

We focus on how large businesses manage the tax risks associated with the business systems used in GST reporting. In deciding how to respond to any weaknesses in these systems or material risks, we will raise the issues with businesses and their advisers and be guided by the level of cooperation in solving the problem.

We seek to ensure that APRA-regulated superannuation funds fulfil their obligations to provide timely and accurate information and meet taxation obligations by providing a balance of guidance, advice, risk-assessment and audit activities.

As Australia's economy recovers, risks may emerge or magnify and some companies in the large market may seek to maximise competitive advantage via tax-minimisation strategies. Increased funding will allow us to intensify our efforts in this and subsequent years to address these potential risks. Wherever practicable, we will continue to issue warnings to the community through our taxpayer alert program about any concerns we may have about tax arrangements.

## Delivering the Government's new measures to the community

Significant new measures and activities that will affect large businesses include:

- implementation of the general business tax break.  
Businesses with a turnover of \$2 million or more may be able to claim an additional tax deduction of 30% or 10% of the cost of an eligible new tangible depreciating asset, acquired and first used or installed ready for use between specified periods
- allowing managed investment trusts to make an irrevocable election to have gains and losses on disposal of investment assets such as shares, units in a unit trust and real property treated as subject to CGT from the first year of income on or after 2008–09.

In implementing these measures we consult closely with industry and professional groups to ensure business concerns about administrative matters are fully addressed. Any matters that we cannot directly address are brought to the attention of the Treasury, as is the case with any unintended outcomes that we see in the operation of the laws we administer, whether they are productive of more or less tax.

We are also working with a range of industry and professional bodies, such as the Large Business Advisory Group, to design effective administrative processes that minimise compliance costs and develop information products and services to help large businesses implement these and other measures.

## Promoting good corporate governance

In an economic downturn, robust corporate governance and tax risk management frameworks make good commercial sense. In addition, companies can expect increasing scrutiny of their accounts from a number of regulators at both international and domestic levels.

The standard of corporate governance has a direct bearing on whether a business is a high tax risk. We believe that building positive and productive relationships is central to managing tax risks, while dialogue with and full and frank disclosure by large businesses helps us to respond more quickly to problems and to provide greater certainty.

Australia plays a key role in developing good corporate governance in the international arena by working with other OECD member countries, including developing a guide on corporate governance in tax risk management.

We continue to support appropriate tax risk management with a variety of products and services to make voluntary compliance easy and to provide an opportunity for large business to raise with us tax technical issues as they emerge.

The Large Business Advisory Group is our peak consultative forum for large businesses. This group works with us to improve operational and administrative processes, reduce compliance costs and address technical and administrative issues. Together with our industry forums, it helps us acquire a good commercial understanding of the marketplace.

Our visits program has been underway for several years and allows our senior executives to meet regularly with the top 100 corporates, building stronger levels of trust and cooperation. This program helps to build our commercial acumen and to better understand the impact of the economic downturn on companies and how we can help large business during this time.

This year we are updating our relationship management services and products. We are piloting a new concept, the lead relationship manager, with a small number of companies this year. We aim to offer a primary point of contact to coordinate a company's interactions with us, fast track critical issues and seek ways to remove irritants.

We are exploring ways to improve the day-to-day operational support offered through our large business phone service and key client managers to the top 150 companies. We aim to resolve potential problems in transactions earlier, to be more responsive to concerns and to improve escalation processes when things do not go as planned. We will also update the large business and tax compliance publication in consultation with taxpayers.

With the National Tax Liaison Group, we are developing a good governance guide on promoter penalties to assist large businesses in their governance processes.

We provide a range of products and support services to assist large business. Of particular interest to large businesses are advance pricing arrangements which provide assurance on the risk of a transfer-pricing review or audit and potentially double taxation. Other products designed to assist businesses by promoting good corporate governance and delivering certainty are annual compliance arrangements, forward compliance arrangements and binding and renewable private rulings that confirm how the law applies in certain circumstances. We also help to alleviate double taxation through the mutual assistance procedure in Australia's treaties.

## Working internationally

At a global level in tax administration we are seeing ever-increasing cooperation among nations. The fifth meeting of the OECD Forum on Tax Administration (FTA) in May 2009 confirmed that improving taxpayer services and tax compliance, both nationally and internationally, continues to be the key focus of its work.

At the meeting, representatives from 34 nations agreed to continue:

- 1 To work together to improve tax administration, taxpayer services and tax compliance – both nationally and internationally.

We are determined to improve taxpayer services and will undertake further work to share information and expertise to enable revenue bodies to prevent, detect and respond to non compliance, including in relation to offshore arrangements.

- 2 To promote strong corporate governance in the area of tax.

We will continue to engage with business and with the agencies responsible for the development of corporate governance codes and guidelines with a view to ensuring tax compliance is included as an aspect of good governance<sup>2</sup>.

- 3 To support tax administration in developing economies.

We will increase our understanding of the needs of developing countries in the area of tax administration and share relevant FTA products, experience and expertise.<sup>2</sup>

All 84 jurisdictions in the OECD Global Forum have now committed to international standards for transparency and information exchange. This increased transparency – covering ownership of entities and bank accounts under the OECD guidelines – will help revenue authorities unravel more quickly the use of international shelters for aggressive tax planning and tax evasion.

Australia has signed six taxation information exchange agreements and is working with a number of other committed jurisdictions to achieve transparency and effective exchange of information between our countries.

## SPECIFIC COMPLIANCE ISSUES

### Loss generation and loss usage

We are concerned about claims for losses that do not reflect genuine commercial arrangements, lack economic substance or are deducted and do not meet the continuity of ownership test (COT) or the same business test (SBT).

An expected increase in losses in light of the global economic downturn and the removal of foreign loss quarantining has heightened risks. Areas that we are examining include:

- non-genuine losses
- errors and misclassification
- arrangements that inappropriately attribute foreign losses to Australia
- incorrect claiming of tax deductions, in particular finance related claims
- COT and SBT
- arrangements that inappropriately apply foreign losses against domestic income.

### Transfer pricing

We monitor and undertake risk management activities with companies that have low or falling tax performance as a result of transfer pricing practices and raise awareness of new risks as they emerge. We focus on the use of arrangements between Australian and offshore entities, including branches to shift profits (and tax) from Australia to other countries including:

- restructuring Australian-based operations to shift functions, assets and risks offshore on a non-arm's length basis, such as the sale of intellectual property at a nominal price
- paying excessive interest, guarantee and other fees
- provision of services by Australian-headquartered companies to overseas subsidiaries at no charge
- allocating income and expenses to Australian businesses which are inconsistent with the economic activities conducted in this country.

