

Taxing Times

Himashini Weeraratne and Gemma Higgins



Tax Risk in the Current Environment

Himashini Weeraratne, Financial Services Tax Partner



Social expectation and tax

- Post Banking Royal Commission Tax landscape:

01

The changing social expectations (including tax matters).

02

Increased scrutiny and greater conservatism in risk appetite applied by financial institutions.

03

Does the Bank's financing or other activities enable tax optimisation, which may come to be seen as unfair

04

Technical tax implications to be addressed by banks.



Justified Trust

- ATO Streamlined Assurance Review Ratings
- Currently reviewing Top 1,000 Public companies and Funds
- Targeting entities with annual turnover >\$50M
- Four key "Justified Trust" areas of focus:

01

Understanding Taxpayer's tax governance framework (Board & managerial level controls)

02

Identifying tax risks flagged to the market (e.g. Taxpayer Alerts)

03

Understanding significant & new transactions

04

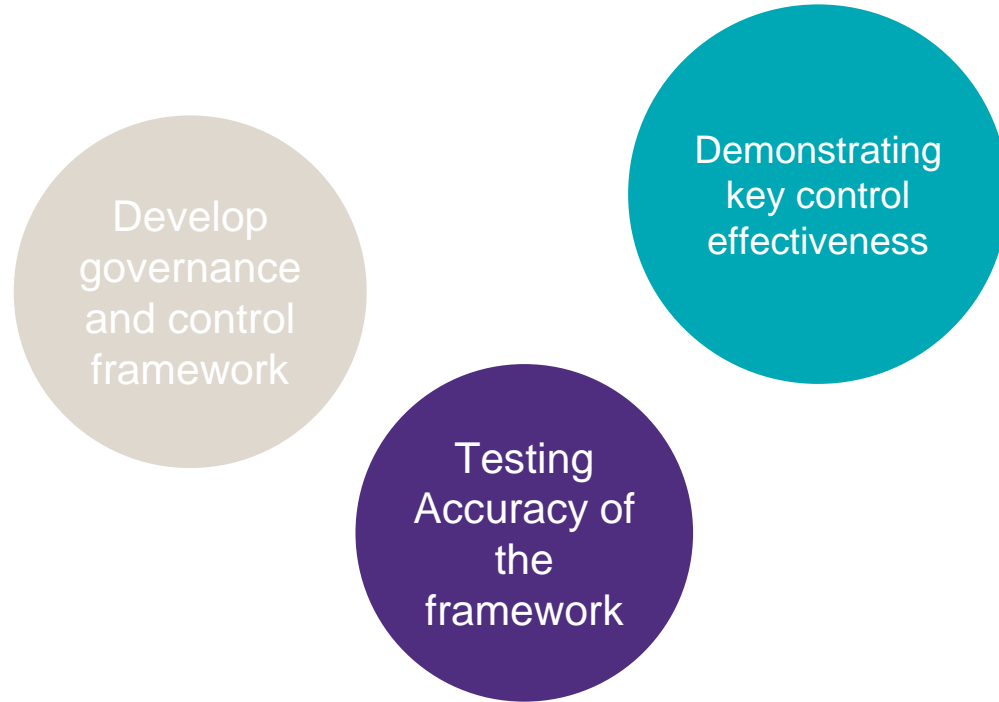
Understanding the differences between tax and accounting positions/outcomes

What is tax risk?

- **Tax risk is the risk that companies** may be paying or accounting for an **incorrect amount of tax** (including both income and indirect taxes), or that the **tax positions a company adopts are out of step with the tax risk appetite** that the directors have authorised or believe is prudent.
- Increasingly the global view that **tax risk management** should be a part of **good corporate governance**.
- The **presence and testing of a tax internal control framework** are an integral part of the risk-assessment protocols used by tax authorities.



