

TAX RISK MANAGEMENT

LIVE CHAT: QUESTIONS AND ANSWERS

INTRODUCTION

Having in place appropriate strategies and policies to manage tax risk is one aspect of good corporate governance.

These strategies can reduce the risk of your client being the subject of an audit or reduce the adverse consequences of an audit should they be selected. This includes audits by any agency for which you lodge a return on behalf of your clients.

Steps to manage tax risk include considering matters on which you give advice, client selection and client verification.

A recent live chat provided members with the opportunity to ask questions about different aspects of tax risk management.

The experts were:

- Gavan Ord, Manager, Business Investment Policy, CPA Australia
- Phil McCann, Principal, McCann Financial Group
- Gavin Swan, Director, Absolute Accounting Services
- Drew Fenton, Managing Director, Fenton Green and co

PRIMARY RESOURCES

- [What attracts the ATO's attention](#)
- [The ATO's approach to compliance](#)
- [Risk management](#)

BE HEARD.
BE RECOGNISED.



DISCLAIMER

The themes and content in today's live chat are a general guide and not intended to be specific to your circumstances. It is not possible to provide a complete suite of answers that addresses all possible circumstances that may exist. We recommend that attendees seek individual expert advice to address their specific scenarios.

OVERVIEW

In the complex world in which we now live, good risk management involves being aware of clients' increasing willingness to sue.

Good risk management is about having an active relationship with your clients. It is about being proactive. Tell them to be wary of hoax emails, for example, from the ATO.

Never begrudge the hours you spend on risk management, it is worth it in the long run. It is about using the resources available to you - checklists and pre-fills etc.

Documentation and evidence is crucial.

Also remember that your liability is not just around tax.

If you are doing wages for a client, there was a recent court case where a restaurant in Melbourne underpaid their staff and the accountant was named in the suit. The accountant was found to be partly liable. Read more at <https://www.intheblack.com/articles/2017/08/04/payroll-accounting-court-action>

QUESTIONS AND ANSWERS

So, what is the current approach of the ATO to tax risk management?

The ATO currently has a dual approach involving pre-emptive and pre-lodgment checks. The ATO wants to address issues early. Being more proactive with apparent anomalies enables it to influence behaviour early. This process results in cost efficiencies for both the ATO and accountants. The ATO is now risk profiling tax agents so you do not want to get on their radar. We recommend that you engage with the ATO early if you identify possible risks.

You could also share with your larger client's the ATO's [Tax risk management and governance review guide](#) and assist them implement their own tax governance framework.

Go to the [ATO's website](#) for more information on the ATO's approach to compliance.

What action does the ATO undertake to detect those who don't do the right thing?

This includes data matching from information given to them by third parties against the information you have included in your tax return. The ATO conducts a program of verification checks, both before and after refund payments are made, to identify incorrect and fraudulent refunds.

The ATO also uses robust analytical models to compare your income and deduction claims to individuals or businesses in similar circumstances. The ATO may ask you to clarify when income and claim patterns are outside of their expectations.

For small businesses, the ATO will investigate when employees tell the ATO that they may not have received their full super guarantee entitlements, will use the small business benchmarks along with other risk indicators to identify businesses that may be avoiding their tax obligations by not reporting some or all of their income, and will investigate concerns reported by people who think there could be inappropriate or unfair business practices occurring.

Go to the [ATO website](#) for more information.

What action does the ATO undertake to deal with those who don't do the right thing?

The ATO imposes penalties and charges you interest if you don't fully meet your responsibilities. If you've made an honest mistake, the ATO will take this into account. However, if you deliberately try to avoid tax, the ATO will take much firmer action (this can include prosecution). If you do find that you have made an error you should tell the ATO as soon as you can. The ATO will take firmer action, including using the full force of the law, for those who abuse the tax and super systems.

Go to the [ATO website](#) for more information on what attracts the ATO's attention.

What kind of broader risk mitigation strategies should members be considering?

The following are suggestions members can use to manage tax risk and hence reduce the probability of your clients being subject to audit activity. These suggestions have been put together with the assistance of members.

- As a general rule, follow the APES 325 Risk Management Framework and monitor staff compliance with that framework and your other policy and procedures.
- Keep up-to-date technically with latest tax updates/ruling/legislation. If you have staff, meet with them regularly to keep them aware and up to date and on the same page regarding risk. This will reduce the risk of a client playing one staff member off against another.
- Practitioners should steer clear of being drawn into giving advice on matters for which they have no qualifications or experience. In such circumstances, seek expert advice or refer the client to an expert.
- Keep in contact with your local business bankers (if they don't change too frequently).
- Consider how you select a client and regularly review your client list and see who should be terminated.

