JTR/IT-refresh -

Australian Government
Australian Taxation Office

Top 100 Income tax refresh review

Top 100 justified trust program
3 July 2024

We acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them, their cultures, and Elders past and present.

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Our commitment to you

If you rely on this document, you have the protections that apply to Guidance – see How our advice and guidance protects you. *To the extent that this document outlines a compliance approach, and you apply that approach in good faith to your own circumstances, the Commissioner will act in accordance with that approach.*

Purpose of this guidance

The purpose of this guidance is to outline our approach and the outcomes sought from a Top 100 Income tax refresh review (**refresh review**).

Background

The Top 100 justified trust program seeks to provide assurance, through the justified trust methodology, that the Top 100 population is reporting and paying the right amount of income tax.

The Top 100 justified trust program is designed to encourage increased compliance and long-term behavioural change through regular coverage and risk detection. The program provides community confidence that the largest businesses in Australia are complying with their income tax obligations. The assurance results also contribute to our whole of system tax gap measure and reporting on the health of our tax system.

Once a taxpayer attains an overall high assurance rating under a justified trust assurance review (**original high assurance review**), we have confidence that it has complied with its Australian income tax obligations and it will enter the monitoring and maintenance (**M&M**) period. During the M&M period, we monitor the taxpayer's disclosures and tax outcomes over the 3 income years following an overall high assurance rating to maintain the level of justified trust obtained. We seek to leverage the high assurance already obtained in relation to ongoing business activities and streamline our assurance activities to focus on new areas of tax risk or where there are significant changes to the taxpayer's business activities (including the tax treatment of those activities). The Top 100 Monitoring and maintenance approach for income tax outlines our approach.

Over time, changes in circumstances affecting a taxpayer including economic conditions, a taxpayer's operations and behaviours, tax law or interpretation, taxpayer reporting requirements and community expectations reduce our ability to rely on previous assurance outcomes despite regular monitoring, requiring us to more comprehensively reaffirm our confidence that the taxpayer continues to pay the right amount of tax, as measured against our objective criteria.

This will be done by conducting a refresh review every fourth income year unless changes in a taxpayer's circumstances or behaviours require an earlier review.

Refresh review approach

The refresh review will resume a whole-of-business approach for the relevant income year, covering the tax outcomes of the entirety of the taxpayer's economic activities and applying the 4 focus areas of justified trust.

We will seek to reaffirm our assurance that the taxpayer is paying the right amount of income tax by confirming our understanding of tax outcomes and refreshing our evidence base with contemporaneous documentation over time where required. Our approach will be tailored depending on the circumstances of the taxpayer. We will comprehensively assure tax outcomes from significant new transactions and new tax risks consistent with justified trust principles.

In ordinary circumstances, it is expected that the refresh review will require less resource investment by both taxpayers and us than the original high assurance review, as existing information, evidence and knowledge are able to be leveraged.

Scope of the refresh review

The scope and intensity applied to a refresh review will in part depend on the relevant facts and circumstances of the taxpayer, including[1]:

- the extent to which the taxpayer's circumstances have remained constant
- changes in the taxpayer circumstances or income tax approaches that may impact our prior level of assurance, particularly where those changes do not align with our existing understanding of the taxpayer (for example, changes to the taxpayer's business, governance or reporting systems since the original high assurance review)
- the future assurance plan, or client next actions, identified in previous reviews that are yet to be assured
- whether any provisional ratings were issued in the original high assurance review or M&M period and the underlying cause of the ratings have not been addressed
- the number of tax risks flagged to market identified
- the taxpayer's tax governance rating
- activities of the taxpayer and disclosures made during the M&M period.

We will consider:

- the last tax assurance report (**TAR**) issued (including Monitoring and Maintenance Assurance report (**M&M assurance report**))
- financial statements
- statement of taxable income and supporting work papers

[1] This is a non-exhaustive list.

- tax return disclosures and accompanying schedules, such as the international dealings and reportable tax position schedule
- country-by-country reporting statements
- results of design and operational effectiveness of income tax controls testing
- any other relevant information for the income year under review.

Taxpayers will be expected to continue to proactively engage with us before and after lodging their tax return relevant to the refresh review and make disclosures of significant or new transactions or where there are material changes before these occur. Where the taxpayer makes a disclosure or notifies us of any of the above circumstances, or where our review detects a significant change or potential tax risk, we will request working papers and evidence supporting the tax treatment.

We will request contemporaneous evidence supporting the tax treatment of significant transactions previously assured such as updated legal agreements and transfer pricing documentation to 'top-up' our evidence base. In some cases, we may take a sampling approach to verify our understanding of tax outcomes of previously assured transactions. The intensity of our assurance activities for previously assured transactions will depend on the level of complexity of the arrangement (with more simple and routine transactions likely to be subject to less intensity), the tax risk inherent in the transaction and the extent to which the tax risk may change over time given changes in the taxpayer's circumstances, tax law and interpretation and environmental factors.

A taxpayer's governance rating may impact the intensity of assurance activities in the refresh review, as we have more confidence and are able to place more reliance on information and explanations provided.

Expectations for each focus area

Our expectations for each focus area in a refresh review are outlined below.

Focus area 1: Tax risk management and governance

A pre-requisite to obtaining overall high assurance is that the taxpayer's income tax risk management and governance framework must have a minimum Stage 2 rating (that is, an assessment that a governance framework is designed effectively). In some circumstances, taxpayers may have received a Stage 3 rating where they have provided us with operating effectiveness testing results during the M&M period.

