TA 2002/5 - Prepaid Service Warrant Arrangement

Taxpayer Alert

TA 2002/5

The ATO view on the arrangement considered in this Taxpayer Alert is set out in Taxation Determination TD 2003/9.

FOI status: may not 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: **Prepaid Service Warrant Arrangement**

This Taxpayer Alert describes an arrangement where a taxpayer claims large income tax deductions for partnership losses. The partnership's losses are created by the partnership acquiring prepaid service warrants that may be redeemable for the provision of financial and wealth creation seminars. The arrangement produces significant tax deductions for a small cash outlay.

DESCRIPTION

The alert applies to arrangements having the following features:

1. A taxpayer purports to enter into a partnership which claims to be in the business of acquiring and disposing of prepaid service warrants.

2. The partnership claims to buy a series of warrants that are redeemable for services from an offshore seminar provider ("service provider").

3. The partnership acquires a series of warrants, for example, for a face value of $50,000 by paying $6,250 (or 12.5% of the face value) with the balance owing to the service provider. No 'loan' agreement is evident for the balance owing.

4. The arrangement is entered into at the end of the financial year.

5. The partnership's objective is to endorse the warrants over to a client for a fee so the client can redeem them for financial and wealth creation seminars from the service provider. There is a question as to whether any warrants are actually made available to the partnership.

6. All warrants that have not been endorsed over to clients by the end of a 12 month period will be re-purchased by the service provider at a 12.5% discount of their face value. In the example at paragraph 3, this is the amount equal to the balance owing.

7. It is claimed that the purchase of the warrants by the partnership will give rise to a loss in the partnership for the face value of the warrants in the year that the warrants are acquired.

8. It is claimed that on endorsing the warrants over to the client or on the re-purchasing of the warrants by the service provider the partnership would derive assessable income. If the warrants are endorsed or repurchased any assessable income would not be derived until the subsequent year.

9. The partners claim a share of the partnership loss in their tax returns.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

(a) The arrangement seems artificial and lacks an ordinary business purpose in its design and execution.

(b) The arrangement raises questions about whether a partnership actually exists.

(c) The arrangement raises questions about whether a business is actually being carried on.

(d) The arrangement raises questions about the deductibility of the cost of the warrants.

(e) The arrangement raises questions about the application of the anti-avoidance provisions in Section 82KZME and Section 82KZMF of the ITAA 1936.

(f) 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.

subject references:	Partnership Losses
legislative references:	Section 8-1 of the ITAA 1997 and sections 82KZME and 82KZMF 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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