What kind of risk mitigation strategies should members be considering specifically for client engagement?

CPA Australia has a number of [resources](#) to assist you with on boarding a client.

- Remember, you are under no obligation to take on every potential client that comes through the door.
- Use your client engagement checklist to help you determine the potential risk associated with different clients.
- Seek the potential client's history (through for example your Letter to the existing accountant (previously known as ethical letter) and ask why they have left their previous accountant, especially if they have moved between a number of accountants/bookkeepers).
- Seek information on whether the client has been involved in the setting up and winding up of a number of businesses (possible Phoenix activity).
- Take steps to get your clients to understand and sign your engagement letter. We understand that getting all your clients to understand the terms of an engagement letter can be difficult but it can reduce the risk of future problems. CPA Australia provides a pro-forma engagement letter on the above client engagement web page.

What kind of risk mitigation strategies should members be considering specifically for client verification and communications?

- When interviewing the client, following CPA Australia's [tax checklists](#) or your own checklist.
- Ask for substantiation to verify what clients are telling you.
- If your client wishes to claim a deduction for the cost of transporting bulky goods/tools to and from their place of work, ask whether their employer can verify the claim or that the employer would verify the claim to the ATO.
- Ask questions on what appear to be unusual transactions or where things just don't seem to add up (such as a client potentially living well beyond what they are telling you).
- Ask your clients to inform you of large transactions before they occur. In your interview, ask your client whether they intend to make a large transaction in the coming 12 months.
- Where appropriate, seek a private binding ruling.
- Maintain a Client Relationship Management system where all of your interactions with clients are documented
- Ask staff (especially your receptionist) if they are fielding questions from banks/creditors/the ATO etc. regarding certain clients.
- Maintain communication with clients through for example newsletters to appraise them of relevant developments.

Additional articles on this topic are available at

<https://www.intheblack.com/articles/2017/08/04/client-documentation-writing>

<https://www.intheblack.com/articles/2017/09/07/online-trust-deeds>

There will still be random audits. How can members protect clients?

The cost of responding to a tax or government audit can become a contentious issue between accounting firms and their clients. Insurance policies offer your clients protection by providing a simple and cost effective way to cover your client's expenses in the face of an unexpected audit. How this benefits you is that you can gain access to professional expertise and resources to adequately respond to the audit in the interest of your client. Your clients see this cover as an additional benefit of dealing with your firm.

You can find more information on this on CPA Australia's [Public Practice Portal](#).

Are there many insurance claims in this area?

The largest claim example that I am aware of concerns a \$430,000 matter. Remember, however, that tax audit insurance caps your client's liability usually at between \$10,000 and \$20,000.

BAS review claim example: The client was a retailer with turnover of around \$2 million and was asked to provide details substantiating BAS returns for two years. The cost of the investigation and preparation by the accountant was \$3,400.

ATO audit claim: The client in this instance was a large orchard business with turnover of around \$45 million. It was alleged that the business under declared its income over a three year period. The accountant undertook a full review of the income received by the business and the cost of that review was \$15,900.

How can you reduce the probability of your clients being subject to audit activity?

It is important to review your clients' documentation up front and have clear terms of engagement. Review their history, and importantly, review portal reports and also benchmarking information. There is a reason clients are reviewed by the ATO, and it usually involves an analytical and risk approach by the ATO. Make sure all income

items are declared, BAS reconcile to P&L, expenses are substantiated and so on. Good systems and software are also integral to your approach with your clients.

Importantly, make sure you have a good client. It is about managing that client and your timely reports to the ATO to ensure that any issues are managed. It is also about good reporting models between you and your client.

Why is the ATO benchmarking only to 2014-15? Wouldn't you think they could update them?

Fair point but they are constantly being updated on a rolling basis as new data becomes available. Furthermore, benchmarking is a key source of ATO audit targets. Our clients are constantly being compared to their peers, to other operators in similar industries and locations. We as practitioners have to be very mindful of this.

As we have access to prefilling reports, clients tend to think that we know everything and don't need to be told, e.g. that they sold shares during the year. Where does the line of responsibility lie between our asking and their telling? If we can show we went through a checklist of questions does that cover us? To be honest, we don't always do that when it's a long-term client emailing us their info for the year.

