Japanese Tax Mission September 2015

Australian Tax Practice

Structure of the tax system

- Federal system
- Constitution and taxing power
- States v Commonwealth
- State taxes: stamp duties, levies, payroll tax
- Commonwealth taxes: income tax and GST
- C/w v State funding issues

- Income tax legislation:
  - Income Tax Assessment Acts 1997 and 1936
  - Taxation Administration Act 1953
  - Fringe Benefits Tax Assessment Act 1986
  - Superannuation legislation
- Australian Tax Office (ATO) rulings
- Co-operative compliance

- Hot topics:
    - technology and returns
    - role of the profession
    - multi-national company tax avoidance
    - revenue needs and tax reform
    - carbon tax / emissions trading scheme

Australian Business Number & Tax File Number

- income checking

- enterprises to register for ABN

- employees have a TFN

- if no ABN or TFN quoted paying businesses to withhold tax

- ATO can request payment information

Tax Audit Powers

- records to be kept for 5 years

- ATO's access power

  – no warning required

  – wallet authorisations

  – exercised bona fide

  – "reasonable facilities and assistance" "occupier"

Tax Audit Powers (cont)

- ATO's acquisition power
  - specify with reasonable particularity
  - third parties
  - reasonable time to comply
- legal professional privilege
- accountants' de facto privilege
- procedure for contested documents
- accounting firm procedures

Tax Investigations

- taxpayers'charter

- specialist ATO cells

- data matching using ABN or TFN

- desk audits

- small business audits

- large case program

Tax Investigations (cont)

- targeting

  – project based

  – statistical variations

  – TIPS (tax profile)

  – CWIT (companies with international transactions)

  – high net worth individuals

  – other (eg. dob ins)

Tax Returns & Assessments

- self-assessment

- pre-filling

- deemed assessment of companies

- public v private rulings

- interest

  – general interest charge (GIC) on late payment

  – shortfall interest charge (SIC) on amendment

  – overpayments

Tax Returns & Assessments (cont)

- amendment
  - fraud or evasion: anytime
  - avoidance and complex taxpayers: 4 years
  - otherwise: 2 years

Objections & Appeals

- internal complaints section
- Administrative Decisions (Judicial Review) Act
- Inspector-general of taxation
- tax appeals
  - onus of proof on taxpayer on balance of probabilities
  - commences with an objection
  - AAT or Federal Court
  - appeals to Full Federal Court and High Court

Objections & Appeals (cont)

- code of settlement and ADR
- 2014/15:
  - 35 million returns
  - 370,000 adjustments
  - 26,000 objections
  - 700 cases lodged
  - 150 cases decided

Collection of tax

- PAYG withholding
  - tax to be withheld from certain payments
  - employees v independent contractors
  - Regulations
  - variations
  - remitted within 7 or 21 days

Collection of tax (cont)

- PAYG instalments
  - where tax not withheld
  - tax payable quarterly
  - tax = (instalment income for quarter) x (instalment rate)
  - instalment rate = effective tax rate of previous year at current rates
  - variations
  - business activity statements (BAS)
  - individual activity statements (IAS)

Offences & Penalties

- compliance pyramid

- administrative
  - tax shortfall table
  - no reasonable care = 25%
  - not reasonably arguable position = 25%
  - aggravating circumstances = 20% increase
  - voluntary disclosure =20% or 80% reduction

Offences & Penalties (cont)

- judicial

  – penalties vary

    eg. refusal to answer questions

    1st $2200

    2nd $4400

    3rd $5500 and / or 12 months

    x5 for companies

Tax Practitioners

- Tax Agents Services Act 2009
  - registration requirements
  - continuing education requirements
  - insurance
  - tax agent code of conduct
  - outsourcing and supervision
  - dob-in line
- Crimes Act 1914: aiding or abetting

Tax Practitioners (cont)

- ATO assistance
    - high level consultation
    - newsletters, newsroom and website
    - ATO app
    - data benchmarking
    - contact centres and voice authentication
    - MyGov accounts
    - E-tax and my-tax
    - Mydeductions