We continue to engage with business and industry in the management of these tax risks by working with firms and legal counsel to resolve complex legal issues relating to intra-group loans to provide certainty for foreign investors. Increased funding allows us to allocate more resources for reviewing risks and undertaking compliance activity. We are also reviewing the advance pricing arrangements program to make it more attractive and relevant to industry. We are also working with JITSIC partner countries to improve transfer pricing processes.

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<sup>2</sup> Fifth meeting of the OECD Forum on Tax Administration, *FTA Communiqué*, Paris, 29 May 2009

## **Thin capitalisation**

The significant fall in the value of commodity, property and financial securities could lead to taxpayers inadvertently triggering the thin-capitalisation safe-harbour debt test. As part of our risk review processes we have identified taxpayers likely to be in serious risk of failing this test if they have not taken appropriate action to alleviate the situation.

We will undertake a thin capitalisation project which will include following up on non-lodgment and incorrect completion of thin capitalisation schedules in addition to compliance activity as appropriate.

## **Consolidation activities**

We are focusing on tax cost setting when entities join or leave a group. In particular, where there has been restructuring; the use of innovative products; intra-group movement of assets, liabilities and tax attributes; and/or interactions with other tax law to achieve outcomes that are inconsistent with the legislative intent. We are examining consolidation exits to ensure that the exit cost setting rules have been applied correctly.

We are also focusing on the acquisition, transfer and use of losses by groups.

We undertake risk reviews of transactions as they occur, particularly those involving novel features, before moving into audit if required.

## **Merger and acquisition activities**

We focus on merger and/or acquisition where the tax outcomes do not reflect the economic substance of the arrangement. Current deleveraging, divestment and acquisition strategies are changing the focus from debt to equity, and from cash to cashless transactions such as scrip deals and earn-out arrangements, representing a change in tax outcomes which in highly-structured arrangements may not have a sound commercial footing.

We regularly examine equity-like instruments and other forms of structuring that seek to defer or extinguish tax liabilities and/or deliver unintended tax benefits. We encourage taxpayers to approach us as early as possible and take part in pre-lodgment meetings.

## **Interaction of CGT with other tax law**

There are an increasing number of concerns stemming from transactions involving the interaction of CGT with other tax law, particularly international and consolidation measures. These include the impact of consolidation membership rules on the occurrence of CGT events and the correct income tax liability in such circumstances; the effect of tax cost-setting outcomes on CGT cost bases; and foreign residents positioning themselves to circumvent CGT obligations.

The economic downturn necessitates more intentional monitoring of divestment strategies and capital losses.

We are focusing on non-disclosure or incorrect reporting of capital gains or capital losses, including re-characterisation issues, transactions involving disposals of economic interests with no taxing point and CGT cost base irregularities. We examine whether capital losses reflect commercial reality and can be properly reconciled and whether they satisfy COT or SBT. We also look at targeting arrangements designed to circumvent foreign resident CGT obligations as outlined in recent taxpayer alerts.

## **Cross border financing arrangements**

We have detected instances of contrived and artificial arrangements to seek to obtain tax benefits in Australia by exploiting provisions such as Sections 25–90, Section 23AJ and Division 820.

We focus on highly-risky cases that appear to generate debt deductions. We will be examining whether, having regard to the facts, these arrangements are effective in producing such a benefit. These arrangements may involve receipt of non-assessable, non-exempt income. We write to people who present as high-risk in this area and follow-up to determine the correct position at law, given the facts of the case.

As offshore banking units (OBUs) are taxed at a concessional rate, we will continue to conduct risk reviews and undertake appropriate compliance treatment for arrangements that appear to preferentially swap profits into OBUs and shift OBU expenses out to increase their tax effect.

## Non-resident withholding tax

We focus on payments offshore of interest, dividends and royalties to non-residents where there is a failure to withhold, report and pay non-resident withholding tax.

We pay particular attention to:

- re-characterisation of payments to avoid withholding tax (for example, fees, services)
- arrangements designed to conceal income and expenses subject to withholding tax
- schemes designed to avoid withholding tax through structured arrangements
- disposal of assets offshore which remain in use in Australia, for which royalties are then paid.

We conduct awareness-raising activities and have a program of risk reviews, followed by targeted audits as required.

## Implementation of the general business tax break – investment allowance

The role of the tax break is to stimulate new capital investment by Australian businesses by providing an incentive to bring forward and/or not postpone new capital investment.

We provide guidance and advice to clarify areas of uncertainty with the application of the new law. We actively monitor risks and undertake relevant compliance activity where we identify taxpayers seeking to exploit the new legislation. We focus on issues such as:

- where contracts are updated to shift transactions into relevant investment time periods
- where evidence emerges indicating that dates are changed on contracts by large businesses to meet the requirements for the 30% deduction
- where assets are inappropriately classified as ‘new’ in cases that are material and high risk
- where the concept of ‘start to construct’ is misinterpreted by large businesses to fit within the 30% investment period
- where deductions are claimed on assets such as aircraft and ships that are used principally outside Australia
- where sophisticated financing arrangements are inappropriately used to exploit the concession.

A 30% deduction is available to businesses with a turnover of \$2 million or more for eligible assets which cost \$10,000 or more. The taxpayer must have committed to invest in the assets between 13 December 2008 and 30 June 2009. It needs to be first used or installed by 30 June 2010. If installed or first used between 1 July 2010 and 31 December 2010, a 10% deduction is available.

A 10% deduction is also available for eligible assets where the taxpayer committed to invest between 1 July 2009 and 31 December 2009 and first uses or installs the asset between 1 July 2009 and 31 December 2010.

The ATO’s small business and general business tax break web page provides guidelines and outlines our approach where taxpayers claim a deduction incorrectly and have taken reasonable care. Generally, we would remit the shortfall penalty in these circumstances.

## Research and development

Some businesses incorrectly classify business-as-usual activities as research and development (R&D). We examine R&D deductions to test compliance with specific R&D rules in the preparation of claims, for example, ‘on own behalf’ and feedstock rules. We also look at over-allocation of expenses to R&D activities and undertake risk reviews and audits of research and development claims made by selected companies.

## GST

### Property transactions and margin scheme

We are focusing on incorrect reporting of property transactions, unreported sales and the application of the margin scheme. We pay particular attention to non-complying margin scheme valuations and incorrect apportionment of GST credits in the retirement village sector. We are adopting a range of strategies including approaches that engage taxpayers and discuss the risks that we are seeing so that they can voluntarily advise us of any errors or omissions. Risk reviews and audits will be conducted to ensure compliance from those taxpayers that we see are high-risk. Retirement villages are an area of interest where we will work to resolve interpretational issues and ensure good compliance.

