

Tax risk and governance

Top 500 private groups tax performance program

Having recognised that some Top 500 private groups conduct the majority of their activities and derive most of their income from passive investment, the ATO has clarified its Tax Governance expectations from those groups in a recently-released [Guide](#).

Who is in the Top 500 population?

Private Groups with:

- > \$500m net assets, regardless of turnover
- > \$200m turnover and > \$250m net assets
- Market leaders or groups of specific interest

ATO's focus areas

In November 2025 the ATO released its finding reports into the key risks and issues it has identified in the Top 500 population, being:

- Trust distributions outside of the 'family group' where a family trust election is in place;
- Complex wealth extraction arrangements from trusts that breach integrity rules such as section 100A (whereby the taxable beneficiary must also be the economic beneficiary);
- Trust distributions to ineligible beneficiaries;
- Division 7A, regarding benefits from private companies to their shareholders and associates;
- Capital / revenue distinction in transactions, particularly involving real property;
- Succession planning;
- Property development, including related party contracts, profit making intention, GST, and capital vs revenue distinctions;
- Cross-border financing undertaken on non-commercial terms;
- The operation of not for profit entities.

ATO's justified trust methodology

Where 'justified trust' is obtained, the ATO have introduced a 'monitoring and maintenance' period of 3 years for Top 500 groups. This is a significant benefit to the group as the ATO will then only seek to understand changes to the group's operating environment, verify the treatment of new tax issues and evaluate the impacts of other material changes to the group during this period.

The ATO has confirmed that during the monitoring and maintenance phase they will largely rely on the effectiveness of the group's tax governance framework to mitigate tax risks.

Taxpayers should expect continuing attention from the ATO until they achieve a justified trust rating for the whole group.

To establish justified trust the ATO reviews four key areas including:

- Effective tax governance;
- Tax risks flagged to the market;
- Ongoing and atypical transactions; and
- Alignment between accounting and tax results

Taxpayers need to satisfy all four key areas in order to achieve 'justified trust' for the whole group. Where this is not achieved, 'partial tax assurance' can also be obtained on an entity-by-entity basis (i.e. for a particular company or a trust within a private group)

Privately owned groups also selected for a Top 500 GST Assurance Program will be subject to a fully integrated assurance engagement and will require the group to achieve justified trust across both income tax and GST.

Effective tax governance

The 4 principles of effective tax governance that the ATO focuses on include:

- Integrity in tax reporting*
- Accountable management and oversight
- Recognise tax issues and risks*
- How and when an entity seeks advice

Tax governance forms the foundation on which the group can demonstrate the other three key areas of justified trust.

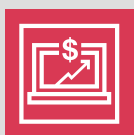
ATO Passive investor guide for Top 500 private groups

The ATO issued its guide for 'passive' Top 500 groups on 12 April 2024. In the guide, the ATO noted the key area of focus in Top 500 passive groups is principle 2.

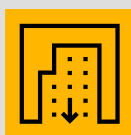
Who is a "Passive Investor"?

According to the Guide, a Passive Investor to which the Guide applies is a group "whose income from regular activities is derived mainly from passive investment activity (greater than 90%)".

The Guide also provides that there are three (3) classes of passive investment activity considered:



Income from
shares in listed
companies



Income from
leasing of
real property



Interest
income

What is the ATO Governance and Justified Trust approach to Top 500 passive investors?

The ATO is offering a simplified engagement under the differentiated approach. Top 500 private groups that haven't achieved justified trust will enter "provisional justified trust" if:

- all material tax issues have been assured;
- tax treatments that have been applied to the way wealth has been extracted are sound; and
- the Top 500 private group does not have an effective tax governance framework in place.

In these circumstances, the Top 500 group will have 12 months from entering provisional justified trust to develop an effective tax governance framework. During this 12-month provisional period, no assurance activities will be carried out.

Successful design of an effective tax governance framework will enable justified trust. The 3-year monitor and maintain period will start from the financial year following the year that provisional justified trust was provided.

Failure to develop an effective tax governance framework within 12 months will result in assurance activities restarting from the last assured financial year (prior to provisional justified trust).

* The ATO focuses on these principles in GST governance assessments.

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Next steps top 500

passive investors

Qualifying groups are encouraged to ensure:

- 1 They take steps to achieve sufficient assurance in ATO engagements; and
- 2 Develop adequate governance documentation, to achieve justified trust with reduced compliance activity.

We can assist with meeting these conditions to help simplify compliance obligations imposed by the ATO in Top 500 engagements.

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