Tax Governance Framework
why should you be thinking about tax governance.

1. **ATO expectations** – A comprehensive tax governance framework is expected and/or required by the ATO

   “We have embraced the increasingly global view that tax risk management must 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 Tax Risk Management & Governance Guide

2. **ATO scrutiny** – Directly impacts the ATO’s risk assessment and level of ATO scrutiny

   “When appropriate we do assess the tax governance processes of large business taxpayers that we have under review ... If we do need to assess your tax governance processes, having a strong tax control framework within the company gives us confidence that tax risks are well managed. This means it may take less time to assess whether your controls align with the principles outlined in this guide. Alternatively, the absence of a strong tax control framework may signal to us that more resources are necessary to fully assess tax risks” – ATO Tax Risk Management & Governance Guide

3. **Internal management tool** - Establishes a corporate’s tax risk appetite and tax risk tolerance and embeds tax risk management into business-as-usual processes

   In April 2016, the Deputy Commissioner stated that the ATO “needs to be satisfied that a tax governance framework not only exists, but that it is being lived in practice” in a discussion on the 4 pillars of Justified Trust

4. **The cost of not doing so** - Tax is a material business expenditure – it makes sense to actively manage it!

   The 2016 Federal Budget penalty increases (100-fold) for non-compliance with lodgement obligations

   Significant global entities that fail to lodge their tax documents with the ATO will receive a maximum penalty of $450,000, amounting to an increase of 100 times (previously the penalty was $4,500). In addition to this, where a multinational company makes a statement to the ATO that is "reckless" or "careless" the penalties will be doubled. These increased penalties will apply from 1 July 2017.

5. **The front page of the newspaper test** – Good tax risk management is a key reputational tax risk management tool and is increasingly expected by investors

   “Apple, Google, Microsoft, Hewlett Packard, and Cisco Systems are only generating an average gross profit of about 5.5 per cent compared to the average of their parent groups which clock profits closer to 24 per cent rates, the analysis shows” - Eighteen of 70 tech companies on the ATO transparency list paid no tax, Sydney Morning Herald, 18 December 2015

why now?

It is approximately a 1 year since the ATO published its Tax Risk Management & Governance Review Guide

The Voluntary Tax Transparency Code has been released by the Board of Taxation

Now is the opportunity to embed a tax governance framework into your broader Governance Framework

The benchmark has now been set, there is no reasonable excuse!
impact of tax governance on ATO risk rating.

**Overall approach** - The ATO uses the risk differentiation framework ("RDF") to **assess your tax risk** and determine the **intensity of their response** in a coherent, consistent and considered way.

How does tax governance impact my RDF assessment

"The RDF is based on the premise that our risk management approach to tax compliance should take account of our perception of both the:

• **estimated likelihood of you having a tax position that we disagree with**, or you (through error or omission) have misreported your tax obligations (as evidenced by your behaviour, approach to business activities, **governance**, and compliance with tax laws)

• consequences of that potential non-compliance (dollars, relative influence, impact on community confidence)."

ATO Risk-differentiation framework fact sheet, 30 September 2014

**Key taxpayers tax note!**

"If you are identified as a key taxpayer, we **take a particularly close interest in your risk management and governance frameworks to mitigate tax compliance risks.**"
what is an effective tax governance framework.

**Strategic Level**
- Board and Management informed and involved in Tax and Tax Risk Management
- Documented and Board approved Tax Control Framework (policies, procedures, systems and controls)
- Process to evaluate and manage tax risks arising on material transactions
- Known and understood tax risk appetite, approved by the Board
- Embedded into the broader governance framework and business culture
- Adequate provisioning for potential tax liabilities
- Aligned with the ATO’s Tax risk management and governance review guide dated 20 July 2015

**Operational Level**
- Clearly defined and understood roles and responsibilities around Tax Governance
- Process to identify, report and manage tax risks
- Accurate and reliable tax reporting
- Adequately resourced tax function
- Monitoring and implementation of changes in tax law and practices
- Timely compliance with all reporting and compliance obligations
overview of a tax governance framework.

**Code of Practice.**
- The Group’s fundamental approach to tax and tax risk
- Documented and Board approved

**Roles and responsibilities.**
- Overall responsibility assigned to Board member(s)
- Management obligations for identifying, managing, measuring, controlling tax risk; and tax compliance and reporting
- Defining applicable taxes and tax risk

**Tax Reporting.**
- Board and management reporting
- Tax risk register

**Significant & material transactions.**
- Defining significant and/or material transactions
- Threshold for escalation
- Offshore Dealings
- Process for internal approval

**Tax Compliance.**
- Internal controls and record keeping

**Supplementary documents.**

[www.portoria.tax](http://www.portoria.tax)
why portoria.