We work with industry consultative forums and tax professionals to identify high-risk areas of the GST law that require clarification or a higher level of awareness, and develop solutions, including public rulings or information products. For example, we will be issuing a new determination on margin scheme valuations.

### Financial supplies

We continue to find cases where large businesses have incorrectly determined that an acquisition they have made is for a creditable purpose or subject to apportionment. Issues that we will examine include:

- initial public offers, capital raisings and share buy-backs
- subject to current litigation, costs incurred by credit card and charge card issuers, including acquisitions made under a loyalty reward program
- securitisation apportionment issues
- apportioning acquisitions that are directly connected with making input taxed supplies
- hire-purchase apportionment.

### **Out-of-scope supplies/Section 13 Transition Act and refund exploitation**

Some taxpayers and advisers have sought to classify transactions historically treated as a taxable supply as no supply or 'out-of-scope' of the GST legislation and hence GST free. Last year, we received a large number of notifications from businesses advising their intention to reclaim GST paid and seek refunds. Such claims are appropriate if they meet the eligibility requirements.

While the provisions in the *Tax Administration Act 1953* in respect of the four year time limits and restriction of refunds have been amended to prevent windfall gains occurring, there is an ongoing risk for transactions prior to 1 July 2008. We will be reviewing the eligibility of these claims. Our actions will include continued liaison with taxpayers and advisers, verification activities including audits and possible litigation initiated by taxpayers.

### **Promoted tax exploitation schemes**

Promoter penalty law provisions aim to deter promotion of tax exploitation schemes. Financial services providers and law and accounting firms need to understand and manage the risks associated with their entrepreneurial activity in this regulatory environment.

We provide guidance on governance issues relevant to promoter penalty legislation, particularly by engaging with the tax profession and financial planning industry to identify best practices and potential areas of exposure. We also work towards early detection and investigation of potential tax exploitation schemes, applying civil remedies as appropriate.

## PREVENTING ABUSIVE USE OF TAX HAVENS

Abusive tax haven arrangements can result in breaches of taxation, corporations, equities and criminal law, including money laundering, and if they were to proliferate, would represent a significant risk to the integrity of Australia's tax system. Since 2006, Project Wickenby, a multi-agency taskforce, has worked across agencies and jurisdictions to send the message that such arrangements carry substantial risks and consequences.

Community perception surveys and feedback from tax advisers confirm the deterrent effect of Project Wickenby and recent media reports indicate that promoters now fear to travel to other jurisdictions. Community information and levels of voluntary disclosure are also increasing.

The government has provided additional funding to us and other law enforcement and regulatory agencies to continue the fight against this form of blatant abuse and to make the deterrence message abundantly clear.

The prevailing haven environment is volatile but shows early signs of reform, driven in part by pressure on revenue systems around the world resulting from the global economic downturn. Unprecedented international cooperation of senior finance ministers and tax administrations has increased the prospects for addressing bank secrecy provisions in high profile haven countries and revealing hidden wealth. For example, since the April 2009 G20 meeting in London, a number of countries have indicated that they will now become more transparent and move to implement tax information exchange agreements.

A range of projects and activities are focused on providing guidance, analysing data relating to offshore income and encouraging voluntary disclosure. The offshore voluntary disclosure concessions aimed at people who have income and assets offshore is an example of this work.

# 05

## **Non-profit organisations**

The non-profit sector includes charities, cultural organisations, sporting and social clubs, professional bodies, resource development organisations, and community services organisations.

Academic research indicates there are around 700,000 non-profit organisations in Australia. About 11% of people in Australia work for non-profit organisations.

Most non-profit organisations are not required to register in the revenue system because their turnover is below the minimum threshold level or they are non-taxable. Around 190,000 non-profit organisations are registered with us.

## OUR APPROACH

Our aim is to promote high levels of voluntary compliance by providing the right balance of information, guidance, support and audit activity.

We explore ways to reduce the costs of compliance and monitor organisations to ensure that those with special concessions remain eligible for those concessions.

We are also working with industries and businesses to ensure that they understand their fuel tax credit entitlements and to identify any instances of deliberate non-compliance. We also check all endorsement applications and all claims for refunds of franking credits.

## HEADLINE ISSUES

### Help for the helpers

The community looks to the non-profit and charitable sector to channel assistance from donors to those in need. We work with this sector to ensure that there are no impediments to donations and that tax deductions are available for donors where appropriate. We provide prompt and constructive guidance, moderating our compliance activities to minimise the compliance burden on those organisations trying to comply.

### Addressing non-compliance

Non-profit organisations tend to be highly compliant and seek to abide by the requirements of their special taxation status. However, a small number of organisations ignore their responsibilities or deliberately attempt to abuse concessions and we need to be fair but firm in those cases.

We monitor compliance through a range of activities including data matching, profiling and analysing third-party information such as media reports. We identify discrepancies and when we find instances of non-compliance or deliberate abuse, we undertake follow up action.

In 2009–10, our compliance work will focus on:

- deliberate misuse of tax concessions
- ensuring taxable non-profit organisations understand and meet their obligations
- closely-controlled organisations
- activities not consistent with any special exemption
- integrity of business systems, including record-keeping and dealing with unusual or complex transactions
- intentional or inadvertent complicity with tax avoidance arrangements of others, for example, trusts distributing large amounts of tax law income or capital to charities but paying only nominal amounts.

We will review 200 non-profit entities to determine continued eligibility for concessions, including deductible gift recipient status. We will check that they are making correct calculations in relation to fringe benefits tax and mutuality exemptions. We expect to review 95 non-profit employers to ensure they are complying with their responsibilities to workers. We will talk to any non-profit entity where there is any connection with a tax avoidance scheme.

### New tax measures benefiting the community

A bill outlining new measures for prescribed private funds (PPFs) was introduced to parliament on 25 June 2009 and if passed, will become effective on 1 October 2009, bringing

greater certainty around administrative control and improving the integrity of prescribed private funds. We will work with the trustees of PPFs to make them aware of the new legislation and assist with any transitional issues, including:

- providing new and updated information products
- advising PPFs of the changes
- following up outstanding returns.

Relevant federal, state and territory ministers may now declare a disaster for the purposes of the Australian Disaster Relief Fund. We will work with state and territory governments and major charities and aid organisations on the application of the new provisions.

