

Tax planning – investigate before investing

What you need to know about tax planning arrangements and tax schemes

WHAT IS TAX PLANNING?

Tax planning occurs when taxpayers legally organise their tax affairs to minimise their taxation liabilities. You may receive advice about tax planning arrangements and schemes from financiers, accountants, lawyers, tax agents, financial planners and other businesses. However, some advisers and promoters will market arrangements that promise tax benefits but do not comply with the law. These arrangements are considered to be aggressive tax planning arrangements – commonly referred to as tax schemes.

HOW DO I KNOW IF THE ARRANGEMENT I AM INTERESTED IN IS A TAX SCHEME?

It can sometimes be hard to tell the difference between a legitimate arrangement and a tax scheme. Promoters can be very good at convincing you the scheme is a good one, using professional marketing tools and attractive sales pitches offering big tax deductions or refunds. It can be difficult to tell if you are getting reliable advice.

These are a few lines that you should be wary of:

- There are no risks. We guarantee the returns.
- You don't need credit or asset checks. We'll lend you the money.
- Even if the investment doesn't go ahead, you'll still make a profit from your tax refund.
- There's no need to ask the ATO if it's okay.
- You can get up to 100% tax deductions.
- A top lawyer and accountant have looked at the investment and they think it's great.
- We'll put your money in a tax-free overseas account.
- You can run your business through your own offshore company.

No matter what a promoter says, the bottom line is if it sounds too good to be true it probably is.

EXAMPLES OF TAX SCHEMES

Tax schemes often involve a series of complex transactions. They may also involve distorting the way funds are being used to enable you to claim deductions you are not entitled to.

The following examples might not seem like tax schemes on the surface, but getting involved could be costly.

- **Scholarship trusts to pay for your children's education** – A promoter may offer to help you set up a fund to pay for your children's education using a trust with the promise that the arrangement will minimise your tax.
- **Mortgage management plans** – A promoter may market an arrangement as a way to 'pay off your home loan faster' by promising you a way to claim tax deductions equivalent to the interest payments on your home loan. Sometimes these arrangements involve refinancing your home loan and taking out further investment loans or even living in the home and renting it through a trust.
- **Early access to superannuation** – A promoter might promise you a way to 'unlock' your superannuation savings before retirement age for personal expenses. Early access to superannuation is only possible in very limited circumstances, such as specific medical conditions or severe financial hardship.

There are many other arrangements that promote tax benefits that can only be gained by exploiting the law. That is why you should investigate any tax planning arrangements you are offered to make sure the offered benefits are available under the law.

HOW DO I INVESTIGATE?

The following checklist will help you investigate an arrangement before you invest in it.

- Check the provider's licence details – people who offer financial products and advice must work for a business that holds an Australian Financial Service Licence issued by the Australian Securities and Investment Commission (ASIC). You can check licence details free of charge via the ASIC website at www.fido.gov.au
- Check if there is a product disclosure statement or prospectus – as a potential investor you must be given one of these. If you haven't received either, contact ASIC by email to info@asic.gov.au
- Obtain independent advice from an adviser who has no connection with the seller or the investment scheme



- Check if the scheme has an ATO product ruling – many tax-effective investments have product rulings. A product ruling provides you with a legally binding assurance that the tax benefits set out in the ruling will be available, as long as the scheme is carried out as described in the ruling. Find out more by visiting our website at www.ato.gov.au/investing or by phoning us on **1800 177 006** (or ask your adviser to do this).
- Taxpayer alerts are early warnings of significant and emerging tax planning issues we are assessing. Check taxpayer alerts at www.ato.gov.au/investing or phone us on **1800 177 006** to find out if the scheme has any of the characteristics described in the alerts.
- Apply for a private ruling to confirm the tax effects of the arrangement. Private rulings are binding, as long as the scheme is carried out as described in the ruling. For more information on how to apply, visit our website at www.ato.gov.au/investing

WHAT ARE THE RISKS OF PARTICIPATING IN A TAX SCHEME?

Taxpayers have the responsibility to declare all their assessable income and claim only the deductions and offsets they are entitled to in their annual income tax returns. You need to be careful before entering into arrangements that affect your tax affairs. There are serious consequences for taxpayers entering into arrangements that are later shown to be tax schemes.

If you invest in a tax scheme, you are risking your original investment plus you could have to pay back any missing tax with interest and penalties long after the promoter and your money are gone.

WHAT DO I DO IF I AM INVOLVED IN A SCHEME?

If you believe you are involved in a tax scheme you should contact us. You can ask for an amendment to your income tax assessment. By making this voluntary disclosure you may be entitled to a reduction in penalties.

If you have concerns about a promoter or a tax scheme, call our Tax Evasion and Referral Centre on **1800 060 062**. You can do this anonymously.

We will investigate further and take action to stop the promoter marketing the scheme if it seems outside the law. This will help stop other taxpayers from investing in the scheme.

➤ MORE INFORMATION

For more information about:

- tax planning and schemes, visit our website at www.ato.gov.au/investing
- making a voluntary disclosure, refer to *Voluntary disclosures – approved form* (NAT 72121).

For financial tips and safety checks, visit the Australian Securities and Investment Commission (ASIC) website at www.fido.gov.au

To help you recognise, report and protect yourself from scams, visit the Australian Competition and Consumer Commission (ACCC) SCAMwatch website at www.scamwatch.gov.au

OUR COMMITMENT TO YOU

We are committed to providing you with advice and guidance you can rely on, so we make every effort to ensure that our publications are correct.

If you follow our guidance in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake in trying to follow our advice and guidance in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

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