

## PART 2

# NAVIGATING THE TAX TIDE:

## Fortifying Your Tax Defences

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# QUESTIONS?

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**Please ask questions through the Q & A pod** not on the chat pod.

Not Answered Questions will be emailed to you along with the **webinar recording**

# Contents

- How to defend a tax position, including how to write and engage with the ATO
- Getting certainty from the ATO: how they use rulings, and how taxpayers can use rulings
- How to prepare for the ATO to come knocking: getting your house in order

# Introductory remarks

- Evidence is key
- The ATO are humans too
- Confusion creates poor outcomes
- Build your defence first

# Defending a tax position

- Relying on rulings
- Communication
- Access to information

# Relying on rulings

- What is the Ruling system and why is it necessary?
- What is the Difference between a public and private ruling?
- How does a taxpayer apply for a private ruling?
- Can a taxpayer rely on a public ruling?
- Are there any other sources of information that a taxpayer can rely on
- VS – ATO website

# Writing to a revenue authority

- Be accurate and comprehensive – revenue authorities will see through unsubstantiated assertions;
- The longer you can spend on a document, the shorter it should be - be clear and concise;
- Provide headings and subheadings – make it easy for the reader to navigate;
- Put the answer to questions early in the response;
- When responding to a request for information or questions, outline the question you are answering verbatim. You do not want to miss any questions that are asked of you;
- Define expressions and terms, but don't overuse definitions;
- Be selective when using case excerpts - ensure a quotation is not lengthy, rather highlight the words in the passage;
- Don't rely on rhetoric, rather be clinical; and
- Don't paraphrase legislation, rather copy it fully and state its purpose.



# Access to information

- The Commissioner may access:
  - a. may at all reasonable times enter and remain on any land, premises or place; and
  - b. is entitled to full and free access at all reasonable times to any documents, goods or other property; and
  - c. may inspect, examine, make copies of, or take extracts from, any documents; and
  - d. may inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property and, to that end, take samples.
- What documents must be provided? Custody or control
- Tips to manage the ATO's information gathering, e.g. timeframes

# Accountants concession

- An administrative concession between the ATO and accountants, protecting accounting advice “solely” relating to tax
- Concession may be lifted in exceptional circumstances, including
  - available documents do not enable determination of tax consequences;
  - the law requires the Commissioner to determine purpose for which a transaction or arrangement was entered into (i.e. Part IVA/promoter penalty provisions);
  - reasonable suspicion of tax evasion or fraud; or
  - there is a likelihood that source documents may be lost or destroyed.

# Importance of evidence

- Evidence and record is a legal requirement
- Think: what are you trying to prove?
  - E.g. more basic examples like work related expenses, or nuances of intention in a significant transaction (e.g. profit making undertaking?)
  - Responding to a penalty position – was reasonable care taken?
- Collate records contemporaneously (i.e. ‘now’) to avoid the unfortunate (e.g. staff no longer available, memory loss, data/information loss)

# Importance of evidence (cont...)

- Constantly evaluate whether, and to what degree, you could justify the position (e.g. from doing the tax return, to responding to an ATO call, to audit and beyond)
- Value of professional advice – largely depends on the robustness of evidence
- Gather evidence contemporaneously
- Primary vs secondary evidence

## Options:

- Legal certainty (i.e., Private rulings)
- Alternatives for practical comfort

# Legal certainty

Statistics – declining popularity

‘Mechanics’ of a private ruling

Benefits

Limitations

Timing is critical!

In conclusion, is it worth it? *Depends...*

Legal certainty alternatives:

- File and object
- Settlement
- Declaratory relief



# Practical certainty

## Options

- Advice from a tax advisor or lawyer
- RAPP
- Insurance/indemnity (more sophisticated deals)

## Benefits:

- Comfort on how they think you should lodge
- Penalty protection



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