The government has also proposed to amend the 'in Australia' requirements for charities to ensure it can continue to fully scrutinise organisations passing money to overseas charities and other entities. There will be triennial reviews of guidelines for:

- organisations on the four deductible-gift-recipient registers
- a limiting of the exemption for foreign-employment income to income earned as an aid or charitable worker in some types of government employment or projects in the national interest.

## SPECIFIC COMPLIANCE ISSUES

### High Court decision

The High Court handed down its decision on *Commissioner of Taxation v Word Investments Limited* in December 2008. The Court ruled that an entity which has exclusively charitable objects, raising funds exclusively for a charitable purpose through investment, trading or commercial activities is not precluded from being a charitable institution. Relevant public rulings will be amended to reflect the Court's decision.

### Taxable non-profit organisations

We will continue to provide regular information updates to the non-profit sector through our non-profit news service subscription newsletter and consultative forums.

For clubs and other mutual organisations, we will release a guide to mutuality and offer them the opportunity to make voluntary disclosures if they have made mistakes. We will also look for non-lodgers in this part of the sector.

Non-profit entities, particularly charities, should take care that they are not named as a beneficiary of a trust as part of a tax avoidance arrangement and should consider repudiating their beneficiary status to protect the organisation's status and reputation.

### Misclassifying supplies as GST-free

We have published further advice about complying with non-commercial supplies concessions, including updating market value guidelines. We work with consultative forums to evaluate the effectiveness of our products and identify if any further support is required. We undertake reviews and audits to test compliance with the concessions, particularly for the supply of accommodation.

### Misclassifying grants

We are working with grant providers and representatives of grant recipients to develop and implement a revised ruling on grants and other financial assistance. The revised ruling will further clarify the GST treatment of these payments.

# 06

## **Government organisations**

Across the various levels of government there are about 17,000 different registered entities employing nearly 15% of all Australian workers.

Most government organisations are exempt from income tax, and GST they pay is generally refunded to them. Overall, this segment receives a refund equal to around 4% of the total tax we collect.

About 9% of total tax collected is contributed by government organisations which have withheld amounts from payments to employees.

## OUR APPROACH

We know that government organisations want to meet their obligations and generally maintain good corporate governance. Where they do not meet their obligations, it is often due to the unforeseen consequences of unusual or complex transactions.

Practical guidance for government organisations is available on our website. We also assist with support services such as private rulings and engage with organisations through various forums. We encourage government organisations to seek our advice as early as possible.

We work closely with major government employers to encourage early and online lodgment of their payment summary annual reports to support pre-filling of income tax returns for their employees. Talking directly with staff in the payroll areas of government employers helped us to understand the problems they experience with compliance and to provide one-on-one support.

We check returns and undertake reviews and audits of specific cases where there is a risk of non-compliance, emphasising the need for government entities to lodge activity statements and other returns on time.

Government organisations are very compliant in meeting their superannuation guarantee and choice of superannuation fund obligations. We receive relatively few complaints about employer superannuation matters from employees and contractors working for government, but when we do, as with other employers, we follow up those complaints.

## HEADLINE ISSUES

### Promoting good tax and superannuation governance

To support government organisations we recently provided to federal agencies a new compliance guide, *Tax and super governance for departments and agencies*, to assist them meet their tax and super obligations. We now plan to introduce the product to state and territory departments and agencies, followed by an edition for local government.

The booklet contains seven governance questions directed at chief executive officer or board level governance. It also includes an assurance template and worked examples of how the two may be used in conjunction with the Australian standard risk management matrix.

Government organisations may voluntarily adopt the approach or use it to refine any existing processes they use with their taxation and superannuation obligations.

### Major infrastructure projects

In major infrastructure projects where there are multiple government and private sector entities, we assist government organisations to manage the GST obligations. Arrangements and transactions associated with these projects can be complex and significant in value, increasing the likelihood and consequences of errors.

We are taking a proactive approach to recent government announcements of infrastructure spending in response to the current economic conditions, providing government agencies and their private and non-profit partners with practical advice and support, such as private rulings.

We also review GST treatment of transactions associated with selected projects to better understand the risks.

## SPECIFIC COMPLIANCE ISSUES

### Treatment of grants

The correct taxation treatment of grants continues to be a concern for the government sector. We will work with government grant providers and representatives of recipients to develop and implement our revised ruling on grants and other financial assistance. We expect the ruling to be issued during the year, further clarifying GST treatment of these payments.

### Property transactions

Property transactions involving government organisations can give rise to complex GST issues. We continue to review the GST treatment of property transactions involving government organisations, including communicating the correct position through discussion with agencies and undertaking audits where there is potential non-compliance.

### Machinery of government

Government departments frequently restructure, in the process abolishing entities and creating new ones. This can give rise to a range of tax issues, including changes to ABN registration and arrangements for issuing tax invoices.

We work with our consultative forums to develop information and guidance products and strategies to assist government organisations manage their GST obligations during restructures.

### Shared service agencies

We monitor the use of shared-service agencies by government organisations to ensure that they correctly account for their tax obligations. We also explore the leverage opportunities that shared-service agencies provide for improving the compliance of government organisations.

### Fringe benefits tax

Government organisations face specific FBT obligations and rules, and for some smaller organisations it is a struggle to maintain the skills and governance arrangements required. We assist various levels of government facing amalgamation and restructuring issues.

### Fuel tax credits scheme

As a result of review activities of fuel tax credit claims by government (particularly local shires and councils), we are developing new web-based information to provide practical guidance to people about their entitlement and to assist them in correctly calculating their claims.

# 07

## Tax practitioners

Tax practitioners play a vital role in the Australian tax system. About 26,000 registered tax agents interact with us for advice. They lodge around 73% of income tax returns for individuals and more than 95% of business tax returns. Many tax agents also provide financial advice and/or act as approved auditors of SMSFs.

A range of other intermediaries operate alongside tax agents, working with taxpayers across a variety of tax matters. The tax industry therefore includes lawyers providing tax advice to people or acting on their behalf, and bookkeepers providing bookkeeping services and, if registered as business activity statement (BAS) agents, preparing activity statements for businesses and other organisations. Software developers are also important intermediaries because many tax professionals rely on their products.

## OUR APPROACH

Effective tax and superannuation administration relies heavily on a capable, sustainable and well regulated tax profession. Tax practitioners and those in the tax industry are vital in influencing voluntary compliance and ensuring that their clients understand their rights and obligations. By supporting and influencing one tax practitioner, we can support and promote better compliance by many people.

Maintaining sustainable tax and superannuation systems depends on a joint effort between those working in the tax industry and us. We promote transparency, ease of access and sharing of pertinent information.

