Tax News & Insights

14 February 2025

OmniTax Professionals

Principles of Effective Tax Governance

Based on ATO guidance, for a large private group to have effective tax governance, it is important that the following three core elements are present across each of the seven principles of effective tax governance:

a) *Existence* – there is a system or a way of doing things that result in consistent outcomes.
b) *Design effectiveness* – the system is designed to identify and mitigate tax risk, and is appropriately documented.
c) *Operational effectiveness* – the framework, processes and procedures operate effectively in practice to ensure that compliance obligations are met, and tax risks are identified and mitigated.

The seven principles of effective tax governance are:

1) *Accountable management and oversight* – roles and responsibilities are clearly defined and understood in relation to tax and super obligations, including registrations, lodgement, reporting, payment, and record keeping obligations.
2) *Recognise tax issues and risk* – appropriate processes and procedures are in place to support compliance with the taxpayer's tax and super obligations.
3) *Seek advice* – clearly defined arrangements are in place for escalating tax issues and seeking advice.
4) *Integrity in reporting* – tax positions align with the tax law. Tax outcomes reflect economic performance or can be explained by other factors. Systems and controls are in place to ensure accurate and timely reporting and record keeping.
5) *Professional and productive working relationship* – the taxpayer has an open, transparent, respectful, and professional working relationship with the ATO.
6) *Timely lodgements and payments* – lodgement and payment obligations are met in full and on time.
7) *Ethical and responsible behaviour* – act in a manner that is consistent with the taxpayers' charter.

The ATO has recently provided guidance noting that taxpayers should have documented end-to-end processes that include:

a) Identification of 'business as usual' tax issues.
b) Keeping an active register of material and sensitive tax issues, and procedures that ensure the right treatment of significant transactions.
c) A policy that ensures tax is considered when atypical transactions arise.
d) Clear instructions for preparing tax returns, including record keeping, reconciliations and disclosures.
e) A process for checking and signing off tax returns.

Given the above guidance, taxpayers are encouraged to ensure they are applying the three core elements noted above to each of the seven principles of effective tax management. Appropriate documentation and evidence should be able to be readily provided to the Commissioner to demonstrate the same in the event of an ATO review.

Distribution to Shareholder a Dividend not a Capital Payment

In December 2024, the Administrative Review Tribunal found that a distribution received by a taxpayer in his capacity as a shareholder of a company was a dividend and therefore assessable as ordinary income. In particular, the distribution was not a return of capital despite being funded from the capital proceeds of the sale of the company's premises. Key points from the decision to note include:

a) The term "share capital account" is limited to an account that a company keeps of its share capital, or any other account created after 1 July 1998 where the first amount credited was an amount of share capital. The term "share capital account" does not extend to any account relating to the company's equity.
b) If a distribution from a company is not debited against an amount standing to the credit of the "share capital account" of the company, the exclusion in paragraph 6(1)(d) does not apply and the distribution should be regarded as a dividend.
c) A dividend paid out of company profits is assessable to the taxpayer as ordinary income. Such profits may be derived from any source and are not limited to profits derived from revenue or income sources.
d) CGT event G1 does not apply to a distribution that is regarded as a dividend.

The decision further highlights the importance of maintaining an appropriate share capital account for corporate entities. A failure to maintain a proper share capital account can result in a return of invested capital being regarded as an assessable dividend for investors. This can result in a permanent tax impost for investors.

GST Input Tax Credits & Time Limit

In December 2024, the Administrative Review Tribunal confirmed that a taxpayer was not entitled to input tax credits claimed more than four years after their GST returns were required to be lodged. The taxpayer operated a cleaning business and was registered for GST. The taxpayer lodged their quarterly GST returns for the period from October 2015 to March 2017 in July 2021, which was outside the four year limit for lodging a return. The Commissioner contended that the taxpayer had ceased to be entitled to input tax credits because they had not been "taken into account in an assessment of a net amount" during a period of four years after the day that the taxpayer was required to file their GST returns. The Commissioner also claimed that he had no discretion to otherwise allow the taxpayer's claimed input tax credits. The Tribunal affirmed the Commissioner's objection decision.

Public Country-by-Country Reporting Laws

Public country-by-country ("CbC") reporting obligations now apply in Australia with effect for reporting periods commencing on or after 1 July 2024. Under this new obligation, the CbC reporting parent of a multinational group with an Australian presence is required to file data on their global financial and tax footprint with the ATO. This data will then be made available publicly.

Note, this new obligation will apply in addition to the existing confidential CbC reporting obligations which may be applicable to a multinational group.

Country-by-Country Reporting Exemptions

In November 2024, the ATO released guidance in relation to exemptions from a taxpayer's CbC reporting obligations that are applicable to all exemption requests from 1 January 2025. The guidance provides only three scenarios where an exemption from CbC reporting may be granted being:

a) You are an Australian CbC reporting parent or a member of a group consolidated for accounting purposes with an Australian CbC reporting parent, where the group has no foreign operations.
b) The annual global income of your foreign CbC reporting parent is A$1 billion or more but falls below the CbC reporting foreign currency threshold in the jurisdiction of the foreign CbC reporting parent.
c) You were a CbC reporting entity in the preceding year due to your membership of a group of entities but left that group during the CbC reporting year due to a demerger or sale to a third party and will not be a CbC reporting entity under your new structure for the foreseeable future.

Items (a) and (b) above provide an exemption for the CbC report, and item (c) provides an exemption for the CbC report and master file. In all other cases, the Commissioner may exercise his power to grant an exemption if the taxpayer's conditions are considered exceptional.

In general, these changes will result in fewer exemptions being available in relation to CbC reporting obligations. They may result in a CbC reporting obligation being placed on an Australian subsidiary that is not replicated in other jurisdictions in which a multinational enterprise is doing business. As a result, multinationals operating in Australian may face increased compliance obligations.

Division 7A and Guarantee Arrangements

In December 2024, the ATO released Taxpayer Alert TA 2024/2 which confirms that the ATO is reviewing arrangements where a private company guarantees a loan made by a financial institution to a related private company that has no or minimal distributable surplus, and where the related company on-lends or pays some or all of the borrowed amount to the first company's shareholders or associates on terms that do not comply with Division 7A. The Alert applies to any such arrangements that are intended to circumvent the operation of Division 7A.

Contact

For more information and other updates, please visit our website at www.omnitax.com.au. Should you wish to discuss any matter or require any additional information, please email us on contact@omnitax.com.au.