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Local government payments in ATO sights

The ATO has previously sought from local government council and shire authorities throughout New South Wales, Victoria, Queensland, and Tasmania details of entities who provided contractor services in the 2011 and 2012 financial years. The ATO says it will now acquire details of entities receiving taxable payments from local government council and shire authorities throughout the country covering the 2011 to 2014 financial years.

The ATO says it will electronically match the information collected with its own data holdings to identify instances of non-compliance with tax lodgment and payment obligations. Records relating to 20,000 to 40,000 individuals are expected to be matched under the program.

TIP: Be aware of the ATO's use of electronic data-matching to check tax compliance. According to the ATO, most people are willing to meet their tax and superannuation responsibilities. However, the ATO says it uses a range of measures, including electronic data-matching, to identify the small minority of taxpayers who do not fully meet their responsibilities.

Tax bill for transfer of land to joint development trust

A taxpayer (the trustee of a trust) has been unsuccessful before the Federal Court in arguing against a capital gains tax bill following a transfer of land it owned to a "joint venture trust". The transaction took place in August 1998 and the amount in dispute totalled some \$7.6 million. The joint venture trust was set up to facilitate commercial development of the land owned by the taxpayer as well as adjacent land owned by other owners.

The taxpayer argued that there was no change in the beneficial ownership of the land and that there should therefore be no tax liability on the transfer. However, the Court held that the transaction was taxable and that the exceptions to the tax liability as argued for by the taxpayer did not apply in the circumstances. The Court also affirmed the Tax Commissioner's decision

to impose an administrative penalty at the rate of 25% of the tax shortfall.

Forestry managed investment scheme losses refused

An individual has been unsuccessful before the Administrative Appeals Tribunal (AAT) in a matter concerning losses claimed in tax returns for the 2006 and 2007 income years.

The individual had invested in a forestry managed investment scheme and the losses from that investment, which amounted to \$1 million over the two years, had been claimed on the basis that he was a member of a partnership. During an audit of the taxpayer's affairs, the taxpayer disclosed to the Tax Commissioner that the partnership losses should not have been claimed and that the 2007 return had been lodged by his tax agent without his authority. The Commissioner refused the claims for losses and issued amended assessments. However, the Commissioner also treated the taxpayer as a person who had made a voluntary disclosure and he decided to reduce the shortfall penalty originally imposed by 80%.

The taxpayer objected to the amended assessments and penalty on the basis that an ATO officer had led other taxpayers to understand that the investment he had made in the scheme could be made. However, the AAT affirmed the Commissioner's decision. It held, among other things, that the returns had been lodged by the taxpayer's tax agent with his authority and that he had failed to discharge the onus of showing that the scheme had not been entered into or carried out for the sole or dominant purpose of the individual obtaining a "scheme benefit". This meant that in the circumstances, the Commissioner could, under the tax law, refuse the losses claimed and issue the amended assessments.

Property rental deduction claims mostly refused

An individual has been mostly unsuccessful before the AAT in challenging the Tax Commissioner's decision to refuse a variety of deductions relating to rental

properties. The individual, who worked full-time as an industrial chemist, owned rental properties with her husband and had done so for many years. In the 2003, 2004 and 2005 income years, they owned nine rental properties. The taxpayer declared a net rental loss for those years, arguing that she carried on a business of letting rental properties.

The AAT agreed that the taxpayer was carrying on a business of letting rental properties and allowed some claims, including part of her telephone, computer and other work-related expense claims. However, it refused most of the other disputed expenses, which included car expenses, travel expenses, repair and maintenance costs and the costs of investment courses and seminars. The AAT refused the claims, saying they either lacked the necessary connection with the individual's income-producing activities, or there was insufficient evidence to support the claims.

Brothers in business together, but not a partnership

The Supreme Court of Western Australia has found that two brothers were not in a partnership. The two brothers had spent some 30 years in business together – their businesses included an accounting practice, property development, share dealings, corporate consulting and farming. However, the Court heard that their relationship deteriorated and culminated in a dispute as to whether they were in a partnership in those years – one brother (referred to by the Court as John, who was an accountant and tax agent) said no, while the other brother (referred to by the Court as Tony, who was not an accountant) said yes.

The Court said thousands of documents were filed, but none of them were a partnership agreement between the two brothers. It said the various deeds of settlement establishing trusts presented in evidence provided proof of the brothers' intentions to trade exclusively through corporate entities and trusts and not to trade as partners. At the time of writing, it is understood that one of the brothers (Tony) is seeking an appeal against the decision.

Daughter found to be "puppet director" of company trustee

A married couple has been successful before the AAT in a matter concerning access to the capital gains tax concessions for small businesses. The key issue in dispute concerned a trust (in respect of which the couple were beneficiaries) and the trust's entitlement to the concessions in connection with a capital gain made on the sale of assets by the trust in the 2008 income year. Specifically, the main issue was whether the trust was controlled, either alone or with others, by the couple's daughter.

The Commissioner argued that the daughter was a controller of the trust and that, therefore, the trust was connected with other entities controlled by the daughter, with the result that the trust breached the eligibility requirements for any of the capital gains tax concessions sought by the couple. However, the AAT found that the husband alone was the person who controlled the trust for the purposes of the small business concessions. Therefore, entities connected with the daughter, who was found to be a mere "puppet director" of the company trustee, did not have to be taken into account in determining the trust's entitlement to the concessions claimed by the couple.

In finding that the husband alone controlled the trust, the AAT noted, among other things, that the trust was not accustomed to acting in accordance with the daughter's wishes independently of her father's wishes in circumstances where her wishes and directions were actually her father's.

TIP: The tax law provides four concessions to reduce, eliminate and/or provide a roll-over for a capital gain made on an eligible asset that has been used in a small business. These concessions include the "15-year exemption", the "50% reduction", the "retirement exemption" and the "roll-over" concession.

The availability of the concessions is subject to satisfying a range of conditions, and these rules can be tricky to apply in practice – improperly claiming the concessions can have devastating consequences. Please contact our office for further information.

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