Surveys by external market researchers in 2008 show that 91% of tax agents were satisfied overall with their current relationship with us. The same percentage indicated that the products and services we provide to them have improved that relationship. We explore ways to deliver cost-effective services for agents.

Given the central role of tax practitioners and other key intermediaries, we closely monitor their level of compliance in their dealings with clients. Where we see trends outside the norm, we check their client tax returns as well as the agent's practices.

## HEADLINE ISSUES

### Responding to tax practitioner and community needs

Changes in economic conditions have placed pressure on the community and business, directly affecting tax practitioners as well as the services required by their clients. Tax practitioners have a unique opportunity to alert business to their tax and superannuation obligations in the early stages when businesses may find themselves in difficulty. The earlier we are aware of difficulties, the sooner we can assist tax practitioners to actively influence their clients to remain in the tax system.

When the community faces natural disasters such as floods and bushfires, we help tax practitioners and their clients to alleviate workloads and deal with tax matters when they are ready. We find ways to reconstruct records where possible and offer additional time to lodge and pay within the law. We demonstrated our commitment to this approach this year when we provided lodgment deferral relief to tax agents affected by natural disasters in Victoria, Queensland and New South Wales.

## Practical assistance to encourage compliance

### Tax practitioners

We are integrating our services for tax practitioners and providing a regional presence to support them.

Across Australia members of our regional teams, including relationship managers, support tax practitioners through visits and phone calls. Our online services give further support. We highlight compliance issues to tax practitioners and their clients to encourage early disclosures so as to avoid penalties. This year we will expand our Australia-wide consultations with tax practitioners by increasing the number of regional working groups from four to seven. This will enable a broad range of practitioners to provide a regional perspective on the business impacts of tax administration.

We offer key compliance information, as well as practical advice and support, through a range of dedicated products, including the 'tax professionals' area on our website, webcasts, email broadcasts, e-link, seminars, *The Tax Agent* magazine, Tax Agent Portal and our electronic lodgment service. We encourage intermediaries to use self service facilities so as to give us space to personally assist intermediaries and their clients on the more complex issues.

Guiding agents through technical issues is a key aspect of our work. We have senior staff in place to resolve issues that cannot be dealt with through our other services. Around 510 tax agents are registered to use our professional-to-professional program, seeking advice on topics such as GST property issues and trust losses. This service will continue in 2009–10.

This year we will focus on new registrants and help them become aware of and access our information and services. We will also provide information on obligations under the *Tax Agent Services Act 2009* to help them understand the impact on them during the transition period.

### Support for superannuation auditors

We continue to enhance the electronic superannuation audit tool (eSAT) that we made available to approved auditors of SMSFs last year. It assists approved auditors to perform the mandatory annual compliance audit of SMSFs and fulfil their reporting obligations.

## Tax agent lodgment program

In consultation with the tax profession, we review the tax agent lodgment program annually, taking into account agents' workloads as well as legislative and revenue requirements. Tax profession feedback indicates that they want to continue the current lodgment program this year, in recognition of the current environment and challenges.

This year, we will explore with the tax profession initiatives to ensure the lodgment program responds to the changing needs of tax practitioners and the community. We will assist agents to get lodgment back on track. This will include negotiated, personalised approaches, incorporating outstanding current and future lodgment obligations, and remission or suspension of penalties.

This year the major change to the lodgment program is a concession to 31 July 2009 for early balancing December substituted accounting period (SAP) entities who lodge electronically. This concession recognises that software may not be available in time to lodge by the due date. It will assist agents who lodge income tax returns for companies and funds electronically. In addition, we will not apply penalties for failing to lodge on time to early December balancing SAP entities when their 2009 return is lodged electronically by 31 July 2009. The payment is still required on 1 June 2009.

## Self-managed superannuation funds

This year we will continue our work to optimise voluntary, on-time, accurate SMSF lodgments. We will follow up outstanding lodgments of new registrants and SMSFs that perpetually fail to meet their lodgment obligations.

Approved auditors play a key role in maintaining the health and integrity of the superannuation system. This year we will:

- provide 'help to comply' tailored guidance for those new to the SMSF audit role
- undertake around 1,000 audits and reviews to gain assurance that approved auditors of SMSFs apply auditing and professional standards and competently meet regulatory requirements
- review large auditing practices to provide assurance that they have effective internal controls to deliver high-quality audits across their large client bases
- work with professional bodies to manage risks and enhance and promote support products including eSAT
- improve our data, intelligence and risk analysis processes for approved auditors.

## Changing regulatory environment

### Tax Practitioners Board

This year both the regulatory environment for tax agents and BAS agents and the role of the Commissioner will change significantly. The *Tax Agent Services Act 2009* establishes a national Tax Practitioners Board, which will have sole authority for the registration of tax agents and BAS agents. The new Board has general administration of that Act.

Key elements of the new regulatory regime include a legislated code of professional conduct and power for the Board to apply for civil penalties for certain misconduct by registered and unregistered entities.

The Board and the Commissioner will both play an integral role in administering the tax system in terms of promoting a capable and well-regulated profession and greater consumer confidence.

We will continue to work with the tax profession to design products and services for tax agents and new BAS agents.

We will focus on:

- developing a collaborative working relationship with the new national Tax Practitioners Board
- providing administrative support to the new national Tax Practitioners Board to help implement the new regulatory framework
- ongoing support for the state-based Tax Agents' Boards during the transitional period.

The new regulatory arrangements will commence on a date to be fixed by parliament. The new Board will have responsibility for the registration and regulation of all tax agents and BAS agents and investigation of unregistered preparers. Until then, we will continue to lead investigations into the activities of unregistered entities. When the transition takes place, the ATO will support the Board to deal with non-compliance by developing complementary protocols and procedures. This will help ensure the integrity of the tax system as well as high levels of consumer protection.

## Ongoing assurance and integrity

The threat of fraudulent activity and use of unregistered tax agents offering seemingly attractive returns poses a risk to the integrity of the tax system, and a competitive disadvantage to agents that adhere to their professional standards of conduct.

This year, we will focus on identifying unregistered tax return preparers and ineligible BAS preparers. We will refer them to the current state-based Tax Agent Boards or seek to prosecute cases for breaches of the Taxation Administration Act. When the National Tax Practitioners Board is operating in 2010, we will work with the Board to ensure breaches are appropriately actioned.

Ensuring the integrity of tax practitioners is a priority for us. Those who do not meet standards are quickly identified and action is taken. We review returns and activity statements lodged by tax practitioners to identify possible frauds or scheme promotion including illegal early release of superannuation funds, and prosecute the more serious breaches of the law. We also review the personal tax obligations of agents.

