



Industry surprised by ATO crackdown on directors fees

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Industry professionals have expressed surprise at the Tax Office's warning to business that they should not claim deductions for directors' fees without having firm plans on when they will be paid.

Tax Commissioner Michael D'Ascenzo has flagged an ATO crackdown on arrangements with an "artificiality" about them, and advised businesses to seek independent advice or the office for a private ruling on their individual circumstances.

"We are concerned that some companies may be using this arrangement to claim amounts that are never intended to be fully paid out," D'Ascenzo says.

"As the fees aren't returned as income until received, this practice results in a mismatch of deductions and income."

"We are not concerned with normal business practice where a company passes a resolution that creates an unconditional commitment to pay directors fees and the payment occurs within a reasonable time period which could extend outside the immediate year of income."

Tax Commissioner Michael D'Ascenzo has said the Tax Office has identified an arrangement where companies resolve to commit to pay an amount for directors' fees but qualify the resolution so that payment is not made until an unspecified time, having regard to future cashflow.

Sue Prestney, principal of MGI Business Solutions Worldwide, says the issue is not a new one so the comments were likely triggered by an increase in problems uncovered by the ATO.

"To extend over one financial year is often the case, especially with bonuses because often there's an arrangement with employees that we'll pay you a bonus if they achieve certain things or the profits are a certain amount. That's quite a

common arrangement, but to expect to get away with a deduction was never going to fly."

Prestney says it's difficult to know what the ATO would consider a suitable timeframe for payments, but three months after the end of a financial year might be the right amount.

But Yasser El-Ansary, of the Institute of Chartered Accountants, says the warning was consistent with the ATO's normal cycle of identifying trends, and informing the public.

"It could be to do with the way the law is being interpreted, or how advisers are interpreting it," El-Ansary says.

"The comments are an affirmation of how the law ought to be interpreted, and their expectation that the taxpayer ought to understand the law."

CPA Australia's Paul Drum says the issue may have become more prevalent in these cash-strapped times.