

update

24 June 2009

Tax update: Failed managed investment schemes

According to a recent media report, the Australian Taxation Office (ATO) has indicated that it is open to it to now disallow deductions based on failed managed investment schemes.

The article suggests that some of these schemes may not have been carried on in the manner represented to the ATO when the relevant product ruling was obtained. The Deputy Commissioner for aggressive tax planning was quoted as stating that the ATO will be looking at whether failed schemes had materially differed from the information on which the product ruling was based. If this is found to be the case, it is possible that the ATO could seek to disallow the relevant deductions.

Historically the ATO has expressed significant concerns about the use of mass marketed managed investment schemes to obtain deductions for investors and have considered use of such schemes an "aggressive tax planning" strategy. On various occasions, the ATO has litigated the issue of whether deductions based on such schemes were allowable.

At present, there is no indication that any of the monies invested into the schemes had not been applied for a proper purpose. Further, even if the rulings were invalid, this simply means that the taxpayers will no longer have this "safe harbour". It would not necessarily mean that the deductions would not be available or even that the ATO would seek to take action in relation to these schemes.

The mere fact that a scheme becomes insolvent should not be enough to affect the deductibility of prepaid investments for the current year. There are also strong arguments that the entire deduction should continue to be allowed, subject to any special circumstances. However, any further investment since the schemes have failed may not qualify for deduction and would not be advised in any event.

If you are concerned about these issues – either because you are assisting your clients to manage their failed investments or because you are concerned about your liability as an advisor – please feel free to contact us. Our team has extensive experience in the areas of tax litigation and advice. We would be happy to have a confidential conversation regarding these, or any other, tax related problems.

For more information

For more information, please contact our Taxation and Financial Services team:

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