This year, our compliance activities for practitioners will focus on:

- the accuracy and integrity of income tax and GST refund claims
- promoted tax exploitation schemes
- tax agents' own compliance with taxation obligations.

## Tax practitioner integrity service

We review and respond to complaints from the tax practitioner integrity service telephone line. This year, we will follow-up on complaints against registered BAS agents as they come under the auspices of the new national Tax Practitioners Board.

This service allows us to identify behaviours before they become significant, acting as an early warning indicator that complements our broader compliance strategies. Matters may be referred to the new Board, which will have an increased range of sanctions and responsibility to determine if the new code of professional conduct under the *Tax Agents Services Act 2009* has been breached.

## Promoted tax exploitation schemes

The tax profession plays an important role in ensuring the integrity of the taxation system. We encourage tax practitioners to be aware of their responsibilities under the promoter penalty laws and to ensure reasonable governance practices are in place to reduce the likelihood of contravention of these laws.

Where a potential tax exploitation scheme is identified, we encourage practitioners to contact us. Reporting dodgy schemes to us could prevent an agent's clients from being caught up in an inappropriate scheme and stop promoters from gaining an unfair advantage in the marketplace. The laws provide civil remedies, such as enforceable voluntary undertakings, injunctions, and/or penalties to deal with promoters of tax exploitation schemes.



## **Serious abuse of the tax and superannuation systems**

Fraud and evasion threaten the integrity of Australia's tax and superannuation systems because of the threat to revenue and retirement income, and the impact this behaviour has on community confidence.

Serious cases of fraud and evasion, as well as proceeds of crime, can affect the ability of bona fide businesses to compete. The global economic downturn is likely to increase the risk of people deliberately abusing the tax and superannuation systems to evade their obligations.

As well as using our own powers and resources, we collaborate with law enforcement agencies and the Commonwealth Director of Public Prosecutions (CDPP) and, increasingly, with foreign tax administrations.

## OUR APPROACH

Our approach involves looking at intelligence, analysing it and working on priority risks by issuing alerts, conducting audits, undertaking criminal investigations for prosecutions and, at times, using multi-agency taskforces. We may also:

- share information, where permitted by law, to assist other agencies and regulators
- work with the Australian Federal Police (AFP) and the CDPP in support of the Proceeds of Crime Act
- work with law enforcement and other agencies to address cross border crime.

We are improving our ability to deter, detect and deal with fraud by fine-tuning our control and detection systems and in the way we conduct audits and criminal investigations.

Increasingly we work with law enforcement agencies and regulators, both domestic and international, in a multi-faceted approach to deter, disrupt and deal with threats. Working arrangements are developed at an intelligence sharing, strategy development and case management level.

Agencies we work with include the Australian Crime Commission, AFP, Australian Customs and Border Protection Service, ASIC and AUSTRAC. We work closely with the Australian Government Solicitor, Attorney-General's Department and the CDPP.

## HEADLINE ISSUES

### Tackling cross-border tax crime

Improper use of tax havens and bank secrecy to conceal ownership or control of assets and income remains on our radar. The current economic situation heightens this risk, although the actions we have taken to date have sent a clear message that serious consequences can flow from that activity.

For example, our cross-agency Project Wickenby activities such as intelligence sharing, pre-verification checks, prosecutions and education activities assist in reducing the incentives for taking part in offshore tax schemes, while increasing the likelihood that promoters and facilitators will be detected and dealt with.

Recognising the importance of Project Wickenby as a strategy for addressing offshore tax crime, the government has extended funding for a further three years to 2012–13.

### Refund fraud

We continue to see coordinated attempts at fraud using high volumes of low-value transactions through tax returns and activity statements in attempts to evade our controls. We have sophisticated analytical tools and techniques to detect suspicious refunds, which are automatically checked against risk criteria before they are issued. Compliance intelligence and information from law enforcement agencies and financial institutions helps us to constantly refine and update these criteria. As a result we have been particularly effective at disrupting this type of fraud. Our controls stop refund applications that require further scrutiny. For example, in a case last year, we prevented losses of approximately \$10 million in an attempted organised fraud.

Where we identify refund fraud, we work with partner agencies to conduct investigations which may lead to successful criminal prosecutions. Last year, 36 people were prosecuted for committing refund fraud – and 30 received custodial sentences.

### Tax implications of organised crime

During an economic downturn, there is an increased risk of organised crime groups undertaking criminal activities that harm legitimate business. Criminal activities such as fraud and money laundering are becoming more sophisticated and complex and the wealth created is being invested in legitimate channels such as share trading and property.

We work with law enforcement and other regulatory agencies in Australia and overseas by ensuring that the proceeds of crime are restrained or brought to tax and that perpetrators face the full force of the law.

## SPECIFIC COMPLIANCE ISSUES

### Tax implications of criminal activities

We will continue to conduct criminal investigations in relation to the more serious abuses in the cash economy and the use of phoenix arrangements.

### Risks to the superannuation system

We are seeing arrangements incorrectly offering people access to their superannuation benefits prior to retirement without meeting the statutory conditions for release. These arrangements are often promoted by individuals or through a business front. We will continue to conduct criminal investigations and work closely with ASIC in relation to these arrangements and the individuals who promote them.

### Risks to the excise system

We focus on ensuring that eligible recipients fully comply with their fuel tax obligations and that ineligible claimants are prevented from making fraudulent claims.

# Snapshot of our 2008–09 activities

## INTRODUCTION

The following information contains some of the highlights of preliminary results from compliance activities undertaken in 2008–09. The final results will be published in our 2008–09 annual report.

You will notice some broad trends in the results.

Firstly, given our strong focus last year on ensuring people were meeting their lodgment obligations, we have seen a marked increase in lodgments and therefore an increase in the associated liabilities across most markets.

We have seen an increase in GST results across all markets mainly due to our increased work to check refund claims were correct and ensure property transactions were reported correctly. Another contributing factor to this result was the increase we have seen in large businesses coming forward to voluntarily disclose issues.

The income tax results for the large market are lower than last year, mainly due to the cyclical nature of the large market audit program. For example, some audits which we expected to complete in 2008–09 have shifted into 2009–10 because of the complexity of the issues involved.

## INDIVIDUALS

### Income tax

- We amended 368,100 individuals' assessments, while individuals self-amended 233,800.
- We reviewed 28,400 returns in relation to high risk refunds resulting in revenue adjustments of \$65.1 million.
- We raised \$44.0 million in revenue adjustments from 410 reviews and audits of executives and directors.
- We sent educational letters to 422,000 individuals about claiming work-related expenses.
- We sent educational letters to 134,800 individuals about rental income and expenses and capital gains tax.