1. **Experience** – with over 45 years of combined professional and commercial experience, we bring first hand practical experience and pragmatic solutions to the table

2. **Commitment** – we will design a Tax Governance Framework that is tailored and “fit for purpose”

3. **Value** – we recognize our services need to represent outstanding value to our clients. Accordingly, we will put together a comprehensive and competitively priced tax governance solution tailored for your business

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**David is a highly experienced tax professional with over 30 years experience in both professional practice and in a major global Investment Bank.**

David is a Chartered Accountant, Chartered Tax adviser, and a Nationally Accredited Mediator.

David is the founder and Executive Director of Optimum Tax Management and Optimum Dispute Resolution and Mediation Services. Prior to that, David was a Managing Director at Deutsche Bank and the Head of Group Tax - Asia Pacific and Australia/NZ for 16 years, leading a team of over 30 tax professionals and responsible for managing the tax affairs for the Bank over 17 countries. David was a member of the Global Group Tax Management Committee for the Bank, responsible for leadership of the Group Tax function and setting the tax strategy of the Bank globally.

Prior to Deutsche Bank David was with Price Waterhouse.

**James is the Managing Director at portoria. and has over 15 years experience at investment banks and Big 4 accounting firms.**

James is a registered Tax Agent, a Chartered Tax Advisor, a Chartered Accountant ANZ and a Solicitor of the NSW Supreme Court.

Prior to forming portoria. James was the Head of Tax Advisory (Asia Pacific) for UBS AG based in Hong Kong.

James led the Tax Advisory Group and was responsible for the provision of tax advisory services to the Investment Bank, Wealth Management and Global Asset Management across Asia Pacific (including managing the Australia & New Zealand Group Tax Team). James was a member of the Global Tax Management Committee and the Global Tax Sensitive Transactions Committee at UBS.

James was also the co-chair of the Asia Securities Industry & Financial Markets Association - Product Tax Committee, which represents large buy and sell side financial institutions in Asia in respect of taxation matters.

Before UBS, James was the Australia & New Zealand Tax Manager at UBS responsible for all tax compliance and tax advisory matters.

James was also at KPMG for 9 years as a Senior Tax Manager in the Banking and Finance division.

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www.portoria.tax
We offer a comprehensive tax governance solution. We will work with your business to design, draft and implement a tailored tax governance framework, that ticks all of the ATO requirements.

phase one

Review and Assessment

- Undertake self assessment
- Complete the Tax Governance Review questionnaire
- Prepare gap analysis

phase two

Design and drafting

- Design and draft a Tax Governance Framework document
- Design and draft a template Board Report
- Design and draft a template Management Report
- Design and draft a template Tax Risk Register
- Design and draft a Tax Compliance schedule
- Design and draft a Significant and Material transaction sign-off

phase three

Implementation

- Finance, business and tax training on governance framework
- Trial period drafting and assistance

- Board and Management informed and involved in Tax Risk Management
- Documented and Board approved Tax Control Framework (policies, procedures, systems and controls)
- Known and understood tax risk appetite, approved by the Board
- Clearly defined and understood roles and responsibilities around Taxes and Tax Governance
- Aligned with the ATO’s Tax risk management and governance review guide dated 20 July 2015
- Embedded into the broader governance framework and business culture

- Accurate and reliable tax reporting
- Adequately resourced tax function
- Monitoring and implementation of tax law changes
- Timely compliance with all reporting and compliance obligations

- Process to identify, report and manage tax risks
- Adequate provisioning for potential tax liabilities
- Timely compliance with all reporting and compliance obligations
- Process to evaluate and manage tax risks arising on material transactions
next steps.

1. Review and critically analyse your existing tax governance framework

2. Complete our tax governance review questionnaire and we will provide you with our no-cost high level assessment of the quality of your tax governance framework

3. Engage us to conduct a more detailed review of your tax governance framework and provide a detailed report on the quality, gaps, and areas for improvement

4. Work with us to design, develop, draft and implement a comprehensive tax governance framework
contact us.

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“we have the flexibility to offer a solution that is unparalleled in the Australian tax market”
Appendix 1.

