Monthly Information Newsletter – Tax & Super

November 2020

Both tax and SMSF audits are still on ATO's radar, but some leniency given

While the ATO has lately been focusing on the rollout of stimulus measures, it has also flagged that audit work is not off the table completely.

In late July, when the ATO fronted a parliamentary Senate Select Committee on COVID-19, its representative said plans were to start tax audits sometime between September and October 2020. Time and efforts however were diverted to the rollout of the JobKeeper scheme and other stimulus measures, with the ATO sourcing staff for this work by redeploying people from initiating audits, saying it had been a "conscious choice" not to initiate new audits during the peak of the pandemic.

But that, as they say in the classics, was then — and this is now. The takeaway for everyone is that audits will not go away, and will come at some point, so taxpayers and SMSF trustees need to have their affairs in order.

It may therefore be worth recapping some of the main triggers for tax audits, which includes:

- falling outside the ATO's small business benchmarks
- discrepancies between tax return income, and the income declared throughout the year on activity statements
- failing to lodge activity statements or returns on time
- underpayment of superannuation guarantee
- lifestyle assets not matching income
- business vehicles, but no FBT return is lodged, and
- consistently showing operating losses.

For the SMSF sector, "reciprocal" SMSF auditing (where two auditors agree to audit each other's funds) are expected to be an ATO focus when auditing gets back into full swing.

In January 2020, the Australian Professional Ethical Standards Board (the body that oversees and issues standards that SMSF professionals should comply with) released guidelines regarding independence.

These guidelines specifically spelled out a potential new direction regarding the independence standards expected for SMSF auditing practices.

The guidelines state that an auditor cannot audit an SMSF where the auditor, their staff or firm has prepared its financial statements, unless it is a "routine or mechanical service".

For firms that provide both accounting ***and*** auditing services, it may come down to many firms making a choice between providing one service or the other. The thing to be aware of is that the ATO has already flagged that the issue is already on its radar. It has however said it is not going to "commit compliance resources" until at least 2021.

No penalties for asset valuations if insufficient evidence

In the meantime, the ATO has stated that that it will not impose penalties if it is satisfied that SMSF trustee finds it difficult to obtain the required valuation evidence for fund assets due to the impacts of COVID-19.

"If we are satisfied this was due to the impacts of COVID-19, the contravention will not result in penalties," the ATO says. "Instead the trustee will receive a letter from us advising them to ensure they comply with our valuation guidelines and have supporting valuation evidence by the time of their next audit if possible, as repeated contraventions can lead to penalties."

The rules state that it is not the auditor's role to determine the market value of the fund's assets but that it is the trustee's responsibility to provide documents requested by their auditor which supports the market valuation for their assets. This is the area that is subject to ATO leniency for the COVID-19 conditions.

The ATO does advise however that auditors should consider the need to modify their audit report and lodge an auditor/actuary contravention report (ACR), if necessary, during the 2020 and 2021 financial years. The ACR should include the reasons why the trustee was unable to obtain the appropriate evidence.