- We wrote to 65,000 individuals asking them to review their claims. About 4,400 reviews or audits were completed resulting in revenue adjustments of \$9.6 million.
- We reviewed or audited 2,700 people concerning capital gains tax resulting in revenue adjustments of \$16.5 million.
- We compared third-party information against returns. 403,600 income and benefits discrepancies resulted in revenue adjustments of \$259.9 million.
- We undertook 310 compliance focused visits to tax agents.
- We acquired and processed an additional 33 million share transactions in 2008–09, bringing the total share transactions we use in data matching to 166 million. We also received an additional 2.8 million property records, bringing the total number of processed real property transactions used in our matching activities to 22.9 million.

### Lodgment

- We wrote to 385,900 individuals following up their lodgment, telephoning 19,700 to further ensure they met their obligations, raising liabilities of \$83.6 million.

### Debt

- In helping individuals meet their payment obligations, we negotiated 208,600 payment arrangements.
- We issued 550 garnishee notices to individuals who chose not to engage with us or who continually defaulted on agreed arrangements.
- We commenced legal recovery action against 1,600 individuals.
- We granted full or partial release from payment of tax debt in 78% of release decisions made.

## Superannuation

- We issued over 85,000 letters to employees advising them of the progress of their complaint about employers not paying superannuation guarantee.
- We profiled and reviewed over 8,200 cases of individuals who potentially exceeded the \$1 million transitional cap. We raised assessments against 644 taxpayers resulting in \$22 million of excess contributions tax.
- We identified over 1,000 individuals involved with illegal access of superannuation benefits and raised over \$3.1 million. Audits of 6 promoters have been finalised raising \$1.8 million in tax and penalties.
- We sent out 12,000 letters and conducted 69,500 lost member account reviews by telephone in 2008–09.

## MICRO ENTERPRISES

### Income tax

- We completed 6,700 reviews and audits, raising \$106.1 million.

### Lodgment

- We wrote to 621,600 micro enterprises following up their lodgment, telephoning 44,200 people to further ensure they met their obligations, raising liabilities of \$886.6 million.

### Debt

- In helping micro enterprises meet their payment obligations, we negotiated 432,800 payment arrangements.
- We issued 8,200 garnishee notices, 5,200 director penalty notices and 2,400 statutory demands to businesses who chose not to engage with us or who continually defaulted on agreed arrangements.
- We also commenced legal recovery action against 6,900 micro enterprises.

### Employer obligations

- We conducted 4,200 field audits, 1,700 outbound telephone reviews and 15,700 desk reviews of employers' compliance with their pay as you go withholding, superannuation guarantee and fringe benefits tax obligations, raising revenue of \$381.6 million.

### Superannuation

- We acted on 14,000 employer cases relating to complaints of unpaid superannuation guarantee. In 2008–09 we raised \$123.4 million in superannuation guarantee charge liabilities.
- We contacted more than 3,000 new self-managed superannuation fund trustees to assess their understanding of their superannuation obligations.
- Four new publications covering the life cycle of self-managed superannuation funds were released to better tailor messages for potential trustees.
- We reviewed the compliance of over 10,000 funds resulting in a range of actions including making 90 self-managed superannuation funds non-complying, 210 convictions of funds for late lodgment and suppressing 500 funds from Super Fund Lookup to prevent illegal early release.

## GST

- Our telephone and field verification checks resulted in approximately 9,500 activity statements being adjusted.
- We conducted 570 audits involving serious fraud and evasion raising net liabilities of approximately \$52 million in GST.
- We undertook 2,600 reviews and audits in relation to property transactions, raising net liabilities of approximately \$56 million in GST.
- We conducted over 10,000 small business obligations visits.

## Excise

- We conducted 1,100 audits and reviews of fuel tax credits and fuel grants clients, and 430 internal reviews.
- We issued two taxpayer alerts in relation to wine equalisation tax arrangements.

## Cash economy

- This year we wrote to, telephoned or visited more than 100,000 businesses. Through these compliance activities we established more than \$140 million in liabilities.

## SMALL TO MEDIUM ENTERPRISES

### Income tax<sup>3</sup>

- We completed 409 audits, 706 reviews and 1,668 phone and letter-based verification activities. As a result, we raised liabilities of \$560 million and disallowed current year and carried forward losses of \$1.1 billion.
- We completed 28 audits and 936 reviews of highly wealthy individuals. As a result, we raised liabilities of \$525 million.

### Lodgment

- We sent letters to more than 13,000 businesses and phoned 8,600 businesses with outstanding lodgment obligations, raising \$810.9 million in net liabilities.

### Employer obligations

- We conducted 440 field audits, 257 outbound telephone reviews and 5,303 desk reviews of employers' compliance with their pay as you go withholding, superannuation guarantee and fringe benefits tax obligations, raising revenue of \$153.1 million.

### Superannuation

- We acted on 4,500 employer cases relating to complaints of unpaid superannuation guarantee. In 2008–09 we raised \$85.2 million in superannuation guarantee charge liabilities.
- We completed 86 audits on Australian Prudential Regulation Authority funds reporting to verify the accuracy and completeness of their Lost Members Register (LMR), Member Contribution Statements, Unclaimed Superannuation Money and Departing Australia Superannuation Payment returns.

<sup>3</sup> In 2007–08, the maximum turnover threshold for the small-to-medium enterprise segment was lifted from \$100 million to \$250 million. As a result of this change, some audits that were commenced in the large business segment have been reported as results in the small-to-medium enterprise segment.

## GST

- We raised net GST liabilities of over \$365 million as a result of more than 35,000 reviews and audits conducted. Of these, 940 related to property risks and raised liabilities of nearly \$78 million.
- We completed 3 GST Rulings on property matters.

## Excise

- We conducted 211 audits and reviews of recipients of fuel tax credits and grants. We also conducted 140 internal reviews. These activities raised net liabilities of \$12.9 million.
- We contacted 53 small to medium enterprises as part of our client relationship management model to assist them in claiming correctly.

## LARGE BUSINESSES

### Income tax<sup>3</sup>

- We completed 36 compliance audits of large businesses. We completed 260 comprehensive risk reviews, resulting in over \$1 billion in additional collections, \$1.4 billion in new income tax liabilities and over \$1.1 billion in notional tax.
- We completed 278 private binding rulings, 56 class rulings, 20 product rulings and 149 objections.
- We finalised 19 advance pricing agreements and seven mutual agreements procedural matters.
- We entered into 2 income tax related annual compliance arrangements to provide large businesses with greater certainty about income tax risks.