Tax Governance Framework template
some more detail. - draft template

1. Introduction

2. Code of practice
   - Responsible corporate taxpayer
   - Responsibly manage tax and tax risk and ensuring full compliance with all prevailing tax laws
   - Cautious approach to tax risk, having due regard to the spirit and intention of Australian tax laws (ie principles based application)
   - Transparent and collaborative relationship with ATO
   - Commitment to payment of “fair share” of income tax
   - Preservation of Shareholder value
   - Only engage in commercially driven transactions which have a low level of tax risk
   - Significant and material transactions require specific approval process

3. Roles and responsibility

Assigns overall responsibility for Tax to a board member, and then sets out management roles and responsibilities for identifying, managing, measuring, controlling and reporting various types of taxes and tax risks.

3.1 Scope/application

Applies to the following types of taxes/tax risks:
   - Income tax
   - Capital gains tax
   - Transfer pricing
   - Research & Development
   - Withholding tax
   - GST
   - FBT
   - PAYG (instalments and withholding)
   - Payroll tax & SGC
   - Stamp duty, customs & excise
some more detail. – roles and responsibilities

3.2 Board of Directors

- Outline role and responsibility of company directors and any associated delegation (e.g., to the audit committee)
- Board level skills matrix - Outline the financial/tax literacy and tax knowledge at the Board level
- Formal endorsement of Tax Governance Framework (including specifically the Code of Practice)
- Assign responsibility for Tax to a specific Board member(s)

3.3 Senior Management

- Management to set responsibility for managing compliance with all tax types the organisation is liable for
- Management should ensure sufficient capacity and capability in the Tax function and other responsible areas to enable effective management of all taxes and tax risk
- Assurance of Tax Governance Framework and internal controls for tax risk
- Sign off of significant and material transactions (as required – see below)
- Review and consideration of tax reporting and tax risk issues presented by Group Tax

3.4 Tax Function

- Overall responsibility for managing and controlling corporate income tax
- Ownership of tax expense and deferred tax lines for accounting purposes

Tax Function (cont.)

- Final determination of tax technical positions
- Responsibility for technical tax risk reviews of business divisions
- Review and sign-off of operational tax responsibilities and processes (e.g., GST)
- Ownership and management of relationship with tax authorities, including management of audits, etc
- Advising Business Units and Corporate of legal and administrative tax changes and their impact on the Group
- Required to ensure that staff are made appropriately aware of their roles and responsibility under the Tax Governance Framework
- Responsible for ensuring/maintaining technical capability of Tax Function (e.g., monthly tax training) and ensuring that staff involved in the preparation of tax compliance returns/obligations are appropriately informed, trained and managed

3.5 Staff

- Roles and responsibility of staff to identify, report and escalate tax issues and tax risks
- Attendance at staff training on tax corporate governance procedures
4. Tax reporting

Details how the Board and Senior Management are informed of tax and tax risk matters and the effectiveness of the Group’s Tax Governance Framework

4.1 Board reporting

- Timing (eg audit committee)
- Tax Board report covering:
  - Tax profile (ETR analysis)
  - Material tax risks and any provisioning
  - ATO activity (audits, reviews, disputes, etc)
  - Significant & material transactions
  - Status of particular tax projects
  - General tax landscape and tax changes overview

4.2 Management reporting

- Timing (eg monthly Group CFO meeting)
- Format:
  - Tax Management report covering:
    - Tax profile (ETR analysis)
    - Material tax risks and any provisioning
    - ATO activity (audits, reviews, disputes, etc)

Management reporting (cont.)

- General tax landscape and changes
- Compliance status update
- Significant & material transactions
- Status of particular tax projects
  - Tax risk report
  - Tax risk register

5. Significant and material transaction approval process

- Escalation threshold (ie summary of acceptable level of tax risk for day-to-day and what requires escalation)
  - Materiality ($)
  - ETR limits
  - Objective level of tax risk
  - Strategic importance
  - Key sensitive area – Offshore expansion/setup, related party transactions, legal/accounting/tax differentials and financial products.

- Internal approval process
  - Roles and responsibilities
  - Timing
  - Review by Tax Function – approval guidelines
  - Decision points
  - Escalation
  - Requirement for external advice
6. Tax compliance, internal controls and record keeping

6.1 Tax compliance

- Tax Compliance schedule
- External advisor report / transmittal letter

6.2 Internal control testing

- Tests to determine effectiveness of tax control framework
- Board endorsement of control testing framework and Tax Risk & Governance Policy
- Audit committee review of results (eg as part of the CFO report)
- Documented assurance from CFO of the design and operating effectiveness of the controls

6.3 Data and record keeping

- Data integrity controls
- IT general controls
- Record keeping aligned with tax requirements

7. Supplementary documents

- Further provisions approval document
- Tax compliance manual – explains flow of accounting information, preparation procedures and work flow, analytical reviews and tax disclosure processes
- Tax accounting manual
- FBT manual
- Transfer pricing policy