Business structure

Risks that attract our attention on the structure and transactions of privately owned wealthy groups.

Consolidation

We focus on consolidation issues from inappropriate CGT reporting, cost-setting rules, membership and loss utilisation.

Demergers

We focus on transactions and schemes that exploit the demerger provisions for a tax benefit.

Lower company tax rate

We are concerned when ineligible corporate tax entities claim the concessional tax rate for base rate entities.

Research and development tax incentive

We review behaviours of concern that result in incorrect Research and Development (R&D) tax offsets claims.

Professional firms

Individual professional practitioners who redirect their income to

Self-managed super funds

We monitor transactions and schemes that take advantage of concessional tax rates that apply to complying super funds.

QC 58473

Consolidation

We focus on consolidation issues from inappropriate CGT reporting, cost-setting rules, membership and loss utilisation.

Last updated 22 May 2024

On this page

What consolidation does

Consolidation allows wholly-owned corporate groups to operate as a single entity for income tax purposes.

CGT consequences

We focus on the reporting of capital gains or losses related to consolidation.

Situations that attract our attention include:

- corporate groups that restructure and have one or more consolidated groups within a private group
- where multiple entities join or leave the consolidated group
- incorrectly reporting capital gains or losses arising from the allocable cost amount (ACA) and allocation process on joining or leaving the consolidated group – for example, there were pre-CGT membership interests or a head company hasn't reported a capital gain when a negative ACA occurred from an entity leaving the group.

Cost-setting rules

We focus on the:

- allocable cost amount (ACA) calculation on joining or leaving a consolidated group
- allocation of the ACA to set the tax cost of assets on joining or membership interests on leaving a consolidated group.

Situations that attract our attention include:

- restructuring that may affect the ACA calculation, before joining, forming or leaving a consolidated group
- on joining a group
  - miscalculating or overstating the ACA, for example, relating to the costs of membership interests or the accounting liabilities of the joining entity
  - inappropriately including or excluding assets before allocating the ACA to assets
  - incorrectly allocating the ACA to assets which results in increased revenue deductions or cost bases of CGT assets – examples include using inappropriate market values or incorrectly making relevant adjustments
- on leaving a group
  - incorrectly calculating the ACA, for example by excluding or understating liabilities

- incorrectly allocating the ACA to the membership interests and treatment of pre-CGT shares (if any).

Membership

We focus on the formation of a consolidated group and the eligibility of members.

Situations that attract our attention include:

- the incorrect formation of a consolidated group
- incorrectly including or excluding an entity as a member of a consolidated group
- late notifications of entries or exits from a consolidated group.

Losses

We focus on whether losses have been correctly transferred, the available fraction has been correctly calculated and losses correctly used.

Situations that attract our attention include:

- incorrectly including or excluding an entity as a member of a consolidated group, where it may cause unintended tax benefits
- incorrectly transferring or using losses
- high available fractions that, if incorrect, would allow a consolidated group to use transferred losses at an inappropriate rate
- failing to adjust the available fraction as required.

QC 69435

Demergers

We focus on transactions and schemes that exploit the demerger provisions for a tax benefit.

Last updated 22 May 2024

What a demerger is

A demerger involves the restructuring of a corporate group by splitting its operations into 2 or more entities or groups. When a **demerger** happens, the shareholders of the head entity of the group acquire a direct interest in the demerged entity.

The demerger provisions offer CGT and income tax relief at both the entity and shareholder level. This tax relief is intended for genuine demergers that offer business benefits through restructuring. Demergers should not be undertaken to achieve a tax benefit.

Demerger situations that attract our attention

Situations that attract our attention include:

- disposing of the demerged entity or business after the demerger event
- shareholders acquiring more than their share of the new interests in the demerged entity
- schemes aiming to inappropriately get CGT rollover concessions through a corporate restructure that doesn't satisfy the demerger requirements
- demergers that appear to have been undertaken to obtain a tax benefit rather than to improve business efficiency
- demergers that remove or significantly reduce assessable capital gains or dividends
- demergers where one of the demerged entities is not wholly owned by the original shareholders, where the proportionate value of their

shares can be affected through arrangements enacted prior to the demerger.

Guidance on demergers

For more guidance on demergers and restructuring, refer to:

- **Income Tax Assessment Act 1936 – section 45B** *Schemes to provide certain benefits*
- **TD 2020/6** *What is a 'restructuring' for the purposes of subsection 125-70(1) of the Income Tax Assessment Act 1997?*

QC 69436

Lower company tax rate

We are concerned when ineligible corporate tax entities claim the concessional tax rate for base rate entities.

Last updated 24 August 2022

Artificial or contrived arrangements implemented to access the lower company tax rate attract our attention.

The lower company tax rate applies to a corporate tax entity that is a base rate entity (BRE). The company tax rate of 30% applies to all other corporate tax entities. For more information, see **Changes to company tax rate**.

We recognise that the majority of corporate tax entities will apply the correct tax rate. However, situations that attract our attention include:

- corporate tax entities not eligible to be a BRE claiming the concessional tax rate such as entities that
  - fail to include the annual turnover of all of their connected entities and affiliates in calculating their aggregated turnover (see, **Aggregation**)
  - have 80% or greater of their income as base rate entity passive income (see, **LCR 2019/5** *Base rate entities and base rate entity passive income)*

- artificial or contrived arrangements to change the company tax rate, such as arrangements where groups
  - restructure to reduce their aggregated turnover
  - shift the derivation of non-passive income to companies who derive only passive income
  - shift passive income to companies deriving non-passive income.

