

BEWARE OF TAX INFORMATION GAINED FROM AROUND THE BAR-BE-QUEUE

ONE OF THE MOST FREQUENT SOURCES OF QUESTIONS

We are often asked by clients about whether they can make certain deductions or follow certain tax strategies. If the response is in the negative, then they often say that someone told them around the bar-be-queue or someone told them at a function that they have made these claims and have never been questioned. Or worse still, they say that their Accountant said to do this was ok.

One of the most common issues is the laws revolving around alienation of income – that is, running a business through a company, trust or partnership and splitting income when they are not entitled to under these provisions – such as construction worker contractors.

Here are some comments I would like to make about this.

- Often, people make deductions or follow certain tax strategies in ignorance of the law and they may not be picked up for many years. People forget that the Tax Office do not check every tax return or may not check any particular taxpayer's return for many years and this will lull them into a false sense of security.
- Everyone's circumstances are different and whilst many of these subjects are discussed around the bar-be-queue, the whole story is often left out or even embellished. So one person's income tax circumstances are different to another's.
- Sometimes taxpayer's obtain personal tax rulings from the ATO about their circumstances and these don't necessarily apply to your own circumstances. Rulings are issued based on presented facts and cannot be construed to be relevant to any other set of circumstances.

WHY WE ISSUE WARNINGS TO CLIENTS WITH THEIR TAX RETURNS

The consequences of not complying with the tax laws are horrendous, both financially and emotionally. Penalties raised by the tax office for underpaid tax as a result of an audit is high (up to 200% of the tax avoided plus interest), and, there is a significant emotional cost of dealing with an invasive tax audit that can affect business, employment and family.

On top of this, there are our charges for assisting clients to manage and represent them in any audit or investigation and any ongoing litigation undertaken by the Tax Office.

In addition, as a Tax Agent, our practice is also affected by any client found by the Tax Office to be deficient in their income tax return disclosures in a number of ways as follows:-

- It could lead the Tax Office to further investigations of our other clients.
- There is a time cost factor that we will have to bill the affected client for assisting them in the audit process and this only compounds the financial problems suffered by the client.
- Our agency is measured on the number of delinquent clients and this goes against us in our renewal process every three years.
- It significantly increases our administration cost that cannot be directly charged to clients but can increase our charge rate that affects all clients.
- Above average audit activity with our clients can lead to higher professional indemnity insurance that we would have to pass onto all our clients.

SELF ASSESSMENT AND THE CASH ECONOMY

A tax return is prepared and submitted on the basis of self assessment. That is, the Tax Office is assuming that a taxpayer has prepared their return correctly and complied with all the provisions of the tax law as they do not check returns after lodgement and prior to assessment. In fact, the assessment process is automatic. The Tax Office then either randomly or by other methods of selection (described further) check returns for compliance by way of various types of audits. There is a lot of debate about the extent of audit activity; however, there is a high probability that most taxpayers at some stage could receive some form of audit.

It is public knowledge that the cash economy is huge in this country. There is also a significant culture in this country of trying to cheat the system for whatever the motive and the bar-be-queue is fertile ground for formulating strategies. We see that there are many businesses where there is a potential to take cash income and the Tax Office are aware of these as well through research and cases detected and data matching. Taxpayers are inclined to take risks because there is a perception that the chances of getting caught are low. Please be assured that this is not the case. My opinion is that **it is not worth the risk**. So often the amount of tax avoided is small compared to the consequential costs of dealing with an invasive audit.

OTHER METHODS OF NON-COMPLIANCE DETECTION AND INVASIVE AUDITS

Think of how easy it is these days with the technology of computers to manage day to day life and access to vast volumes of information. So do the Tax Office. They have vast amounts of revenue collection to be gained by investing in this sophistication.

The Tax Office is continually increasing their efficiency in methods of computerized data matching. That is, they have access to large amounts of information both from other government departments, and also from private enterprise such as banks. They simply cross match this data with specified parameters to detect tax fraud in many different areas. This matching is then cross matched against information in tax returns often by industry segments and any return that has a mis-match, is automatically tagged for an audit.

In addition, self employed tax payers are benchmarked against industry standards in terms of gross income and business expenses. If a taxpayer's income or expenses is vastly different, they could be scrutinized.

Invasive audits are those where the tax office will investigate assets and match against income. They could also search homes and work premises for evidence of assets purchased if they believe that there is under-disclosed income. These audits could also investigate patterns of personal spending and could lead to other people being involved.

TAX SCHEMES

Beware the tax scheme. If it sounds too good to be true, then it isn't. We are aware that there are some tax practitioners promoting aggressive tax schemes that do not involve realistic investment returns or are based on perceived loopholes in the legislation. Again, the Tax Office is very vigilant in this area and if a scheme is detected, then any Tax Agent known to engage in the promotion of that scheme becomes a target for a global audit of all clients attached to that Tax Agent. That is, all of a Tax Agent's clients can expect an audit and both the clients and the Tax Agent can be bogged down in ongoing Tax Office scrutiny and litigation. Details of known schemes can be found on both the ATO and ASIC web sites. Our role is to ensure that you conform to the tax laws and only pay that amount of tax that you are required to pay within the tax laws. Sensible tax planning is always recommended and we include this as part of our service.

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