



TA 2008/6 - Claiming tax deductions for debts from a previous tax planning scheme that are forgiven or where repayments are refunded

 This cover sheet is provided for information only. It does not form part of *TA 2008/6 - Claiming tax deductions for debts from a previous tax planning scheme that are forgiven or where repayments are refunded*

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Taxpayer Alert

TA 2008/6

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: Claiming tax deductions for debts from a previous tax planning scheme that are forgiven or where repayments are refunded

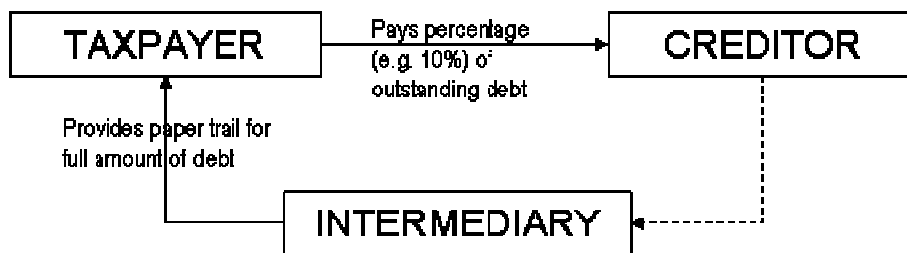
This Taxpayer Alert describes arrangements whereby taxpayers involved in a previous tax avoidance scheme enter into an arrangement under which they purport to be able to claim a tax deduction for debts relating to that scheme that have been forgiven or where repayments of the debt are refunded.

DESCRIPTION

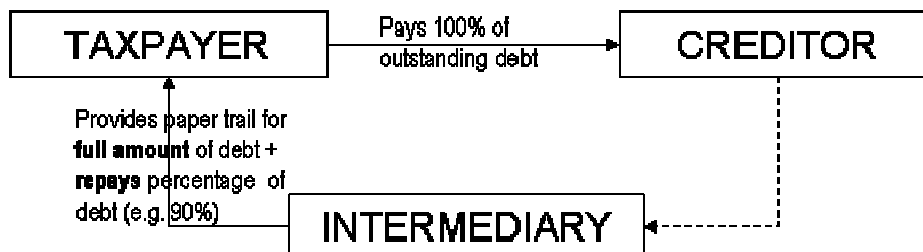
The alert applies to arrangements having the following features.

1. The taxpayer has a debt from participating in a previous tax planning scheme.

2. An entity associated with promotion of the previous tax planning scheme (the other entity) approaches the taxpayer with an offer to settle the outstanding debt on that scheme, on the basis of generating further tax deductions above the [net] amount repaid.
3. The other entity proposes an arrangement whereby the taxpayer pays either:
 - (a) an amount less than the full amount of the outstanding debt and the other entity offers to provide documents that incorrectly evidence the payment of the full amount. This may involve the fabrication of documents that purport to show the payment of the full amount by the taxpayer; or
 - (b) the full amount of the outstanding debt and the other entity offers to provide supporting documentation to substantiate this payment, but also to arrange a covert refund of the majority of the amount paid to the taxpayer or their associates. This may involve the use of a round robin payment arrangement to return the majority of the amount paid by the taxpayer back to the taxpayer or their associates.
4. The basic features of this arrangement can be summarised diagrammatically as follows:



Alternatively, the arrangement may constitute a round robin, such as:



FEATURES ABOUT WHICH THE TAX OFFICE IS CONCERNED

The Tax Office considers that an arrangement of this type gives rise to taxation issues that include whether:

- (a) such an arrangement or certain steps within it may be a sham;
- (b) either the outstanding debt or the [net] amount actually repaid under this scheme may be deductible under section 8-1 the *Income Tax Assessment Act 1997*;
- (c) the general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) may apply to the arrangement, on the basis that its dominant purpose is to enable the taxpayer to obtain a tax benefit;
- (d) any entity involved in the arrangement is a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

The Australian Taxation Office is examining these arrangements.

The Tax Office will consider the deductibility of each settlement amount on a case by case basis taking into account the overall circumstances. Deductions, where allowable, will be limited to the amounts which have actually been incurred.

Note 1: Penalties of up to 50% of the tax avoided can apply where Part IVA is applied. Base penalties for intentional disregard of the tax law are imposed at 75% of the tax shortfall. Reductions in base penalty may be available if the taxpayer makes a voluntary disclosure to the Tax Office. If you have any information about the current arrangement, phone us on 1800 177 006.

Note 2: In appropriate cases possible sanctions under criminal law may also apply. Where a taxpayer makes a voluntary disclosure and that disclosure indicates possible criminal offences, the Commonwealth Director of Public Prosecutions has indicated that favourable consideration will be given to granting an indemnity from criminal prosecution in relation to the taxpayer's involvement in the scheme where:

- *the case does not exhibit a significant degree of criminality by the taxpayer;*
- *the taxpayer provides information about how the arrangements worked, including the role and identity of the promoter; and*
- *the taxpayer co-operates with the investigation and consequential proceedings.*

Note 3: Penalties of up to 5,000 penalty units for individuals, 25,000 penalty units for bodies corporate or up to twice the amount of consideration received or receivable may apply to promoters of tax exploitation schemes under Division 290 of Schedule 1 to the Taxation Administration Act 1953. The Commissioner can also apply to the Federal Court of Australia for restraining and performance injunctions against promoters where prohibited conduct has occurred, is occurring or is proposed.

subject references: Tax avoidance
Tax evasion

legislative references: Section 8-1 of the Income Tax Assessment Act 1997
Part IVA of the Income Tax Assessment Act 1936
Division 290 of Schedule 1 to the *Taxation Administration Act 1953*

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