TA 2002/1 - Internet Marketing Expenses Scheme

This cover sheet is provided for information only. It does not form part of *TA 2002/1 - Internet Marketing Expenses Scheme*

Taxpayer Alert

TA 2002/1

The ATO view on the arrangement considered in this Taxpayer Alert is set out in Taxation Determination TD 2002/23.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

The developers and marketers of an arrangement which is the subject of a Taxpayer Alert should provide the full facts of the arrangement to the ATO to enable the ATO to finalise its view.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might obtain their own advice and/or contact the ATO officer named in the Alert.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Internet Marketing Expenses Scheme

This Taxpayer Alert describes an arrangement where a taxpayer claims large income tax deductions for Internet marketing expenses paid to a tax haven based Internet marketer.

DESCRIPTION

The alert applies to arrangements having the following features.

1. A taxpayer enters into a marketing agreement with a tax haven based Internet marketer to ‘establish a location on the Internet and to carry on the business of selling advertising and marketing services over the Internet’. The agreement is for one year only.

2. The taxpayer prepays a marketing fee of, for example, $100,000 to the Internet marketer of which $20,000 is sourced from the individual’s own means and $80,000 is borrowed (for a period of one year) from another tax haven entity.

3. The taxpayer claims a tax deduction of $100,000.

4. The taxpayer's borrowed funds are guaranteed and indemnified by an Australian company of which the taxpayer is the sole owner and director.

5. The Internet marketer guarantees a return of at least $20,000 in advertising revenue to the taxpayer.

6. The borrowed funds of $80,000 are not repaid. Neither the taxpayer nor the guarantor is pursued to repay the borrowed funds.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

(a) The arrangement raises questions about the deductibility of the expenses under the general provisions. The expenditure appears to be capital in nature.
(b) The arrangement raises questions about the application of the general anti-avoidance provisions of Part IVA of the ITAA 1936.
(c) The arrangement seems artificial and lacking commerciality in its design and execution.
(d) There appears to be round robin funding or a circular movement of funds and guaranteed returns.
(e) There appears to have been a substantial removal of risk from the taxpayer.
(f) The transactions involve tax havens.

The Australian Taxation Office is examining these arrangements.

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subject references:

legislative references: Section 8-1 of the ITAA 1997 and Part IVA of the ITAA 1936

related taxpayer alerts:

related practice statements: PS 2001/15 - Taxpayer Alerts

related media releases:

file references:

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