ATO expectations



ATO expectations and findings



Transaction testing

- Tax risk and policy framework
- Significant transactions should be identified
- Maintenance of a tax risk register is important
- Ensure senior decision makers are aware of any outstanding issues with the ATO



System testing

- A good tax governance framework includes systems and controls to ensure accurate reporting and identify, assess and manage any tax risks
- Range of testing gives stronger assurance
- Procedures to explain significant differences, unusual or significant transactions,
- engage with external advisers where necessary on more complex matters
- establish procedures to ensure all advice sought is adhered to and practically applied



Control testing

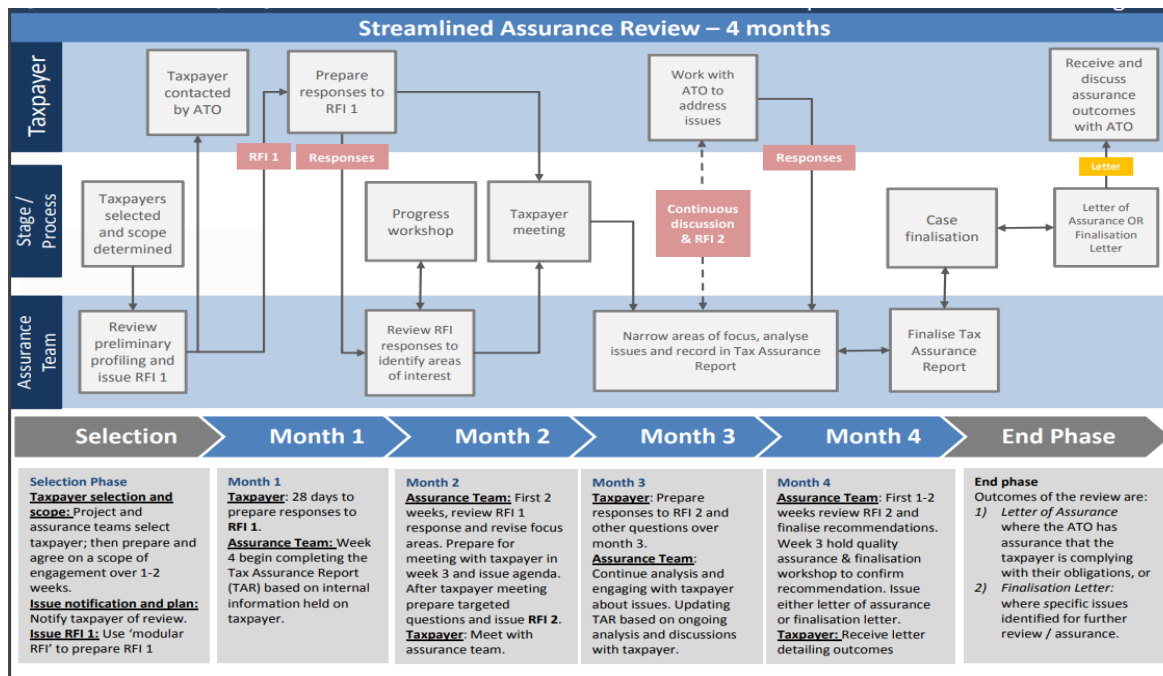
- Ensure your tax governance framework remains effective
- Tax governance needs to support an appropriate tax outcome.
 - a. Regularly reviewing tax governance arrangements
 - b. Regularly checking policies and procedures are up to date with current tax laws
 - c. Having policies that refer to current reference materials and examples available to staff
 - d. Ensuring staff responsible for the taxation function maintain knowledge, skills and experience



Reporting and documentation

- Establish record-keeping systems and practices
- Consider implementing internal controls
- document any reasonably arguable position
- Ensure that all the documents are complete, executed or signed and stored

Streamline Assurance Review Roadmap



Example review structure



Scope

- Carrying out a gap analysis
- An assessment as to the adequacy, completeness and timeliness of the source data for tax calculation and reporting purposes
- Use examples in the ATO's Tax Risk Management and Governance Review Guide



Testing

- Interviews
- Data analytics and reconciliation
- Walk-throughs and process flows



Report

- Key findings, remediation where appropriate
- Documentation and publish report to senior management and Board

Overview of AASB Int 23

What is AASB Int 23?

