


TA 2007/4 - Share options granted under an employee share scheme to a related trust

 This cover sheet is provided for information only. It does not form part of *TA 2007/4 - Share options granted under an employee share scheme to a related trust*



Taxpayer Alert

TA 2007/4

The Taxation Office view on this arrangement is set out in ATO Interpretive Decision 2003/192.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk tax planning issues or arrangements that the Tax Office 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 tax officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the Tax Office has under risk assessment will be 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 Tax Office.

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 Tax Office considers give rise to taxation issues. These issues will generally require more detailed analysis to provide the Tax Office view to taxpayers.

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. (It should be noted that the Taxation Administration Act 1953 sets out circumstances where the Commissioner may decline to issue such a ruling). Such taxpayers might also contact the tax officer named in the Alert and/or obtain their own advice.

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

TITLE: Share options granted under an employee share scheme to a related trust

This Taxpayer Alert describes an arrangement to avoid tax, through the use of a related trust, by an individual taxpayer in respect of options to acquire shares granted under an employee share scheme.

DESCRIPTION

This alert applies to arrangements that exhibit some or all of the following features:

1. An individual taxpayer, is to be granted options to acquire shares in a company (the company) under an employee share scheme upon their appointment as an employee, director or executive of the company.
2. The taxpayer arranges for the options to be granted to a related trust. The taxpayer may be a director of a company acting as trustee of the trust, and/or the taxpayer may be a beneficiary of the trust.
3. The options are not 'qualifying' rights under Division 13A of the *Income Tax Assessment Act 1936 (ITAA 1936)* as they are not granted to an employee.
4. The marketing of the arrangement may include the claim that the grant of the options is in consideration for the trust procuring the services of the individual taxpayer for the company rather than in respect of their employment or services provided. This claim is for the purpose of arguing that the trust, rather than the individual taxpayer, should be assessed on the grant of the options.
5. Under each option a share can be acquired upon payment of an exercise price.
6. The exercise price of each option is below market value of the share at the time of grant.
7. The trustee of the trust exercises the options to acquire the shares and then sells the shares.
8. In preparation of the trust return, the gain from the sale is included in the assessable income of the trust.
9. The net income of the trust may be distributed to a beneficiary, or beneficiaries, in a tax preferred position, for example, they may have accumulated tax losses.

FEATURES WHICH THE TAX OFFICE CONSIDERS GIVE RISE TO TAXATION ISSUES

The Tax Office considers that the arrangement outlined above gives rise to taxation issues which include whether:

- (a) the discount given in relation to the options is included in the assessable income of the individual taxpayer under section 139D of the *ITAA 1936*;
- (b) the options are a benefit provided to the individual taxpayer, as per section 15-2 of the *Income Tax Assessment Act 1997 (ITAA 1997)*, and should be returned as statutory income as per section 6-10 of the *ITAA 1997*; and
- (c) the general anti-avoidance provisions in Part IVA of the *ITAA 1936* apply.

The Australian Taxation Office is examining these arrangements.

subject references: *employee share schemes,*

legislative references: Section 6-10 of the *ITAA 1997*
Section 15-2 of the *ITAA 1997*
Division 13A of the *ITAA 1936*
Part IVA of the *ITAA 1936*

related taxpayer alerts:

related media releases:

file references:

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