Australian Government

Australian Taxation Office

Key ATO income tax work program priorities

Oil and Gas Sector

Presented by Rebecca Saint, Assistant Commissioner Public Groups International ATO

What we are covering today…

- Finance
  - Related Party Finance
  - Thin Capitalisation

- Hubs
  - Marketing Hubs
  - What’s next for the hubs PCG?

- Revenue/capital
  - Re-characterisation of expenditure
  - Capitalised labour
  - Exploration

Finance

Related party financing

- PCG 2017/4 is expected to be released in December 2017

- Key substantive changes proposed from the draft PCG:
  - separation of the risk indicator into two tables
  - changes to definitions and score weighting

- The focus of the PCG is to encourage willing and co-operative future compliance.

- Compliance activity
  - 11% of all related party debt (excluding ADIs) already transitioned into lower risk arrangements for future years – expect increase
  - 23% of additional debt subject to current compliance activity

Thin Capitalisation

Focus areas:

1. Asset valuations
   - Revaluation of mining rights
     - ATO to provide guidance to the market via a Tax Determination/Taxation Ruling and a Practical Compliance Guideline
     - Consultation Q1 2018

2. Arms Length Debt Test (“ALDT”)
   - Work currently undertaken to consider the approach adopted when evaluating the ALDT

Hubs

Marketing Hubs – treatment strategy

Historical approach

- Individual audits and litigation (correction)
- Tax Rulings, where issues turn on questions of law

Modern approach

- Use of Practical Compliance Guidelines (PCGs) and Agreed Upon Procedures (AUPs)
- Combining data analytics, industry information and expert knowledge seeking ‘horizontal equity’
- Lower the compliance burden for ‘low-risk’ taxpayers
- More targeted 1:1 inquiry or further engagement for other taxpayers
- Potential for forward agreements, but also strategic litigation
- Diverted profits tax

Marketing Hubs – What Should You Do?

- Voluntary disclosures – taxpayers have until January 2016 to take advantage of the concession

- Taxpayer's with year ending 31 Dec 2017 will shortly be able to self-assess their risk zone for this year
    - Certain taxpayers will be asked to report their risk zones in the RTP schedule
    - We will write to individual taxpayers requesting you to provide us with your risk rating
    - IDS disclosure changes

- Take steps to move to the white zone
    - You can proactively engage with us for your unique circumstances and reduce your risk rating
    - Engage with the ATO to reach forward agreement even if you are not already under review

- Outside the green zone - Have contemporaneous evidence to support your transfer pricing position

What's next for the hubs PCG?

Procurement hub schedule to PCG 2017/1

- The risk indicators are relevant to offshore procurement hubs supplying "non-core" goods or services
- Cost plus approach
- Consultation expected Q4 2017/Q1 2018

Shipping schedule to PCG 2017/1

- Draft guidance to assist taxpayers risk assess the outcomes of their shipping arrangements
- To be released for consultation Q1 2018
- Industry experts have been consulted to ensure draft guidance is consistent with industry practice, noting that shipping arrangements are complex with nuances varying across industry

Revenue/Capital

Revenue/Capital

Re-characterisation of expenditure from capital to revenue

- Large increase in amendments relating to re-characterisation of capital expenditure from fixed asset registers
- Concerns that these amendments only seem ‘one way’ therefore we are seeking to understand whether items on revenue account that should have been on capital account
- With a number of new projects nearing production in the Oil & Gas space, there will likely be more amendments as fixed asset registers are updated
- Technology solutions?

Revenue/Capital – Specific focus areas

Correct treatment and allocation of capitalised labour to capital assets

- Salary, wages and other labour costs actually paid or payable to persons employed in business are usually immediately deductible under section 8-1, **except when those costs are outgoings of capital, or of a capital nature.**

- Salaries and wages of employees involved in the construction of capital assets should be capitalised forming part of the Division 40 cost of the asset rather than being immediately deductible.

- Where employees are engaged in a mixture of maintenance and capital projects, costs would need to be allocated accordingly

- Characterisation of labour costs incurred by taxpayer on self-constructed assets is a question of fact and degree which requires consideration of a whole factual matrix of each particular case

- ATO considering need for public guidance

FOCUS AREAS

Revenue/Capital: Specific focus areas - continued

- **Exploration**
  - Taxation Ruling 2017/1
  - Practical Compliance Guideline 2017/16
  - Agreed upon procedures currently being developed
    - Currently consulting with industry
    - Expect to be finalised Q1 2018

.

- **Division 40-80 – ‘First use’**
    - Consultation with industry has occurred
    - Expect to be published Q1 2018

F
O
C
U
S

A
R
E
A
S

Conclusion

- ATO is aiming to provide certainty and assurance on key income tax risks in the oil and gas sector

- Increased guidance being published on key areas impacting the sector
  - Forms the basis of our compliance approach to taxpayers
  - PCGs and other guidance products are able to be used by taxpayers to tell your story (both internally and externally)

- Get involved in consultation
  - APPEA
  - E&R Working Group

FOCUS AREAS