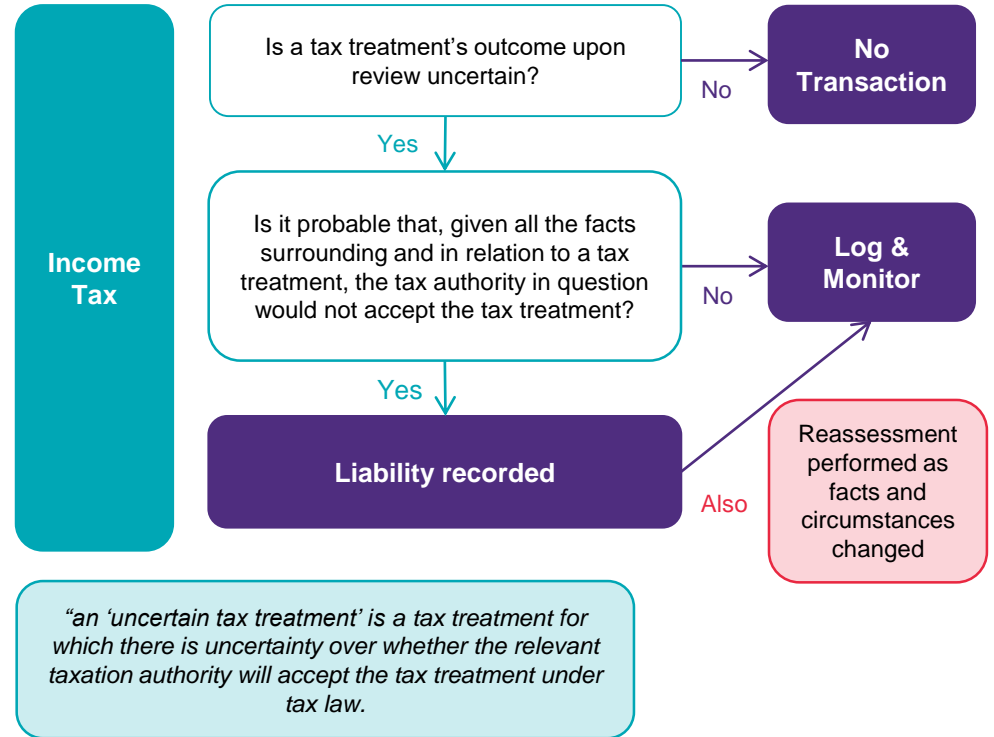
AASB Int 23 is not new – it rather clarifies how to apply the recognition and measurement requirements of AASB 112 “Income Taxes”.

- US GAAP has had a similar concept for several years under Fin 48 Accounting for Uncertainty in Income Taxes.

It applies :

- from 1 January 2019; and
- To all entities applying AASB’s including those preparing general purpose accounts, or, those required to be lodge with ASIC.

Specifically it clarifies how to recognise and measure current and deferred tax assets/liabilities where there is uncertainty over a tax position.



What is AASB Int 23?

AASB Int 23 only applies to an entity when the following criteria are satisfied:

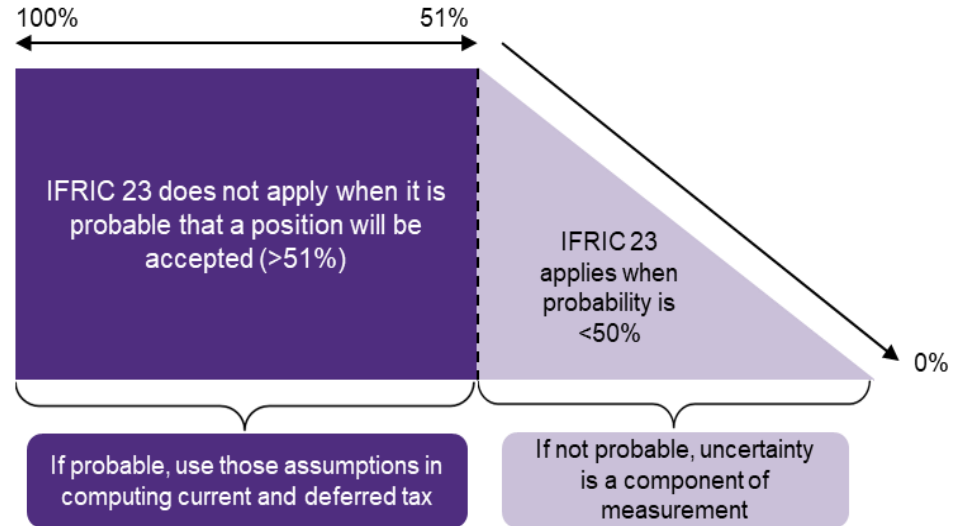
- Uncertainty exists over an income tax treatment (i.e. TP, losses, income taxes – revenue recognition) being accepted by a tax authority; and
- It is not probable the tax authority will accepted the treatment adopted – that is it is 50%+ likely that the tax authority will not accept the position.

This assessment is based on the judgement of management and the auditors.

It is important that in assessing AASB Int 23 all periods subject to review by a tax authority need to be considered. The key timeframes are:

- Income tax – 4 years from lodgement.
- TP – 7 years from lodgement.

