TA 2002/4 - Personal Services - Partnership Arrangement

This cover sheet is provided for information only. It does not form part of *TA 2002/4 - Personal Services - Partnership Arrangement*

Taxpayer Alert

TA 2002/4

The ATO view on the arrangement considered in this Taxpayer Alert is set out in Draft Taxation Determination TD 2002/D8 and Taxation Determination TD 2002/24.
ATO Media Release – NAT 02/92 provides advice on 'arranged partnership' schemes.

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: Personal Services – Partnership Arrangement

This Taxpayer Alert describes an arrangement whereby a taxpayer who earns personal services income from the provision of professional services enters into a partnership with other unrelated taxpayers who also earn personal services income. The intended effect is to recharacterise the income being earned as income of the partnership so as to enable the taxpayer to split their income with their spouse or a related party.

DESCRIPTION

1. A taxpayer earning personal services income from the provision of professional services pays an arranger to organise a partnership with other unrelated taxpayers.

2. The taxpayer pays to the arranger an upfront fee and a continuing management fee.

3. The taxpayer renews existing or enters into new contracts for the provision of personal services in the name of the partnership.

4. Tax invoices for services provided are generally in the name of the partnership.

5. The taxpayer directs the service acquirer to make payments either to the taxpayer as the representative of the partnership or to the arranger as agent for the partnership.

6. If the payment for services are made directly to the taxpayer, that taxpayer pays to the arranger the GST in respect of the provision of the services and the continuing management fee.

7. If the payment for services is made directly to the arranger by the service acquirer the arranger will deduct the applicable GST and the continuing management fee. The net amount is generally paid to the taxpayer who provided the services.

8. The taxpayer's income from the partnership is based on the income generated by the taxpayer's personal services rather than a share of the net income of the partnership income.

9. The taxpayer assigns up to 49% of their alledged interest in the partnership to their spouse or a related party.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

The ATO considers that the arrangement outlined above gives rise to taxation issues which include:

(a) The validity of the partnership. For example: there does not appear to be an objective intention to carry on a business in common with a view to profit with the other partners.
(b) Whether a business providing professional services is being carried on through a partnership.
(c) Whether the arrangement circumvents the provisions of Part 2-42 of the ITAA 1997 which deals with taxpayers deriving personal services income.
(d) The application of Part IVA of the ITAA 1936:
    i. the arrangement seems artificial and lacks an ordinary business purpose in its design and execution; and
    ii. in the dominant purpose of entering into the arrangement is to obtain the tax advantages of income splitting and access to an increased range of deductions.

subject references:	
legislative references:	Sections 8-1, 995-1 and Part 2-42 of 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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