Yes, it is a good point. But we have to be vigilant. We have to go back to basics and check the portal. Reports don't absolve us of our responsibility to check the information from the client. Part of good risk management is to use all tools at your disposal, and whilst the portal reports are part of this picture, the checklists and regular communication (even by telephone) with our client is critical. And reviewing the documentation.

We don't always do the checking for a long-term client and this creates a risk of complacency.

How does the ATO perform data matching for overseas incomes and assets? Bear in mind not all countries share their information with Australia.

Whilst current overseas data matching is sporadic, it is quite clear that over time the ATO will be obtaining more and more information from overseas sources through information sharing with other revenue agencies. Current overseas data matching is not perfect, however, it is on the rise and something that members should be aware of.

The number of jurisdictions the ATO shares information with is extensive and growing either through a tax treaty or an information exchange agreement. Visit here for that list.

What is CPA's approach to assist members in public practice on tax risk management?

CPA Australia provides checklists and pro forma letters, CPD and information sessions. We also provide comprehensive insurance policies which cover off all your By-Law requirements and TPB requirements.

Without question the number one risk mitigating strategy is to have a well-educated client who understands their obligations. If they understand and adhere to them then the risks are significantly less from the CPA member's perspective. If there is a query you then have confidence in your client and the data that they provide to you.

On top of the content in current prefilling report, does ATO plan to release more information to tax agents to improve the accuracy of tax returns?

We have no specific information on what additional information the ATO may be sharing with agents through prefill reports, however, history tells us that the ATO will no doubt be increasing the information included in prefills in coming years. So, watch this space. Remember, the ATO recognises that tax agents are their partners in the tax system.

What is your advice for when we have doubts about how a client has instructed us to treat an expense? I usually write a file note, such as 'repairs and maintenance per (client name) (date)' Is this sufficient? Should I get the client to sign the note in case there's an ATO audit?

A file note being signed by the client will demonstrate their understanding of any advice you have given them, however, context should be given to the overall transaction. Good risk management would dictate that if you are concerned enough about the instruction to write a file note, then documentation should also be reviewed, and the file note should make the client aware of what the likely outcome of an ATO review will be. If in doubt, obtain a ruling.

We have come across several dodgy clients and decided not to take them as our clients. From the practitioner side, is there any obligation to report the matter to ATO if you know that the prospective client acts dishonestly? Bear in mind, we also are bound with client confidentiality agreement, however, the potential client declined the engagement.

We understand practitioners' difficulties with clients and potential clients. Warren Buffet once said that you can't do good business with a bad client.

The *Tax Agent Services Act* requires you to show reasonable care in your dealings. CPA Australia recently recorded a webinar on reasonable care, which you can access on [YouTube](#).

A webinar recording on new ethical requirements on non-compliance with laws and regulations (NOCLAR) has also just been released and you can find this on the [NOCLAR](#) page of the CPA Australia website.

If we reviewed every questionable transaction and obtained rulings, we'd be very expensive accountants, and the firm down the road would be very busy. Surely, we can't solely focus on reducing risk to nil while frustrating clients and losing productivity. Where do we strike the balance?

The accountant down the road would also be very busy (and bogged down) with a hornet's nest of questionable transactions. Agreed, we cannot review every questionable transaction. The idea of risk management is to manage risk - it is impossible or near impossible to reduce risk to nil. There is a balance that needs to be struck by using portal reports, communicating with clients, reviewing documentation, using checklists, and having a good background and rapport with your clients.

When will the ATO start taking action on Super payments? They have moved to full live reporting over 12 months ago and still I have heard nothing.

They are moving to real time reporting. We are not fully there yet. We can help our clients by increasing awareness about quarterly or even monthly payments of SGC. And we know the government is taking action in this area. You can read more on this from a [press release](#) from the Minister.

FURTHER INFORMATION

For help or to suggest other topics for live online chats please email livechats@cpaustralia.com.au

A [complex issue resolution service](#) is available to resolve complex administrative issues and tax technical interpretation queries you have been unable to resolve online or by phone. Go to

Other resources

[Engaging early with the ATO for advice](#)

[Difference between a review and an audit](#)

- <https://www.ato.gov.au/print-publications/taxpayers--charter---if-you-re-subject-to-review-or-audit/?page=3>
- <https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/tax-assurance/risk-review-and-audit-processes/>

Pre-lodgment reviews

- <https://www.ato.gov.au/business/public-business-and-international/excellent-working-relationships/engaging-early-with-you/>
- <https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-you-should-know/Excellent-working-relationships/>

Options for resolving disputes with the ATO

[Correct a mistake or amend a return](#)

[Private rulings](#)

[Data matching programs](#)

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