Judgement is a key factor for AASB Int 23 – that of management and the auditor.



Goods and Services Tax

Gemma Higgins – Indirect Tax Director



JobKeeper

JobKeeper for Financial Suppliers

The recent introduction of the JobKeeper subsidy has proved complex for Financial Suppliers to interpret and apply.

Turnover Test

- The decline in turnover test is based on GST turnover
- "By design, not error"
- Excludes input taxed supplies
- Includes any taxable supplies – no matter how small
- Intra-group supplies included

Industry approach

- COBA and Fintech Australia have approached Treasury on the issue
- "No appetite to address industry-specific issues"
- Alternative tests available

Correct GST classification of supplies may enable Financial Suppliers to access the JobKeeper subsidy.

GST Recovery and ATO guidance

ATO Activity – Update

In 2019 the ATO issued draft guidance that impact different areas of the Financial Services industry.

Specifically, the ATO is seeking to clarify its views on determining the extent of creditable purpose in relation to credit card issuing businesses and transaction accounts.

Credit card issuing businesses (GSTR 2019/2)

- Applies to credit card issuing business in determining GST recovery.
- Narrows the assessment of ‘creditable acquisition’ to being that of an objective assessment to a ‘relevant connection’ of making of input taxed supplies, rather than considering the relationship between the acquisition and the broader enterprise.

Transaction Accounts (GSTR 2019/D1)

- Applies to ADIs such as banks and credit unions and considers the GST recoverability of acquisitions related to the supply of transaction accounts (in four-party payment systems) to consumers / businesses such as everyday, savings, cheque, deposits and accounts which have overdraft facilities.
- Consistent with position in GSTD 2018/D1, narrows the assessment of ‘creditable acquisition’ to being that of an objective assessment to a ‘relevant connection’ of making of input taxed supplies, and limiting the apportionment where such supplies may also serve a broader commercial objective.
- Consequently, GST recoverability will be significantly more finite, resulting in greater GST leakage for ADIs.

GST Governance and Record Keeping

GST Governance and Record Keeping

The ATO is seeking assurance that financial suppliers are correctly reporting their GST payable, and GST credits claimed.

Tax Governance Framework

- Appropriate for size and complexity of business
- Must be able to explain:
Calculations, Estimates, Choices,
Any elections made.

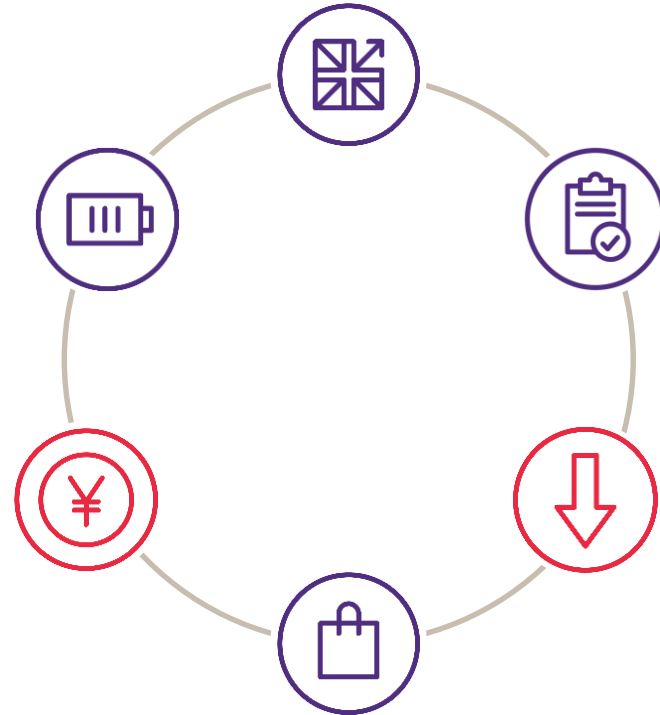
Evidence

- Roles and responsibilities
- Tax Control Framework
- Sign-off procedures
- Integrity of tax positions
- Appropriate systems and processes
- Regular reviews

Priority Issues

The ATO are focusing their reviews on the following priority issues:

- Determining extent of creditable purpose
- Reduced credit acquisitions
- The reverse charge for recipients of cross-border supplies
- Rights for use offshore
- Significant or unusual transactions



Thank you

Questions

If you would like to find out more,
please get in touch.



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