For more information on compliance and administrative approaches for prior years, see PCG 2018/8 *Enterprise Tax Plan: small business company tax rate change: compliance and administrative approaches for the 2015–16, 2016–17 and 2017–18 years*.

QC 69454

Research and development tax incentive

We review behaviours of concern that result in incorrect Research and Development (R&D) tax offsets claims.

Last updated 1 May 2023

On this page

We review behaviours of concern that result in incorrect Research and Development (R&D) tax offsets claims.

R&D tax incentive administration

The ATO and AusIndustry (on behalf of Industry Innovation and Science Australia) jointly administer the **research and development (R&D) tax incentive**. The incentive aims to support companies that undertake eligible R&D activities. AusIndustry administers the registration and compliance of the R&D activities. We are responsible for the R&D expenditure claimed on the tax return.

We focus on claims:

- made by entities in particular industries
- related to particular behaviours.

Industries of concern

Four industries of concern have been identified:

- agriculture
- building and construction
- mining
- software development.

Particular behaviours of concern are:

- claiming the R&D tax offset on business-as-usual expenses
- apportionment of overheads between eligible and non-eligible R&D activities
- payments to associates
- whether or not expenses have been incurred
- approaches taken by R&D consultants
- fraudulent claims
- failure to keep records.

Taxpayer alerts

For more information on the R&D incentives and industries, see our taxpayer alerts:

- TA 2015/3 *Accessing the R&D tax incentive for ineligible broadacre farming activities*

- TA 2017/2 *Claiming the R&D tax incentive for construction activities*
- TA 2017/3 *Claiming the R&D tax incentive for the ordinary business activities*
- TA 2017/4 *Claiming the R&D tax incentive for agricultural activities*
- TA 2017/5 *Claiming the R&D tax incentive for software development activities*

QC 69457

Professional firms

Individual professional practitioners who redirect their income to an associated entity to reduce their tax liability.

Last updated 1 May 2023

On this page

Our concerns about arrangements

We are concerned about arrangements involving individual professional practitioners who redirect their income from a business or activity that includes their professional services to an associated entity where it has the effect of significantly reducing their tax liability.

Arrangements that attract our attention include those that lack commercial rationale or have high-risk features.

Arrangements that lack commercial rationale

Arrangements that lack commercial rationale:

- seem more complex than necessary to achieve the relevant commercial objective
- appear to serve no real purpose other than to gain a tax advantage
- have a tax result that appears to be at odds with its commercial or economic result
- result in little or no risk in circumstances where significant risks would normally be expected
- operate on non-commercial terms or in a non-arm's length manner
- present a gap between the substance of what is being achieved and the legal form it takes.

Arrangements with high-risk features

Arrangements with high-risk features:

- have financing arrangements relating to non-arm's length transactions
- exploit the difference between accounting standards and tax law
- are materially different in principle from Everett and Galland
- involve multiple classes of shares and units held by non-equity holders.

Guidance on allocation of profits

For more information on the allocation of profits and our compliance approach, see:

- PCG 2021/4 *Allocation of professional firm profits – ATO compliance approach*
- Assessing the risk: allocation of profit within professional firms
- TA 2013/3 *Purported alienation of income through discretionary trust partners*.

QC 69455

Self-managed super funds

We monitor transactions and schemes that take advantage of concessional tax rates that apply to complying super funds.

Last updated 1 May 2023

What attracts our attention with SMSFs

With self-managed super funds (SMSFs), we focus on transactions and schemes that aim to inappropriately take advantage of concessional tax rates that apply to complying super funds.

Our attention is attracted by:

- schemes in which parties were not dealing with each other at arm's length and non-arm's length expenditure either has
  - been incurred in gaining or producing ordinary or statutory income
  - not been incurred but would have been expected to be incurred if the parties were dealing with each other at arm's length
- other issues including
  - income from property developments being inappropriately diverted into SMSFs (see SMSF Regulator's Bulletin SMSFRB 2020/1)

  - intra-group lending and guarantee arrangements that inappropriately benefit SMSFs (see SMSF Regulator's Bulletin SMSFRB 2020/1)
  - income derived by a fund through a fixed entitlement to the income of a trust
- issues around valuation of any type of property being indirectly or directly purchased from a private group
- significant management and administration expenses
- private company dividends or unit trust distributions being diverted to SMSFs
- illegal early release of superannuation benefits
- personal services income diverted to SMSFs
- incorrect calculation of exempt current pension income.

We know some schemes target Australians planning for their retirement and encourage people to channel money inappropriately through their SMSF.

The Super Scheme Smart aims to educate individuals and their advisers about these schemes.

These schemes have some common features. They:

- are artificially contrived with complex structures, usually connecting with an existing or newly created SMSF
- involve a significant amount of paper shuffling
- aim to give a present-day tax benefit, often resulting in the individuals involved paying minimal or zero tax, or even receiving a tax refund
- sound too good to be true and, as such, they generally are.

Guidance for SMSFs

For guidance and rulings, see:

- TR 2006/7 *Income tax: special income derived by a complying superannuation fund, a complying approved deposit fund or a* *pooled superannuation trust in relation to the year of income* (special income was the predecessor to NALI)

- LCR 2021/2 *Non-arm’s length income – expenditure incurred under a non-arm's length arrangement*
- PCG 2020/5 *Applying the non-arm's length income provisions to 'non-arm's length expenditure' – ATO compliance approach for complying superannuation entities*

QC 69458

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.