ON THE MONEY

An update from Bayside Business Accountants

BBA

This newsletter is all about business! Read more to learn about how the ATO is targeting small businesses.

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ATO Targets Small Businesses

The ATO have released details of their Compliance Program that includes their intended audit targets for 2012/13. As expected, small to medium sized enterprises (SMEs) feature prominently with cafes, restaurants, real estate businesses and carpenters firmly on the ATO radar.

Following the upgrade of the ATO's computer system several years ago, they have reduced their old fashioned audit activity in favour of sophisticated data matching activity. They match information contained in tax returns and business activity statements (BAS's) with details of transactions reported to it by a wide range of third parties. Last year alone it gathered almost 600 million pieces of information from banks, Government agencies and other sources.

The ATO have also developed benchmarks for more than 900,000 small businesses in over 100 industries. They claim that approximately 90% of businesses in those industries fall within these financial guidelines and the ATO use profiling techniques to identify businesses operating outside these industry benchmarks. For example, if you operate a coffee shop the ATO would expect your business to meet a number of the financial ratios below. In particular, the key benchmark ratio for this industry is cost of sales to turnover. This ratio is likely to be the most accurate predictor of business turnover and if your sales fall outside that range, you may well be selected for a review.

Key Benchmark Ratio	Annual Turnover Range		
	$65,000 - $250,000	$250,000 - $600,000	More than $600,000
Income tax return			

Cost of sales/turnover	37% - 45%	36% - 43%	33% - 39%
Average cost of sales	41%	40%	36%
Total expenses/turnover	80% - 89%	85% - 91%	88% - 93%
Average total expenses	85%	88%	90%
Activity statement			
Non-capital purchases /total sales	59% - 73%	55% - 67%	52% - 61%

Risk review candidates are generally selected based on the output from 'rules based engines' or computer programs. A smaller number are selected on the basis of qualitative intelligence obtained from various sources such as media reports, 'dob-ins', information from other tax administrations and other Government sources.

Over the coming year, the ATO says it will particularly focus on the following compliance risks:

- unrecorded and unreported cash transactions
- employer obligations, especially superannuation guarantee contributions
- GST refund integrity and GST evasion
- ensuring businesses are correctly registered in the tax system
- incorrect fuel tax credit claims following implementation of the clean energy measure
- payments to contractors especially the new building and construction industry reporting system.

In a fairly surprising move, the ATO have also launched a guide for SMEs that outlines the behaviour that raises a tax 'red flag'. Overseas deals and large one-off transactions are high on the list of triggers that include:

- Tax performance varying substantially from business performance
- Inconsistencies in activity statements or spikes in refund claims
- Large, one-off or unusual transactions
- Tax and economic performance varying significantly from similar businesses in the same industry
- Unexplained losses
- A history of aggressive tax planning by individuals or their advisers
- Weaknesses in compliance structures and processes
- Tax outcomes inconsistent with the intent of tax law
- Lifestyle not supported by after-tax income
- Treating private assets as business assets
- Accessing business assets for tax-free private use

- Not disclosing offshore dealings with overseas entities, especially low-tax jurisdictions and tax havens that allow banking secrecy
- Using complex structures and intra-group transactions to minimise tax
- Transactions where the tax and economic outcomes are inconsistent
- Poor governance and risk-management systems
- Distortions and inconsistencies in market valuations and apportionments
- Business performance falling outside small business benchmarks (for businesses with turnover of up to $15 million)

Cash Transactions
The ATO will be specifically targeting plasterers and cafés in relation to unrecorded or unreported cash transactions. For plasterers, the ATO will be comparing hardware store accounts against their purchases. Cafes will also be subject to similar treatment with comparisons between coffee supply purchases on trade accounts and sales.

Employer Obligations
The ATO expects to review at least 20,000 businesses regarding reporting of their PAYG withholding. They will conduct training to assist the building industry with their new reporting of payments to contractors. The ATO will also be conducting enterprise reviews to ensure businesses register for PAYG withholding when they employ their first staff member and register for GST when their turnover exceeds the $75,000 threshold.

GST Refunds & Evasion
The Tax Commissioner now has power to retain 'high risk refunds' and may stop BAS's for investigation where there are discrepancies, anomalies or unusual changes in patterns. To minimise the delay of refunds they might check refunds after they have already been paid. The ATO will also be investigating taxpayers disposing of real property who fail to report or mis-classify the transaction on their BAS.

Expense Claims for Individuals
Also published at the same time was the ATO's focus on data matching techniques to pursue taxpayers with:

- incorrect or fraudulent over claims for refunds
- occupations with high levels of claims for work-related expenses
- tax avoidance schemes
- omitted income such as dividends, interest, capital gains or foreign source income.

The ATO intends to specifically focus on plumbers, IT managers and defence force commissioned officers. Through the use of third party information they can detect omitted income from a range of sources.

High income earners investing in financial products, particularly those products that promise substantial tax benefits will also be targeted. The ATO is planning 'particular

focus' on investments made by medical practitioners and other high income individuals.

Employee vs Contractor
The ATO has heightened its focus on contractor arrangements, particularly on businesses trying to present employees as contractors by simply having them supply an invoice and quote their ABN. An underlying employment relationship is not overridden by simply generating invoices and calling employees contractors. Some key guidelines for the distinction between an employee and a contractor include:

- The business cannot have control over the manner in which the contractor undertakes their work on a daily basis.
- A full time employee that provides services that would allow them to be in business for themselves would be more likely to be considered a contractor, not an employee.

In 2011/12 the ATO audited 1100 businesses where it suspected the businesses may have incorrectly treated employees as contractors. The audits revealed 48% of these businesses were incorrectly treating individuals as contractors. SME's should also be aware that Fair Work Australia would also scrutinise businesses in these circumstances.

Employers should ensure they have sought advice or researched the legal tests that determine whether a worker is an employee or independent contractor and understand the 'sham' contracting provisions of the Fair Work Act.

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