### Employer obligations

- We conducted 22 field audits, 118 outbound telephone reviews and 146 desk reviews of employers' compliance with their pay as you go withholding, superannuation guarantee and fringe benefits tax obligations, raising revenue of over \$5 million.

### Superannuation

- We acted on 395 employer cases relating to complaints of unpaid superannuation guarantee. In 2008–09 we raised \$2.4 million in superannuation guarantee liabilities.
- We conducted over 135 audits and reviews to ensure large Australian Prudential Regulation Authority funds were meeting their reporting obligations.

## GST

- Our compliance activities gave rise to \$690 million in additional GST liabilities.
- We finalised over 290 compliance audits focussing on integrity of business systems, financial supplies and property transactions as well as encouraging and responding to an increase in voluntary disclosures.

- Through improved risk assessment we reduced the number of refund interventions to 380.
- We issued 295 private indirect tax rulings for the large market, as well as four GST public rulings and two GST determinations that related to but were not limited, to the large business market.

## Excise

- We conducted 62 reviews of large businesses across the excise commodities which focussed on controls to assure the accuracy of returns and claims.
- We conducted 39 audits and reviews on other large-market clients and 32 internal reviews. We also contacted 54 large-market clients as part of our client relationship management model to assist them in claiming correctly.

## NON-PROFIT ORGANISATIONS

### Income tax

- We checked 4,000 applications for refunds of franking credits, with 230 applications varied down, saving \$26.5 million in revenue.
- We reviewed the entitlements for 170 deductible gift recipients and tax concession charities, resulting in 40 entitlements being revoked and giving written advice to 23 cases to implement changes to ensure future compliance with tax obligations. These reviews raised \$1.8 million in tax and penalties.
- We reviewed the status and income tax liability of 65 other non-profit entities issuing assessments for \$12 million in tax and penalties.
- We completed 150 reviews of prescribed private fund endorsement, obtaining 110 outstanding information returns and issuing two compliance advices.
- We checked 5,000 applications endorsement applications for endorsement or deductible gift recipient, with 1,100 disallowed.

### Employer obligations

- We conducted 140 field audits, 19 outbound telephone reviews, and 1,200 desk reviews of employers' compliance with their pay as you go withholding, superannuation guarantee and fringe benefits tax obligations, raising revenue of \$25 million.

### Superannuation

- We acted on 346 cases relating to employee complaints of employers not meeting their superannuation guarantee obligations. In 2008–09 we raised \$3.5 million in superannuation guarantee charge liabilities.

## GST

- We completed around 4,000 compliance interventions resulting in \$13.5 million of revisions.
- We issued more than 400 private rulings and other forms of interpretative advice.

<sup>3</sup> In 2007–08, the maximum turnover threshold for the small-to-medium enterprise segment was lifted from \$100 million to \$250 million. As a result of this change, some audits that were commenced in the large business segment have been reported as results in the small-to-medium enterprise segment.

## GOVERNMENT ORGANISATIONS

### Employer obligations

- We conducted 118 visits and 286 outbound phone calls to government employers (federal, state, local) to encourage early and online lodgment of their 2008–09 payment summary annual reports to support pre-filing of tax returns.

### GST

- We issued more than 335 private rulings and other forms of interpretative advice.

### Excise

- We conducted 117 audits and reviews of fuel tax credits and fuel grants clients, and 43 internal reviews. Implemented the expansion of the fuel tax credits system from 1 July 2008.

## TAX PRACTITIONERS

### Responding to tax practitioner and community needs

- We proactively contacted more than 650 tax agents who were affected by natural disasters to offer practice assistance and hardship support. Of those, we visited 140 to provide direct assistance.
- We responded to more than 22,300 calls from tax agents during the payment of the government's tax bonus.
- Our premium phone service for tax practitioners received more than 1.5 million calls, of which 92% were answered within two minutes.

### Practical assistance to encourage compliance

- Fully implemented the tax practitioner services strategy. This included setting up regional tax practitioner forums, expansion of the 'professional-to-professional' service to a total of 500 registered tax agents and conducting 8,820 visits to tax agents through our relationship manager program.
- We held the annual June tax practitioner seminar at 191 venues attracting a record 19,300 registrations.
- We produced 5 online webcast presentations including 3 tax practitioner webcasts in 2008 (August, October and December) with an average of 8,000 hits and 1,000 DVDs ordered; and one in March 2009 that had 10,300 hits and almost 1,500 DVDs ordered.
- We delivered eLink to 21,300 subscribers, 24,600 copies of The Tax Agent magazine each quarter and the electronic business activity statement (BSP) newsletter to 5,000 subscribers.

## Changing regulatory environment

- We finalised 492 investigations and reviews of registered and unregistered tax practitioners including prosecution of 53 tax agents for non lodgment and referral of 24 unregistered preparers for prosecution action. We referred 121 registered tax agents to the relevant Tax Agent Board for review, resulting in 16 cancellations of registration, 7 suspensions and 7 re-registrations refused.
- We referred 39 approved auditors of self-managed superannuation funds to their professional association for failing to carry out or adequately perform the duties of an approved auditor.

## SERIOUS ABUSE OF THE TAX AND SUPERANNUATION SYSTEMS

### Serious non-compliance

- We completed 619 audits and 137 reviews.
- We raised liabilities of \$352 million, two thirds of which was derived from Project Wickenby activity.
- We completed 183 investigations.
- We brought 58 prosecution cases before the courts, of which 54 were successful.

### Project Wickenby

As part of our Project Wickenby activities for 2008–09 we:

- raised liabilities of \$230 million
- collected \$40 million in cash. In addition, \$159 million has been paid in subsequent years from people who have been subject to Wickenby action
- completed a total of 558 cases, issuing 485 amended assessments.

To date Project Wickenby has:

- raised liabilities of \$406 million
- collected \$117 million in cash. In addition, \$235 million in tax has been paid in subsequent years from people who have been subject to Wickenby action
- restrained \$76 million worth of assets under the proceeds of crime legislation.

## NOTES

Our active compliance results include voluntary disclosures for individuals with high incomes, people involved in offshore tax arrangements and other tax planning arrangements, large business market GST and income tax matters.

Large business market credit amendment amounts arising from the resolution of disputes in 2008–09 and the amount of new large business market income tax disputes will be disclosed in this year's annual report when the amounts are certain.

**FEEDBACK**

Email your comments to [compliancefeedback@ato.gov.au](mailto:compliancefeedback@ato.gov.au)

**MORE INFORMATION**

For copies of this document phone 1300 720 092 or visit [www.ato.gov.au](http://www.ato.gov.au)

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