If there have been no material changes that impact the taxpayer's income tax risk management and governance framework, we will seek to rely on ratings previously obtained, with additional work limited to reviewing:

- material changes made to the design of the income tax governance framework
- the implementation of any of our governance recommendations, including enhancements and the taxpayer's progress on actioning outstanding items from the most recent future assurance plan

- where the taxpayer has undertaken operational effectiveness testing, the outcomes from the testing to assess whether a Stage 3 rating is achieved or maintained
- the impact of any other focus areas on the tax governance framework (for example, understanding the reasons for any amended assessments and the implications for governance and controls).

There may be reasons why we cannot leverage from prior ratings or existing information, evidence and knowledge, including where:

- there has been a material change to the existence or design of a tax governance framework, a change in business structure, a divestment or merger, implementation of new systems and software or business processes
- as a result of the operational effectiveness testing, the independent tester has recommended changes to the design of the governance framework, which we have not yet reviewed
- the taxpayer has yet to provide us with operational testing results, which may indicate that the taxpayer's income tax governance framework is no longer designed effectively.

Where the governance rating assigned during a previous assurance review can no longer be relied upon, the refresh review may include a comprehensive review of the taxpayer's income tax controls to re-assure this focus area.

Focus area 2: Tax risks flagged to market

During the M&M period, we generally limit our review activities to any new tax risks flagged to market (**TRFM**) that arise. For the refresh review, we will take a more holistic approach and seek to verify our assurance for all TRFM that potentially apply to the taxpayer.

Where assurance was previously attained in relation to a particular TRFM, we will seek to verify our understanding and assurance levels placing appropriate reliance on evidence previously obtained. We will also consider the effectiveness of internal controls related to the management of tax risk. To the extent necessary, we will request contemporaneous evidence to 'top-up' our understanding and evidence base. In some circumstances it may be appropriate to take a sampling approach.

For TRFMs not previously assured, the intensity of our assurance activities will be similar to the original high assurance review, reduced to the extent we can leverage previously obtained information and knowledge.

Focus Area 3: Significant or new transactions and specific issues

During the M&M review, we generally limit our review activities to significant new transactions and changes in existing business activities and tax positions. In the refresh review, we will seek to verify our understanding and assurance levels in respect of all significant transactions and obtain assurance over new transactions.

For previously assured transactions, we will place appropriate reliance on previously obtained information and knowledge to reduce the intensity of our assurance activities where possible. To the extent necessary, we will request contemporaneous documentation and working papers to 'top-up' our understanding and evidence base. In some circumstances it may be appropriate to take a sampling approach.

For new transactions and significant transactions not previously assured, the intensity of our assurance activities will be similar to the original high assurance review, reduced to the extent we can leverage previously obtained information and knowledge.

Focus Area 4: Understanding the alignment between accounting and tax

During the refresh review, we will seek to obtain assurance over the accounting and tax results variation. Accordingly, we will continue to conduct full book-to-book (**B2B**), book-to-tax (**B2T**) and an effective tax borne (**ETB**) analysis.

The B2B and B2T analysis will be more intensive than the M&M review, as we seek to refresh our assurance more comprehensively across all material adjustments, not just those identified as new or having changed significantly. However, to the extent we can rely on the knowledge and information acquired during previous justified trust reviews, we expect this analysis to be streamlined and less intensive than the original high assurance review.

We will undertake a full ETB calculation and analysis during the refresh review leveraging the knowledge obtained from the most recent calculation. We will refresh our proxies and assumptions, with reference to those used in the most recent ETB calculations, to ensure these reliably reflect the taxpayer's current circumstances.

Additional review and enquiry in relation to the ETB during the refresh review will generally be limited to transactions which are new or have significantly changed (in terms of nature or amount) since the last ETB analysis was conducted.

Outcomes from a refresh review and next steps

At the conclusion of the refresh review, the taxpayer will be issued with a TAR.

If a taxpayer achieves overall high assurance in the refresh review, a 3-year M&M period will commence, followed by a subsequent refresh review.

Where we have assigned high assurance for a significant or new transaction, a transaction with respect to a TRFM, or a specific tax risk, this means that with respect to this issue, we obtained assurance that the right Australian income tax outcomes were reported in their tax return.

Taxpayers can therefore rely on a high assurance rating to mean we will not initiate any additional review of the tax return for the year reviewed (including assurance or audit activity), other than any issues listed in the future assurance plan or similar work plan, noted as requiring further review, unless there are exceptional circumstances. Similar work plan includes a taxpayer specific justified trust maintenance plan, issues register or annual review plan.

Once overall high assurance has been attained for a year reviewed, it will only be in exceptional circumstances that we will apply compliance resources to review any of the relevant issues in the income year reviewed. The following circumstances are likely to constitute exceptional circumstances:

- legislation is enacted, a final decision of the court or tribunal is made or there is a precedential ATO view that applies retrospectively to the income years reviewed
- a review is required to complement compliance activity or give effect to a determination of another government agency or regulator
- there is a self-amendment or objection to the return for the income year reviewed (we will review the return in relation to the issue covered by the self-amendment or objection and related issues)
- we have been subsequently notified of a disclosure issue or error that should be corrected (relevant factors for consideration include materiality, potential risk to revenue, likely proliferation in the market or consistency with the policy intent)
- there is a change of tax treatment or position in that year or in subsequent years (other than due to a retrospective change in law or a precedential ATO view), particularly where the change in treatment means some amounts are never taxed or double benefits will be obtained for expenditure
- it becomes apparent to us that full and true disclosure was not made
- there is potential application of the general or specific anti-avoidance rules
- fraud or evasion becomes evident to us.

If a taxpayer receives an overall medium or low level of assurance, the M&M period cannot commence and the next actions will be discussed with the taxpayer.

References

Monitoring and maintenance approach

Top 100 justified trust program

Top 100 population

ATO references

BSL: ISP