

TA 2001/1 - Home Loan Unit Trust Arrangement



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Taxpayer Alert

TA 2001/1

The ATO view on the arrangement considered in this Taxpayer Alert is set out in Taxation Ruling TR 2002/18.

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: Home Loan Unit Trust Arrangement

This Taxpayer Alert describes an arrangement where a taxpayer and/or spouse use a unit trust to acquire a property for their residential use in an attempt to access tax deductions generally available to investment properties. In essence, the arrangement appears to be about seeking deductions for essentially private expenditure.

DESCRIPTION

The alert applies to arrangements having the following features.

1. The taxpayer and/or spouse establishes a unit trust with a company as trustee. The taxpayer and/or spouse initially acquire a small number of units in the trust. The taxpayer and/or spouse are the directors of the trustee company.
2. The taxpayer borrows an amount of money that approximates the value of a yet to be acquired residential property and uses the borrowings to acquire more units in the

trust. The trust gives a guarantee to the lender over the taxpayer's borrowings.

3. The unit trust then purchases a residence that is leased to the taxpayer and/or spouse at market rental with annual rent reviews. The trust grants a mortgage over the residence to the lender as security for the taxpayer's borrowings. In some cases the term of the lease is for 50 years.
4. Subsequently, the taxpayer and/or spouse pay rent to the trust under the lease. The trust pays the expenses on the property such as water and council rates and insurance. The trust claims deductions for those expenses and also claims any depreciation or other capital allowance deductions that apply in respect of investment properties.
5. The trust's taxable income is distributed to the unit holders. The taxpayer, as the major unit-holder, receives most of this distribution and it is included in his or her tax return as assessable income.
6. The taxpayer claims deductions against that income for the interest that is paid on the borrowings used to acquire the units in the trust. This results in an overall loss from the arrangement to the taxpayer that is offset against other income.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

- (a) The arrangement seems artificial and lacking commerciality in its design and execution.
- (b) It would seem that the arrangement may have the dominant purpose of enabling deductions to be claimed for essentially private expenditure.
- (c) The arrangement raises questions about the deductibility of interest expenses under general provisions.
- (d) The arrangement raises questions about the application of the general anti-avoidance provisions of Part IVA of the ITAA 1936.

The Australian Taxation Office is examining these arrangements.

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| <i>legislative references:</i> | ITAA 1997 Div 6 ITAA 1997 Div 8 ITAA 1997 Div 42 ITAA 1997 Div 43 ITAA 1936 Part IVA |
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| <i>file references:</i> | 2001/019419 |
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| Date issued: | 20 December 2001 |
| Authorised by: | First Assistant Commissioner Kevin Fitzpatrick |
| Contact Officer: | Peter O'Donohue |
| Business Line: | Personal Tax |
| Section: | Aggressive Tax Planning |
| Phone: | 1300 650 135 |
