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ATO to Target Trusts

Tax Update

Each year, the Australian Taxation Office (**ATO**) announces its compliance focus for the year ahead and provides some insight into where it will focus its attention. The intention each year is to claim back lost revenue and catch out those taxpayers who "cheat the system".

For the current financial year, the ATO has announced that one of its targets will be trusts and in particular, the misuse of trust structures.

Establishing the Trusts Taskforce

Earlier this year, a Senate inquiry into the family business sector called for the Board of Taxation to look into the tax rules affecting trusts.

In the 2013-14 Federal Budget, the Government announced that it would provide $67.9 million over four years to the ATO so that it could audit taxpayers who have been involved in tax avoidance or tax evasion schemes using trusts. The ATO has established a "Trusts Taskforce" to carry out the compliance activity.

The new taskforce will target promoters, individuals and businesses that seek to "misuse trusts in an attempt to avoid paying their fair share of tax". However, Deputy Commissioner Michael Cranston has said that for the most part, the 700,000 trusts used by family businesses across the nation are legitimate trusts with only a minority manipulating the law.

The ATO suggests that the following arrangements are likely to attract attention:

a) Trusts or their beneficiaries who have received substantial income but who are not registered, or have not lodged tax returns or activity statements.

Who does this affect?

- Individuals and businesses using trusts.

Article Highlights

- The ATO has established a "Trusts Taskforce" charged with reviewing and auditing trusts.
- The Trusts Taskforce will target those businesses and individuals who have misused trusts to avoid paying their share of income tax.
- A full legal review of the history of each trust to ensure activities undertaken are in compliance with all laws is recommended.

b) Trusts that have offshore dealings in known tax havens.

c) Agreements which have no real commercial basis and which appear to only be in place to direct income entitlements to a low-tax beneficiary while benefits are enjoyed by other beneficiaries.

d) Artificial characterisation of amounts, such that tax outcomes do not reflect the economic substance of the arrangement, with the result that some parties have received substantial benefits from a trust while the corresponding tax liabilities have been attributed elsewhere (e.g. resolutions which have been made and artificially reduce trust income in an attempt to redirect minimal present entitlements but full tax liabilities to entities with no capacity or intention of paying).

e) Changes made to trust deeds to achieve a tax planning benefit with no credible explanation.

f) Transactions that have excessively complex features or sham characteristics.

While the ATO has offered the above features as examples of what will attract its attention, the list is not exhaustive and the ATO may be drawn to look further at the tax history of a trust for any number of other reasons.

What You Should Do

It is worthwhile conducting a full legal review of the history of each trust (not just those trusts that appear to be at risk after having reviewed the comments above) to ensure that the activities of the trust have been undertaken in compliance with all laws (including but not limited to all tax laws).

If you are concerned about any aspects of your trust's compliance history or require assistance, please contact Jemal Zagami, Partner on +61 8 9426 6612.

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