

ATO review on litigation trends



The Australian Taxation Office (ATO) has recently published a review of its tax and superannuation litigation trends, “*Your case matters 2012*”. This is the ATO’s first publication reviewing these trends. The statistics show that the majority of cases are favourable to the ATO (though this would include partial wins and matters settled), though it recognises that more recent trends have shown taxpayers having more success.

The ATO acknowledges the Government’s desire to minimise the cost and impact of litigation through alternative dispute resolution mechanisms (such as mediation) and its analysis shows that there is a positive trend towards resolving matters prior to hearing. This undoubtedly is an area that will develop further over coming years given comments from both Government and the courts about the costs of litigation generally, and as the ATO becomes more comfortable participating in these mechanisms. The ATO will however always be, to some extent, constrained by its Code of Settlement Practice, which should always be taken into account when trying to resolve matters with the ATO.

In raw numbers, litigation touches a very small portion of income tax assessments. For example, in 2010-2011, 15.6 million income tax returns were lodged, against which 17,400 objections were lodged, with only 401 appeals filed in either the Administrative Appeals Tribunal (AAT) or the Federal Court.

There is a clear preference for taxpayers, when proceeding to litigate against a decision of the ATO, to take their matter to the AAT, which is a more informal and generally cheaper jurisdiction than the courts. Of the 1085 cases in progress in the 2010-2011 period, 814 (75 per cent) were in the AAT (or its Small Taxation Claims Tribunal).

When discussing matters where the ATO has conceded a case after it has commenced, the most common reason for this is fresh information being provided by taxpayers, which indicates that better communications between the ATO and taxpayers could help reduce and resolve dispute at an earlier time. This is clearly a point to keep in mind in any dealings with the ATO prior to litigation.

The statistics on test cases funded by the ATO show that there are only a small number of applications made in any year (between 30 to 50 per year over the period) and a smaller number approved. In the 2010-2011 period 12 test cases were decided which resulted in law clarification from eight matters, and legislative

change from the other four. The ATO’s guidelines on its test case funding program set out the various factors that need to be satisfied for a grant of funding, which may go some way to explain the relatively low number of applications.

In relation to legal costs, in 2010-2011 the ATO spent approximately \$81 million on legal costs - \$34 million on staff costs and \$54 million on external legal services (which would include both solicitors and counsel), although these figures include fees the ATO spent on non-litigious matters.

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